

20645 035

SPACE LEASE AGREEMENT  
BETWEEN  
MONTGOMERY COUNTY, MAR  
AND  
IMAGINATION STAGE, INC

MONTGOMERY COUNTY, MD

APPROVED BY JD

FEB 28 2002

\$ 1804 RECORDATION TAX PAID

\$ N/A TRANSFER TAX PAID

REC'D 02/28/2002  
REC'D 02/28/2002  
REC'D 02/28/2002  
REC'D 02/28/2002

PLEASE RETURN TO:  
LERCH, EARLY & BREWER  
3 Bethesda Metro Center, Suite 380  
Bethesda, Maryland 20814-5367

Attn: Judith A. Hill

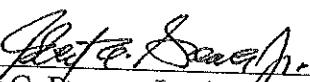
File 09507.001 / R68

Attached to and made a part of the Space Lease Agreement between  
**Montgomery County, Maryland, and Imagination Stage, Inc.**

<u>Property:</u>	<u>Parcel Identification Number:</u>
Lot 367	07-049-00550891
Lot 368	07-049-00550903
Lot 369	07-049-00550914
Lot 370	07-049-00550856
Lot 371	07-049-00550867
Lot 372	07-049-00550878
Lot 373	07-049-00550880
Part Lot 363 & 364	07-049-00552731
Part Lots 365 & 366	07-049-00552720
Part Lot 338	07-049-00552764
Part Lot 339	07-049-00552775
Part Lot 340	07-049-00552797
Part Lot 341	07-049-00552718
Part Lots 342 & 343	07-049-00552707

Title Insurer: None.

**I HEREBY CERTIFY** that this instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

  
\_\_\_\_\_  
Robert G. Brewer, Jr., Attorney

**AFTER RECORDATION, PLEASE RETURN TO:**

Judith A. Hill, Paralegal  
Lerch, Early & Brewer, Chtd.  
3 Bethesda Metro Center, Suite 380  
Bethesda, Maryland 20814  
301-986-1300  
[File No. 09507.001\RGB]

**AUBURN - DEL. RAY PUBLIC GARAGE 36  
IMAGINATION STAGE  
AND SCHOOL OF THE ARTS  
SPACE LEASE**

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EXHIBIT D	Letter of Intent
EXHIBIT E	Permitted Encumbrances

## SPACE LEASE

THIS LEASE dated this 22<sup>nd</sup> day of February, 2002, by and between **MONTGOMERY COUNTY, MARYLAND**, a political subdivision of the State of Maryland (hereinafter, together with its successors and assigns called Lessor) and **IMAGINATION STAGE, INC.**, a not-for-profit Corporation incorporated under the laws of the State of Maryland (hereinafter, together with its successors and assigns, called Lessee), (the Lessor and the Lessee together the "Parties").

## RECITALS

(1) WHEREAS, the Lessor is the owner of a certain parcel of land in the central business district of Bethesda, Maryland, located in a tract of land known as Woodmont Subdivision within the block bounded by Old Georgetown Road, Auburn Avenue, Norfolk Avenue and Del Ray Avenue, and further described as: part of Lots 367, 368, 369, 370, 371, 372 and 373; and part of Lots 363, 364, 365, and 366; and part of Lots 338 and 339; and part of Lot 340; and part of Lots 341, 342, and 343; and [original Parking Lot 36] as shown on Plat 4 Book 1 of the Land Records of Montgomery County, Maryland (the Land);

(2) WHEREAS, the Lessor is constructing on the Land the structure shown on drawings attached hereto as Exhibit C (the Parking Garage) consisting of seven (7) parking levels containing approximately seven hundred fifty (750) parking spaces together with the support system for the Parking Garage, the Land and Parking Garage jointly referred to as, (the "Garage Property");

(3) WHEREAS, Montgomery County has determined that a portion of the development on the Land shall be reserved for a cultural/arts use within the Parking Garage and has selected Lessee, a not for profit tax exempt corporation under §501(c)(3) of the U.S. Internal Revenue Code, as the organization with which the Lessor should negotiate a lease, and the Lessor and Lessee have thereupon signed a memorandum of understanding relative to the Lessee leasing of part of the Garage Property for the construction and operation of a cultural/arts use;

(4) WHEREAS, the Parking Garage is being designed, with input from Lessee, in anticipation of the construction of a cultural/arts facility, by the Lessee, within the Parking Garage;

(5) WHEREAS, the Lessee now desires to lease from the Lessor a sufficient portion of the Parking Garage for the purpose of constructing, operating and maintaining the aforesaid cultural/arts facility consisting of a two (2)-story structure with an administration area, a side stage support area, the Imagination Stage area and educational studio areas, all connected by an exhibition space/lobby area and an area to be sublet by Lessee for purposes compatible with and complementary to the Lessee's primary use;

(6) WHEREAS, the Lessor, or its designee, will construct and own the aforesaid Parking Garage on the remainder of the Garage Property and above the Demised Premises and, as set forth in this Lease, will maintain and operate a public parking garage (the "Public Garage") therein.

NOW, THEREFORE, for and in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth:

ARTICLE I  
DEFINITIONS

Alteration shall have the meaning set forth in Section 7.04.  
Business Day have the meaning set forth in Section 26.20.  
Construction Term shall have the meaning set forth in Section 2.03.  
County shall mean Montgomery County as a governmental entity.  
Default shall have the meaning set forth in Section 18.01.  
Demised Premises shall have the meaning set forth in Section 2.01(a).  
Effective Date shall have the meaning set forth in Section 2.03(a)  
Event of Default shall have the meaning set forth in Section 18.01.  
Garage shall have the meaning set forth in Recital and Section 4.05.  
Garage Property shall have the meaning set forth in Section 2.01(b).  
Hazardous Material shall have the meaning set forth in Section 22.01.  
Initial Term shall have the meaning set forth in Section 2.03(a).  
Impositions shall have the meaning set forth in Section 5.01.  
Index Rate shall have the meaning set forth in Section 18.12.  
Land shall have the meaning set forth in Recital.  
Legal Rate shall have the meaning set forth in Section 17.09.  
Leasehold shall have the meaning set forth in Section 8.03(a).  
Leasehold Mortgage shall have the meaning set forth in Section 8.03(a).  
Lessee Development shall have the meaning set forth in Section 4.01.  
Lessee Improvements shall have the meaning set forth in Section 4.01.  
Lessee Plans and Specifications shall have the meaning set forth in Section 4.01.  
Lessor shall have the meaning set forth in Section 23.01.  
LGTCA shall have the meaning set forth in Section 9.02(i).  
Major Default shall have the meaning set forth in Section 18.02(a).  
Material Deviation shall have the meaning set forth in Section 18.02.  
Montgomery County shall Montgomery County, Maryland, a political subdivision of the State of Maryland.  
Optional Term shall have the meaning stated in Section 2.03 (b).  
Parking Garage shall have the meaning set forth in Recital 2.  
Permitted Encumbrances shall have the meaning set forth in Section 8.07.

Prime Rate shall have the meaning set forth in Section 18.12.  
Public Garage shall have the meaning set forth in the Recital 6.  
Rent shall have the meaning set forth in Section 3.01.  
Rent Commencement Date shall have the meaning set forth in Section 3.02.  
Restoration shall have the meaning set forth in Section 12.02.  
Substantial Alteration shall have the meaning set forth in Section 7.04.  
Substantial Completion shall have the meaning set forth in Section 4.08(a).  
Substantially Completed shall have the meaning set forth in Section 4.08(a).

**ARTICLE II**  
**GRANT AND PREMISES; EFFECTIVE DATE; INITIAL;**  
**RENT COMMENCEMENT DATE; TERM; OPTIONAL TERMS**

**Section 2.01. Granting Clause; Retained Area.**

**Section 2.01(a). Demised Premises.** For and in consideration of the rents, covenants and agreements herein contained, Lessor does hereby lease, rent, let and demise to Lessee, and Lessee does hereby take, accept and hire from Lessor, upon and subject to the conditions herein contained, the space (hereinafter collectively referred to as the ("Demised Premises") as shown and described on Exhibit A.

**Section 2.01(b). Garage Property.** Lessor shall retain all of the areas except the Demised Premises and those interests, which are defined by easements. The Lessor's retained areas shall be known as the "Garage Property."

**Section 2.02. Marketable Title.** The leasehold interest in the Demised Premises will be marketable and good of record and in fact, insurable by a title company of Lessee's selection free and clear of all liens, encumbrances, leases, tenancies, covenants, conditions, restrictions, rights-of-way, easements and other matters affecting title, excepting only the Permitted Encumbrances.

**Section 2.03. Initial Term; Effective Date; Rent Commencement Date; Term; Optional Terms.**

**Section 2.03(a). Initial Term; Effective Date; Rent Commencement Date; Term.** The Effective Date of this Lease is the date on which the Lease is fully executed by the Parties. The Initial Term is the period of time that begins on the Effective Date and ends 18 months after the Effective Date or on the day on which the County issues a Use and Occupancy permit to Lessee for the Demised Premises, whichever occurs first. The Rent Commencement Date and the Term begin 18 months after the Effective Date or on the day on that the County issues a Use and Occupancy permit to Lessee for the Demised Premises, whichever occurs first, and continues for 30 years.

Section 2.03(b). Lessee's Option to Extend Term: In accordance with this Lease, the Lessee may extend the Term for four (4) FIVE (5) year periods (the "Optional Terms"), provided that: (a) the Lessee is not in default of any of the provision of this Lease; (b) the Lease is in full force and effect; (c) the Lease has not been assigned and the Leased Premises have not been sublet; (d) the Lessor has not given Lessee notice of Lessor's intention to terminate the Lease and use the Garage Property for other public purposes in accordance with Section 2.05 of this Lease; and (e) the Lessee gives Landlord written notice that the Lessee will exercise any of Lessee's options to extend the Lease Term at least 12 months but not more than 15 months prior to exercising any of Lessee's Options to extend. TIME IS OF THE ESSENCE FOR THE LESSEE'S NOTICE TO LANDLORD.

Section 2.04. Recording the Lease or a Memorandum of Lease. The Term of this Lease is for longer than seven (7) years. Lessee will record the Lease or a Memorandum of Lease satisfactory to Lessor among the Land Records of Montgomery County, Maryland, within thirty (30) days of execution of the Lease by the Parties, and will provide Lessor with a copy of the recorded Lease, or Memorandum of Lease containing recording information.

Section 2.05. Termination for Convenience. At any time following the 28<sup>th</sup> anniversary of the Rent Commencement Date, the Lessor may terminate this Lease for convenience so long as: (a) Lessor has given Lessee written notice of Lessor's intention to terminate the Lease two (2) years prior to the termination date; and (b) the County Council has appropriated funds for a public project on the Garage Property in an approved and adopted Capital Improvement budget for the County which provides for demolition and and/or replacement of the Garage Structure in the second Fiscal Year after the termination date stated in the notice to Lessee.

ARTICLE III  
RENT

May 1st  
See a/c  
2.03(a)  
Aug 1st

Section 3.01. Rent; Rent Adjustment.

Section 3.01(a). Annual Rent. Rent for the entire Term, including option periods, is FORTY THOUSAND AND 00/100 (\$40,000.00) DOLLARS per annum (the "Base Rent"), payable in twelve equal installments, during each lease year, of THREE THOUSAND THREE HUNDRED THIRTY-THREE AND 33/100 (\$3,333.33) DOLLARS each, and adjusted as provided below. All installments of Rent and all other payments required to be made in this Lease by Lessee to Lessor shall be paid in such United States currency as shall, at the time of payment, be legal tender for the payment of public and private debts.

Section 3.01(b). Payment of Rent. The first monthly payment hereunder shall be due on the Rent Commencement Date. All payments thenceforth shall be due and payable on the first day of each month during the lease term, at: Montgomery County Department of Public Works

& Transportation, Division of Traffic & Parking, 101 Monroe Street, 11<sup>th</sup> Floor, Rockville, MD 20850, or at such other place designated by Lessor, without prior demand therefore, and without any deduction or set-off whatsoever.

Section 3.01(c). Penalties and Fees for late payment of Rent. Should the Lessee fail to submit monthly rental payments in the above described manner, and should said failure continue for more than ten (10) calendar days after the first day of the month for which such rental payment is due and payable, Lessee shall pay to Lessor, in addition to and as a part of the rental payment in question, a late penalty of five percent (5%) of said monthly rental payment. Should Lessee's failure to pay continue for more than twenty (20) calendar days after a monthly payment becomes due and payable Lessee shall pay to Lessor, in addition to and as a part of the rental payment in question, a late penalty of fifteen percent (15%) of said monthly rental payment. Should Lessee's failure to pay continue for more than thirty (30) calendar days after a monthly payment becomes due and payable, Lessor shall have the right to terminate this Lease, recover possession of the Leased Premises and pursue any other legal remedies available to Lessor under the laws of the State of Maryland.

Section 3.01(d). Rent Adjustment. Beginning on the sixth (6<sup>th</sup>) anniversary of the Rent Commencement Date of the Lease, Rent shall increase, but not decrease, at the lesser of (i) the rate of two and one-half (2.5%) percent per annum, or (ii) the sum representing one hundred percent (100%) of the amount resulting after (1) multiplying said annual rent payable during the previous lease year by a fraction, the numerator of which shall be the index now known as the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers, National Average, All Items (1984 = 100), or its successor, for the month two months prior to the last month of the previous lease year and the denominator of which shall be said index for the month two months prior to the last month of the lease year preceding the previous lease year and (2) subtracting from such product the annual rent payable during the previous lease year.

Lessor, at its sole and absolute discretion, shall have the right, upon application by Lessee, to reduce or eliminate any portion of the rent payable under this Lease. No such reduction or elimination will be made by Lessor during the first five (5) years following the Rent Commencement Date.

#### ARTICLE IV DESIGN, MAINTENANCE AND CONSTRUCTION OF JOINT DEVELOPMENT

Section 4.01. Lessee Improvements. The Lessee Improvements will be built in accordance with the Lessee Plans and Specifications listed in Exhibit B. Lessee may issue, agree to, or permit additions to, modifications of, departures from, or change orders with respect

to, the Lessee Plans and Specifications listed in Exhibit B without the prior written consent of Lessor; provided, however, that the Lessor's consent shall be required for any change which (i) is incompatible with the structural design of the Parking Structure, (ii) interferes with the completion of the Public Garage Improvements, (iii) materially impacts on the cost of the Public Garage Improvements, or (iii) adversely affects the ability of Lessor to build the Public Garage Improvements in accordance with the Garage Plans and Specifications. Lessee shall provide Lessor with written notice of any proposed addition to, modification of, departure from, or change order with respect to the Lessee Plans and Specifications requiring Lessor's consent and shall give Lessor ten (10) Business Days after receipt of (i) written notice thereof and (ii) such additional information as Lessor shall reasonably require in order to make its decision. The Lessee Plans and Specifications are, subject to Section 23.21 hereof, deemed acceptable by Lessor and depict the current status of the design of the Lessee's Improvements. In general, the Lessee Plans and Specifications call for the construction of a first-class arts and cultural center to be known as the Imagination Stage and School of the Arts, containing approximately 37,400 square feet of floor space. The Lessee Improvements include: 1) a 450-seat theater, including space for sound and video equipment, theatrical lighting, special effects trap room, crying room, draperies and rigging and an audio loop for hearing amplification; 2) a separate 150-seat studio theater, including space for lighting and sound equipment, drapes and rigging and a stage access ramp; 3) administrative offices; 4) educational studios for drama, music, theatrical production and dance; 5) public areas, including a main lobby, gallery, Imagination Boutique shop, café, box office and systems, an outdoor Intermission Terrace, and an access elevator; 6) back-of-house areas including men's and women's bathrooms, and a technical workshop; 7) approximately 1,800 square feet of additional ground floor space along Del Ray Avenue which Lessee intends to sublease to a commercial user for a use complementary to the Lessee Improvements and/or the Garage; 8) and an exterior marquee on Auburn Avenue attached to the Garage, all as shown on Lessee Plans and Specifications.

Section 4.02. Description of Joint Project and Division of Responsibility. The Garage will be constructed next to, and above, the Lessee Improvements. The Lessor will rough grade the entire site and will excavate to the extent necessary to install its footings, foundation, and utilities. The Lessee will be responsible for constructing its improvements on the Demised Premises, including fine grading and such additional excavation as will be necessary to install its specialized footings, floor slabs, walls, facade and entrance. The Lessor will permit the Lessee to install its mechanical equipment on the roof of the Garage in an area to be mutually agreed upon by the parties, and to connect such roof top equipment to Lessee's HVAC system within the Demised Premises through vertical spaces to be designated by mutual agreement of the Parties for such purposes.

As shown on the Lessee Plans and Specifications, the columns and other structural supports for the Garage above the Demised Premises will pass from the Lessor's footings installed in the ground up through the Demised Premises; such footings, columns and structural

supports will also support the Lessee Improvements. The Parties hereby grant to each other reciprocal easements for structural support (including the installation and repair thereof) by means of such footings, columns and other structural supports. As shown on the Lessee Plans and Specifications, a sanitary sewer line and a storm drain line serving both the Demised Premises and the Garage will each pass beneath the Lessee's floor slab on grade. The Parties grant to each other reciprocal easements for the installation, operation and repair of such sanitary sewer line and storm drain line. Lessor reserves the right to drain storm water from its roof top through sound-insulated vertical drains, some of which may pass through the Lessee Improvements in vertical spaces shown on the Lessee Plans and Specifications. The Parties hereby grant to each other reciprocal easements for the installation, operation and repair of such storm drainage facilities and sound insulating materials. Although it is intended that Lessee will be a direct public utility customer for all required public utilities necessary to serve the Demised Premises for its anticipated uses, the Parties understand that electric service will be brought into the Public Garage and that Lessee's electric meter will be located in a meter/utility room in the Garage. Lessee will be entitled to bring its electric service from such meter room, through spaces in the Garage to be designated by mutual agreement of the Parties for that purpose. Lessor hereby grants to Lessee an easement for the purpose of enabling the Lessee's installation, operation and repair of such electrical lines and facilities not inconsistent with Lessor's use of the Public Garage space. The Lessee Improvements will have its own WSSC water and sanitary sewer connections and its own WSSC water meter. Each party covenants, agrees and represents to the other party that the use for support, utility connections and other essential building functions by one party of the other party's space, as described above in this Section 4.02, will not materially and adversely interfere with the use and enjoyment by the other party of its space.

#### Section 4.03. Construction of Public Garage

Section 4.03(a). The Garage will be built in accordance with the Garage Plans and Specifications listed in Exhibit C. The County may issue, agree to, or permit additions to, modifications of, departures from, or change orders with respect to, the Garage Plans and Specifications listed in Exhibit C without the prior written consent of Lessee; provided, however, that the Lessee's consent shall be required for any change which may (i) be incompatible with the structural design of the Lessee Improvements, (ii) interfere with the completion of the Lessee Improvements, (iii) materially impact on the cost of the Lessee Improvements, or (iv) adversely affect the ability of Lessee to build the Lessee Improvements in accordance with the Lessee Plans and Specifications and to use the same for its primary purpose. Lessor shall provide Lessee with written notice of any proposed addition to, modification of, departure from, or change order with respect to the Garage Plans and Specifications which requires Lessee's consent, and shall give Lessee ten (10) Business Days after receipt of (i) written notice thereof and (ii) such additional information as Lessee shall reasonably require in order to make its decision. Provided Lessor has complied with Section below, if Lessee shall not

respond to Lessor within such (10) Business Day Period, Lessee shall be deemed to have consented to any change to which its consent is required.

Section 4.03(b). Lessor anticipates completing construction of the Public Garage Improvements during Fiscal Year 2002, which ends on June 30, 2002. Lessor shall proceed and at all times continue diligently to prosecute construction and to complete construction of the Public Garage Improvements, in a good and workmanlike manner in accordance with the Garage Plans and Specifications.

Section 4.03(c). Except as otherwise specifically provided in Section 7.01 below, or in this Section 4.03(c), Lessor shall promptly correct or repair, or cause to be corrected or repaired, any material deviations from the Garage Plans and Specifications not waived by Lessee and any defects (latent or patent) in the development, construction, equipping or improvement of the Public Garage Improvements of which Lessor has notice, or upon the written request of Lessee, whichever shall first occur. Notwithstanding the foregoing, Lessee shall, at Lessor's request, cooperate with Lessor to find the best solution to correct a material deviation, even if Lessee is required to modify the Lessee Plans and Specifications to accommodate such deviation; in such event, however, all costs and expenses connected with any such modification of the Lessee Plans and Specifications shall be borne entirely by Lessor.

Section 4.04. Obtaining Licenses, Permits and Approvals. Lessee warrants to Lessor that it will, at its sole cost and expense, obtain and maintain or cause to be maintained in full force and effect, after issuance, all licenses, permits and approvals required for the construction of the Lessee Improvements in accordance with the Lessee Plans and Specifications and all applicable federal, state, and municipal laws, regulations and ordinances. Following Substantial Completion of the Lessee Improvements, Lessee shall maintain, or cause to be maintained in full force and effect, after issuance, all necessary occupancy permits for its project.

Section 4.05(a). Construction of Lessee Improvements. Lessee shall be solely responsible for the construction of the Lessee Improvements and shall comply with all applicable laws, ordinances and regulations pertaining thereto. Prior to commencement of construction, Lessee shall furnish Lessor with a copy of its final plans and specifications for the Lessee Improvements and shall furnish Lessor with a copy of its construction contract with a licensed general contractor. Lessee shall not begin construction until Lessor has issued a written notice to proceed with construction of the Lessee Improvements.

Section 4.05(b). Modification of Plans and Specifications for Lessee Improvements; Lessor Consent Required in Certain Circumstances. The Lessee Improvements will be built in accordance with the Lessee Improvement Plans listed in Exhibit C. Lessee may issue, agree to, or permit additions to, modifications of, departures from, or change orders with respect to, the Lessee Improvement Plans and Specifications as listed in Exhibit C without the prior written

consent of Lessor, provided, however, that the Lessor's consent is required for any change which may (i) be incompatible with the structural design of the Public Garage Improvements, (ii) interfere with the completion of the Public Garage Improvements, (iii) materially impact on the cost of the Public Garage Improvements, or (iv) adversely affect the ability of Lessor to build the Public Garage Improvements in accordance with the Public Garage Plans and Specifications and to use the Public Garage for its primary purpose. Lessee must provide Lessor with written notice of any proposed addition to, modification of, departure from, or change order with respect to the Lessee Improvement Plans and Specifications which requires Lessor's consent, including full sets of plans detailing the proposed modifications no later than the earlier to occur of application for building permits showing the modified Lessee Improvements or thirty (30) days prior to commencement of construction under the modified Lessee Improvements.

Section 4.06(a). Prompt Commencement and Completion of Construction of Lessee Improvements. Promptly after the Effective Date, Lessee will apply for all necessary permits to begin construction of the Lessee Improvements in the Demised Premises. Lessee, at its sole cost and expense, shall commence construction of the Lessee Improvements no later than thirty (30) days after the County has issued all permits required for Lessee to begin construction of the Lessee Improvements, and Lessor has issued a written notice to proceed with construction of the Lessee Improvements. Lessee shall proceed and at all times continue diligently to complete construction of the Lessee Development, in a good and workmanlike manner in accordance with the Lessee Plans and Specifications during the Initial Term. As used in this Agreement, the terms "Substantial Completion" and "Substantially Completed" mean that all required certificates of Use and Occupancy have been issued to Lessee for the Lessee Improvements.

Section 4.06(b). Prompt Correction or Repair of Material Deviations from Lessee's Plans and Specifications. Except as otherwise specifically provided below, or in this Section 4.06(b), Lessee shall promptly correct or repair, or cause to be corrected or repaired, any material deviations from the Lessee Plans and Specifications not waived by Lessor and any defects (latent or patent) in the development, construction, equipping or improvement of the Demised Premises with the Lessee Improvements upon learning thereof or upon the written request of Lessor, whichever shall first occur. Lessor shall, at Lessee's request, cooperate with Lessee to find the best solution to correct a material deviation, even if Lessor is required to modify the Garage Plans and Specifications to accommodate such deviation; in such event, however, all costs and expenses connected with any such modification of the Garage Plans and Specifications must be paid entirely by Lessee and must conform to design guidelines and standards acceptable to the County.

Section 4.07. Construction Meetings; Mutual Cooperation; Notice to Proceed.

Section 4.07(a). Each party will be invited to, and shall instruct appropriate representatives to attend construction meetings of its respective improvements to the extent necessary or desirable to coordinate the construction of the joint development.

Section 4.07(b). Notice to Proceed to Lessee. As soon as reasonably practicable after the Effective Date and when the site is ready for Lessee's construction, Lessor shall issue a notice to proceed to Lessee to start its construction. The Parties covenant and agree to cooperate with each other in order to facilitate a harmonious and mutually acceptable workplace environment during the course of construction of the Public Garage Improvements and Lessee's Improvements. The notice to proceed shall be issued by the Director, Department of Public Works and Transportation.

ARTICLE V  
PAYMENT OF TAXES, ASSESSMENTS  
UTILITY CHARGES, ETC.

Section 5.01. Impositions. The Lessor pays no real estate taxes on its own property, including the Land and the Public Garage Improvements. If the Lessee is required by law to pay real estate taxes and assessments, the Lessee covenants and agrees to pay real estate taxes and assessments with respect to the Demised Premises when and as the real estate taxes become due and payable. The Public Garage property and the Demised Premises will be separately metered for all utilities. Each party shall be solely responsible for paying its own utility charges.

ARTICLE VI  
USE, MAINTENANCE  
AND OPERATION OF GARAGE PROPERTY AND DEMISED PREMISES

Section 6.01. Ownership of Lessee Improvements. Except as provided in Article VIII, during the term of this Lease, the Lessee shall be the owner of the Lessee Improvements.

Section 6.02. Use of Demised Premises in General. During the period of construction of the Lessee Improvements and until Substantial Completion thereof, Lessee shall use the Demised Premises only for the construction and operation (as permitted by law) of the Lessee Improvements as set forth in this Lease. As the Lessee Improvements are completed, Lessee shall use, occupy and maintain the Demised Premises and the Lessee Improvements, or cause them to be used, occupied and maintained, in accordance with their original purpose as more particularly described in this Lease. The provisions of this Section constitute a covenant not to abandon the Lessee Improvements or the Demised Premises and to continuously to operate them in accordance with the Lease, subject to seasonal and other periodic pauses in theatrical productions and theatrical classes, vacancies and closings for repairs or renovations which are consistent with the operation of a children's theater and/or cultural/arts and educational facility in the Bethesda-Chevy Chase area. Lessee shall have the right to permit use of the Demised Premises as an

auditorium for public and private meetings and conferences accordance with applicable County law and regulations as amended from time to time. Lessee shall in no event use, occupy or maintain, nor shall Lessee knowingly (which term shall include those things which a prudent landlord reasonably should know) allow the Demised Premises or the Lessee Improvements to be used, occupied or maintained, for any unlawful purpose or in violation of any certificate of occupancy covering or affecting the use of the Demised Premises or the Lessee Improvements or any part thereof, or for any purpose which, in law, constitutes a nuisance, public or private, or which may make void or voidable any insurance then in force with respect thereto, or which would materially and adversely interfere with the Lessor's use of the Public Parking Garage. Lessee shall not change the uses hereinafter prescribed for the Demised Premises or the Lessee Improvements without Lessor's prior written consent which consent may be withheld, without limitation, in Lessor's sole and absolute discretion. In the event any proposed change of use is for a higher and better use than the use of the Demised Premises permitted herein, or in the event that Lessee abandons or loses its status as a § 501(c)(3) Corporation under the U.S. Internal Revenue Code, Lessor may increase the Rent immediately to market value or more to reflect such higher and better use, or use by a for profit corporation.

Section 6.03. Use of Demised Premises and Lessee Improvements. Lessee shall use, operate, occupy and maintain the Demised Premises and Lessee Improvements in a manner consistent with the operation of first-class buildings of similar type in the Bethesda-Chevy Chase area. Lessee agrees that, during the Term of the Lease, Lessee will continuously provide the programs described in Lessee's Letter of Intent addressed to Douglas M. Duncan, County Executive, which is attached to this Lease as EXHIBIT D, and incorporated as if fully set forth. Lessee will continuously operate, at a minimum, the programs described in EXHIBIT D during the Term of the Lease, unless the County has agreed, in writing, which consent shall not be unreasonably withheld, to a modification of the types of programs to be provided and the amount of services to be provided to children and young people with special needs, in particular children and young people with disabilities, and with limited financial resources. Lessee must annually send to the Lessor, not later than sixty (60) days after the end of Lessee's fiscal year, a written report describing the programs provided during the previous fiscal year, and stating the number of children and young people in special needs populations served by the programs at the Demised Premises.

Section 6.04. Compliance by Lessee. Subject to the provisions of Article VII, below, throughout the term of this Lease, Lessee shall, at no cost to Lessor, comply with and cause its sublessees and other occupants to comply with all applicable laws, ordinances, orders, rules, regulations and other requirements of all federal, state, county, municipal and other governmental authorities and with all requirements of any organization of insurance underwriters responsible for establishing standards applicable to any insurance coverage required to be

maintained under Article IX, except to the extent Lessee can demonstrate to Lessor's satisfaction that its insurance policies will not be jeopardized by any particular activity not in compliance with the requirements of such organization of insurance underwriters.

Section 6.05. No Waste. Lessee shall not commit or suffer to occur any waste to all or any part of the Demised Premises or to the Lessee Improvements or to any other improvements situated on the Demised Premises or any part of the Demised Premises, ordinary wear and tear excepted ("Waste"). This shall not be deemed to prevent construction, maintenance, repair, reconstruction, demolition, or alterations within the Demised Premises or the Lessee Improvements in the manner permitted in this Lease.

Section 6.06. Non-Interference. Except as otherwise provided in this Lease, neither party shall unreasonably interfere with or obstruct the operation or use of the Public Parking Garage or the Demised Premises or the Lessee Improvements.

Section 6.07. Lessee's Signs, Etc. Throughout the Term of this Lease, Lessee shall have the right to erect one or more lighted outdoor signs that may include the following types of signs: 1.) a prominent marquee which may feature the name of a contributing sponsor, but not serving primarily as an advertisement for a business not housed in the Demised Premises; 2.) a large playbill or billboard; and 3.) a sign on a façade of the Public Garage for the Lessee's commercial subtenant, with an entry on Del Ray Avenue. Lessee's signs may be changed from time to time during the Term with the prior written consent of the Lessor. Lessee's initial signs are shown in the Lessee Plans and Specifications. All signs erected by Lessee shall comply with applicable sign ordinances and regulations, and must be approved in writing by Lessor in advance of permits being issued. Lessor's approval of sign design and placement does not constitute approval of the County under applicable sign ordinances and regulations. Lessee's right to erect signs is subordinate to the County's right to erect signs on the Public Garage Structure to notify the public of the location of the Public Parking Garage Facility, entrances, exits, and rates for parking.

Section 6.08. Lessee's Right to Display Outdoor Art. Throughout the Term of this Lease, Lessee shall have the right to display and maintain works of art outside the Garage, either in the Promenade between Auburn and Del Ray Avenues or in public spaces on either Auburn or Del Ray Avenues, subject however to compliance by Lessee with all applicable Montgomery County laws and regulations. Lessee must secure all required permits and approvals for the outdoor displays and exhibits at Lessee's sole expense, and Lessee at Lessee's sole cost and expense will comply with all notices of violation and citations issued in connection with the display of outdoor art in public spaces. Lessee must maintain adequate insurance and bear all risk of loss for activities related to this Section.

**ARTICLE VII**  
**REPAIRS, MAINTENANCE AND ALTERATIONS**

Section 7.01. Obligations of Lessor and Lessee. Except as otherwise provided in this Section 7.01, the Lessor will, at the Lessor's sole cost and expense, operate, maintain and keep in good repair the Public Parking Garage structure, including but not limited to the footings and foundations, roof, walls, windows, reinforced concrete floor slabs and ramps, the roof, garage elevators and stairs, electrical system, drainage system and heating and ventilation system. The Lessee, throughout the term of this Lease, will operate, maintain, and keep in good repair the Demised Premises and the Lessee Improvements and shall keep the same in a condition consistent with the standards of first class buildings of similar type in the Bethesda-Chevy Chase area. In addition, although Lessee will be constructing its own building facade, such facade will be attached to the Garage structure by supporting members, and Lessor will be responsible for structural repairs and replacements to all elements of the Garage which will provide support to the Lessee's façade, unless the structural repairs and replacements are necessitated by any act or omission of Lessee. Lessee will be responsible for all repairs and replacements to the Lessee's façade, unless the repairs and replacements are necessitated by any act or omission of Lessor. In addition, Lessee shall repair and maintain the exterior walkway known as the Promenade connecting Auburn and Del Ray Avenues. Lessee shall also be responsible for all repairs and maintenance of the waterproof membrane within the composite floor slab protecting the Lessee Improvements. All repairs or replacements required to be made or furnished by Lessor and Lessee shall be at least equal in quality and workmanship to the original work. Except as otherwise provided in this Section 7.01, Lessee or Lessor shall each promptly correct or repair, or cause to be corrected or repaired, any defects (latent or patent) in the development, construction, equipping or improvement of each Improvements upon learning thereof or upon the written request of the other party, whichever shall first occur. In making any repairs or replacements or in taking any other actions in connection with the operation, repair or maintenance of its Improvements, each party shall take all reasonable actions required to minimize any necessary disruption of the operations of the other party, and Lessee and Lessor agree to cooperate in the scheduling and staging of repair and maintenance activities in order to minimize any such disruption. Other than as expressly set forth in this Section 7.01, nothing contained in this Lease shall in any way obligate Lessee to perform any repairs or maintenance to any portion of the Public Garage, except that Lessor can require Lessee to pay for repairs or replacements necessitated by any act or omission of Lessee.

Section 7.02. Lessor Not Obligated. Except as otherwise specifically set forth in this Article VII, Lessor shall have no liability whatsoever, now or in the future, to Lessee or any other person or entity for any damage to the Lessee Improvements or the facade of the Lessee Improvements, and (ii) Lessor shall not be required to make any repairs, alterations, replacements, changes, additions or improvements on or to the Lessee Improvements or the facade of the Lessee Improvements. Other than as expressly set forth in Section 7.01, nothing

contained in this Lease shall in any way obligate Lessor to perform any repairs or maintenance to any portion of the Lessee Improvements, except that Lessor can be required to pay for repairs or replacements to the Lessee Improvements necessitated by any act or omission of Lessor.

**Section 7.03. Lessee Not Obligated.** Except as otherwise specifically set forth in this Article VII, Lessee shall have no liability whatsoever, now or in the future, to Lessor or any other person or entity for any damage to the Public Garage, and Lessee shall not be required to make any repairs, alterations, replacements, changes, additions or improvements to the Public Garage. Lessor hereby assumes the full and sole responsibility for the replacement and management of the Garage Property.

**Section 7.04. Alterations.** Provided that no Event of Default has occurred and is continuing, Lessee shall have the right from time to time after completion of the Lessee Improvements and at its sole cost and expense to make additions, alterations and changes to the Lessee Improvements including repair or replacement made pursuant to Articles XII and XIII (any such addition, alteration or change involving an estimated cost of less than \$200,000 being hereinafter referred to as an "Alteration", and any such addition, alteration or change involving an estimated cost of \$200,000 or more being hereinafter referred to as a "Substantial Alteration"), subject however, to the following conditions:

**Section 7.04(a).** All Substantial Alterations shall be designed by an architect or engineer selected by Lessee and accepted in writing by Lessor and shall be performed in accordance with plans and specifications prepared by such architect or engineer and approved in writing by Lessor.

**Section 7.04(b).** Nothing in this Section 7.04 shall restrict Lessee's right to repair or maintain the Demised Premises in accordance with the requirements of Articles IV, XII, XIII and this Article VII, as applicable. Lessee shall have the right, in an emergency, to make temporary repairs to the Lessee Improvements without Lessor's consent if such repairs are necessary to protect public health and safety or to safeguard the Lessee Improvements and Lessee's other property and if the time required to secure Lessor's consent would pose a threat thereto. Lessee shall notify Lessor promptly after making such repairs and shall, as soon as reasonably practicable, make such changes to such repairs as may be reasonably requested by Lessor to comply with the intent of Sections 7.04(a) through (c).

**Section 7.04(c).** Lessee shall notify Lessor of all Alterations made without the requirement of Lessor's consent and shall, at Lessor's request, deliver to Lessor as-built construction drawings of all elements thereof promptly upon completion thereof.

**Section 7.05. Reimbursement for Repairs to Waterproof Membrane.** If Lessee elects to have Lessor repair the waterproof membrane, notwithstanding the provisions of Section 7.01,

Lessee shall reimburse Lessor, upon thirty (30) days prior written notice, for the costs of any repairs made by Lessor to the waterproof membrane located in the composite slab above the Leased Premises. Such notice from Lessor shall include an itemization of the costs of any such repair. Lessor agrees to pursue its remedies against the manufacturer, contractor and/or designer of the waterproof membrane, and Lessee shall be subrogated to any rights Lessor may have against the manufacturer, contractor and/or designer.

**ARTICLE VIII**  
**MORTGAGE, SUBLEASING, SALE AND REFINANCING**

**Section 8.01. Limitation on Encumbrances.** Lessee shall not sell, assign, mortgage, pledge or otherwise transfer, convey or encumber this Lease or all or any part of Lessee's interest herein, in the Leasehold or in the Demised Premises or the Lessee Improvements or any part thereof, nor shall Lessee enter into any sublease with respect to all or any portion of the Demised Premises or the Lessee Improvements, except in accordance with the provisions of this Article VIII.

**Section 8.02. Mechanic's Liens.** Lessee shall not encumber or otherwise permit any lien or charge to arise on the Garage Property or any part thereof. In the event that any such lien, encumbrance or charge shall be filed against the Garage Property or any part thereof resulting from claims or liabilities due or alleged to be due from Lessee, within thirty (30) days after notice of the filing thereof, Lessee shall cause the same to be stayed or discharged of record by payment, deposit, bond, order of court or otherwise provide security satisfactory to Lessor for the payment thereof.

**Section 8.03. Mortgaging.** From time to time during the term of this Lease, Lessee may mortgage or otherwise encumber its interest in rent, user fees, or other payments due under any sublease and its interest in the Demised Premises and the Lessee Improvements (the foregoing estate and interests of Lessee being hereinafter referred to collectively as the "Leasehold"), to any lender (or group of lenders) and may assign this Lease as security for such mortgage or encumbrance provided that at the time of such mortgage or encumbrance there exists no Event of Default, and further provided that the conditions of this Section 8.03 are fulfilled. In no event, however, shall Lessee encumber the Land or the Garage. Any Leasehold Mortgage shall be submitted to Lessor for its review for compliance with this Lease. The loan amount secured by any such Leasehold Mortgage, when added to all other proposed outstanding Leasehold Mortgages (subject to Section 8.03(c)) will be in an aggregate secured amount not greater than one hundred percent (100%) of the final project cost of the Demised Premises and the Lessee Improvements; provided, however, that the foregoing shall not be deemed to limit Lessor's right in its sole discretion to refuse to consent to any Leasehold Mortgage which would cause any of

the requirements of this Section 8.03, or any State or County Law, to be violated. Any Notice delivered to Lessor under this provision is not effective unless it states the following in conspicuous, bold face, capitalized typeface:

**THIS NOTICE IS BEING DELIVERED PURSUANT TO SECTION 8.03 OF THE SPACE LEASE DATED \_\_\_\_\_, 2002, BY AND BETWEEN MONTGOMERY COUNTY, MARYLAND, AS LESSOR, AND IMAGINATION STAGE, INC., AS LESSEE. FAILURE TO RESPOND TO THIS LETTER WILL HAVE IMPORTANT LEGAL CONSEQUENCES. THIS LETTER SHOULD BE FORWARDED IMMEDIATELY TO SOMEONE WITH AUTHORITY TO ACT ON IT.**

Provided Lessee has complied with the notice provisions of this Lease, Lessor's failure to give a written detailed objection to any proposed Leasehold Mortgagee which requires its consent within thirty (30) days after Lessee's delivery to Lessor of (a) Lessee's written notice and (b) such information about the Leasehold Mortgagee as Lessor may reasonably request shall be deemed approved. Any mortgage or other encumbrance (other than a sublease) effected pursuant to this Article VIII shall be known hereinafter as a "Leasehold Mortgage." Any Leasehold Mortgage and all rights acquired under any Leasehold Mortgage by any holder or any mortgage insurer (hereinafter a "Leasehold Mortgagee") shall be subject to the covenants, conditions and restrictions contained in this Lease and to all rights and interests of Lessor hereunder, except as otherwise expressly provided herein.

Section 8.03(a). No Leasehold Mortgage shall cover any interest in any real property other than the Demised Premises, the Lessee Improvements and the Leasehold.

Section 8.03(b). Each Leasehold Mortgage shall contain provisions satisfactory to Lessor authorizing the disposition and application of insurance proceeds, condemnation awards and proceeds of sales or other dispositions (including foreclosures) in accordance with the provisions of this Lease.

Section 8.03(c). If Lessor consents to any proposed Leasehold Mortgage, other than Allfirst Bank as the initial Leasehold Mortgagee, then the following provisions of this Section shall apply:

(i) Lessee must deliver to Lessor a copy of the Leasehold Mortgage and promissory note or other debt instrument secured thereby immediately after such Leasehold Mortgage and promissory note are fully executed and delivered to Lessee;

(ii) Lessor may only acknowledge its acceptance to any Leasehold Mortgage by instrument in recordable form acceptable to Lessor.

(iii) Lessee and the Leasehold Mortgagee shall not enter into any amendment or other modification of or supplement to the Leasehold Mortgage, the promissory note or the debt instrument secured thereby, or any other document relating thereto, which increases the principal sum due or modifies the terms approved pursuant to Section 8.03 without the prior written consent of Lessor.

(iv) Lessor must provide any Leasehold Mortgagee with copies of all notices of default or termination or all other notices of violation of any provision of this Lease or any laws by Lessee which are sent to Lessee or of which Lessor also receives copies. Lessor is not required to send notices to any Mortgagee for whom Lessor does not have a current or accurate contact name, and/or address. It is the obligation of Lessee and any of Leasehold Mortgagees to provide Lessor with accurate and timely notice of all of Leasehold Mortgagees, their names, and addresses. Any Leasehold Mortgagee may remedy any such Default or cause the same to be remedied within the time period for cure granted to Lessee hereunder, plus, in the case of any Major Default as defined in this Lease an additional thirty (30) days, so long as the Leasehold Mortgagee sends written notice to Lessor promptly after the Leasehold Mortgagee has actual or constructive notice of default or termination or all other notices of violation of any laws by Lessee that a satisfactory cure is being diligently prosecuted during such time, except for overdue monetary payments, which must be paid to Lessor immediately (no time extension to pay).

(A) Any Leasehold Mortgagee or its designee shall agree to remedy Lessee's monetary Defaults and all other Defaults existing at the time the Lease is assumed by any Leasehold Mortgagee or its designee, to the extent such Defaults are capable of cure with due diligence;

(B) With respect to any proposed designee, such Leasehold Mortgagee promptly shall furnish to Lessor, as a condition precedent to Lessor's obligation to accept the assumption of this Lease or as a condition precedent to Lessor's obligation to enter into a new lease with such designee as provided in Section 8.03(e)), such information relating to such proposed designee, including, without limitation, information relating to such designee's financial condition, financial and business prospects, experience, expertise, reputation, and then-current status as a tax exempt 501 (c) (3) corporation under the United States Internal Revenue Code and such other information as Lessor may reasonably request to protect the public's interest in the Demised Premises, and such designee's designation by such Leasehold Mortgagee hereunder shall be subject to the prior written approval of Lessor, which approval shall not be unreasonably withheld, Any Notice delivered to Lessor under this provision is not effective unless it states the following in conspicuous, bold face, capitalized typeface:

THIS NOTICE IS BEING DELIVERED PURSUANT TO SECTION 8.03(d) OF THE SPACE LEASE DATED \_\_\_\_\_, 2002, BY AND BETWEEN MONTGOMERY COUNTY, MARYLAND, AS LESSOR, AND IMAGINATION STAGE, INC., AS LESSEE. FAILURE TO RESPOND TO THIS LETTER WILL HAVE IMPORTANT LEGAL CONSEQUENCES. THIS LETTER SHOULD BE FORWARDED IMMEDIATELY TO SOMEONE WITH AUTHORITY TO ACT ON IT.

Provided Lessee has complied with the notice provisions of this Lease, Lessor's failure to give a written detailed objection to any proposed Leasehold Mortgagee which requires its consent within thirty (30) days after Lessee's delivery to Lessor of (a) Lessee's written notice and (b) such information about the Leasehold Mortgagee as Lessor may reasonably request shall be deemed approved.

(C) Notwithstanding anything contained in this Lease to the contrary and with respect to Events of Default under the Lease which cannot be cured by the Leasehold Mortgagee (e.g., bankruptcy of the Lessee), Lessor shall not terminate the Lease or exercise its other remedies so long as the Leasehold Mortgagee cures all monetary and non-monetary Events of Default as provided in this Section 8.03.

(D) Lessor's approval of any proposed designee shall not be required in the event that the designee is an entity owned or controlled by the Leasehold Mortgagee and the designee shall certify in writing to Lessor that the proposed designee unconditionally assumes and agrees to perform all of the terms, covenants and conditions of this Lease to be observed or performed by the Lessee with respect to the Leased Premises, and that a duplicate original of the designee's certificate containing such assumption agreement, duly executed and acknowledged by such designee and in recordable form, is delivered to Lessor under this Lease immediately after the designee executes the certificate containing the assumption agreement and in all events prior to the time that the Leasehold Mortgagee or its designee take possession of the Leased Premises;

(v) In the event that more than one Leasehold Mortgagee shall request assumption of this Lease pursuant to Section 8.03, Lessor shall allow assumption with the Leasehold Mortgagee whose Leasehold Mortgage is prior in lien, or with the designee of such Leasehold Mortgagee, provided that the conditions set forth in this Section 8.03 have been satisfied. Any Leasehold Mortgagee claiming to have lien priority and requesting that the Lessor permit that Leasehold Mortgagee to assume this Lease as security for the Leasehold Mortgage must indemnify Lessor against the claims of any other Leasehold Mortgagee that Lessor's consent to assumption was improperly granted. Lessor, without liability to Lessee or any Leasehold

Mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy issued by a responsible title insurance company doing business within the State of Maryland as the basis for determining the appropriate Leasehold Mortgagee who is entitled to assume the Lease; and

Section 8.03(d). In the event that Lessor approves an assumption of the Lease by a Leasehold Mortgagee, then Lessor will grant the Leasehold Mortgagee assuming the Lease an additional period of time to cure defaults of which the Leasehold Mortgagee receives notice during the first thirty (30) days following assumption of the Lease. If this Lease is terminated within thirty (30) days after assumption of the Lease, Lessor may, on written request of Leasehold Mortgagee made at any time within the thirty (30) day period following receipt of a copy of Lessor's written notice of termination by Leasehold Mortgagee enter into a new lease for the Demised Premises with such Leasehold Mortgagee or with a designee of the Leasehold Mortgagee approved by Lessor, provided the Leasehold Mortgagee complies with the provisions of this Section 8.03, and further provided that Lessor has the right to approve the designee within thirty (30) days after receipt of such request. Lessor's approval in advance shall not be required in the event that the designee is an entity wholly owned or controlled by the Leasehold Mortgagee and the designee shall unconditionally assume and agree to perform all of the terms, covenants and conditions of this Lease to be observed or performed on the part of the Lessee with respect to the Premises, including the requirements that the designee be qualified as a tax exempt organization under §501 (c) (3) of the United States Internal Revenue Code and that the Demised Premises and Leasehold Improvements be operated solely as a cultural arts/educational facility in accordance with the requirements stated in Section 6.03. Lessor may waive the requirement that any wholly owned designee of Leasehold Mortgagee be qualified as a 501 (c) (3) corporation for a period of six (6) months after the Leasehold Mortgagee forecloses under the Deed of Trust between Lessee and Leasehold Mortgagee so long as: (i) the Leasehold Mortgagee diligently seeks a new tenant for the Demised Premises that fully complies with all of the requirements of this Lease, that has the capability of providing the programs or services required to be provided by Lessee at the same or better quality than Lessee, and that is a 501 (c) (3) tax exempt corporation; and (ii) the Leasehold Mortgagee submits written reports to Lessor every 30 days detailing the Leasehold Mortgagee's efforts in the prior 30 days to find a satisfactory new tenant for the Demised Premises. Lessor may extend the six (6) month period for one only six (6) month period so long as the Leasehold Mortgagee's wholly owned designee continues to operate the Demised Premises in accordance with all of the provisions of this Lease, including this Section 8.03, and provided that the Leasehold Mortgagee has identified a substitute tenant for the Demised Premises that is fully satisfactory to the County, that is a 501 (c) (3) corporation, that fully complies with the requirements of this Lease, and that will be able to, within the additional six (6) month period, take possession of the Demised Premises and operate the types of programs and classes as required in Section 6.03, at the

same or better quality than Lessee. Any further assignee or designee (other than an entity owned or controlled by the Leasehold Mortgagee) must be approved by the County in advance as provided above, and must meet all of the conditions of approval set forth in the Section 6.03 and all of the requirements of this Lease, including that the further assignee or designee be qualified as a tax exempt organization under §501 (c) (3) of the United States Internal Revenue Code and that the Demised Premises and Leasehold Improvements be operated solely as a cultural arts/educational facility in accordance with the requirements stated in Section 6.03 for use of the Demised Premises.

Any such new lease shall be effective as of the date of its execution by Lessor. The new lease will adopt the material terms of this Lease, including the Term of this Lease, at the same Rent and upon the same terms, covenants, conditions and agreements as stated in this Lease, except that the Leasehold Mortgagee shall (i) contemporaneously with the delivery of such request for a new lease pay to Lessor all the installments of Rent and additional rent which Lessee was obligated but failed to pay through the date of such termination; (ii) pay to Lessor at the time of the execution and delivery of said new lease any and all sums for Rent and additional rent which would have been due hereunder from the date of termination of this Lease (had this Lease not been terminated) to and including the date of the execution and delivery of said new lease, together with all expenses, including reasonable attorneys' fees, incurred by Lessor in connection with the termination of this Lease and with the execution and delivery of said new lease, less the net amount of all sums received by Lessor from any subtenants in occupancy of any part or parts of the Demised Premises up to the date of commencement of said new lease; and (iii) on or prior to the execution and delivery of said new lease, such Leasehold Mortgagee or its designee shall, with due diligence and within a reasonable time, perform or cause to be performed all of the other covenants and agreements herein contained on Lessee's part to be performed to the extent that Lessee shall have failed to perform the same to the date of delivery of said new lease, except such covenants and agreements which cannot with the exercise of due diligence be performed by the Leasehold Mortgagee or its designee. Lessor shall have no obligation to deliver physical possession of the Demised Premises to such Leasehold Mortgagee unless Lessor at the time of the execution and delivery of said new lease has obtained physical possession thereof. Such new lease shall have the same relative priority in time and right as this Lease and shall have the benefit of, and shall vest in such Leasehold Mortgagee or its designee all of the right, title, interest, powers and privileges of the Lessee hereunder in and to the Demised Premises, including specifically assignment of Lessee's interest in and to all then existing subleases, automatic vesting of Lessee's right, title and interest in and to the Lessee Improvements, as well as all furniture, furnishings, appliances, equipment, fixtures and machinery therein, until expiration of the Term as the same may be extended under the provisions of this Lease.

Section 8.04. No Liability of Leasehold Mortgagee Prior to Foreclosure. Until such time as any Leasehold Mortgagee shall acquire from Lessee the Demised Premises and the Lessee Improvements by foreclosure, or by deed in lieu of foreclosure or other proceedings provided by law or the terms of the Leasehold Mortgage such Leasehold Mortgagee shall have no liability to Lessor for payment of Rent or the performance of any covenants, terms or conditions under the Lease.

Section 8.05. Subleasing. At any time and from time to time, Lessee may, subject to the provisions of this Lease, sublease all or any part of the space in the Demised Premises, provided that each such sublease contains the statement required in Section 23.02.

Section 8.06. General Provisions Applicable to Mortgaging, Assignment and Subleasing. Lessor shall in no event subordinate (or be deemed to have agreed to subordinate) its fee interest in the Demised Premises, Land and Garage Property to any Leasehold Mortgage or other mortgage, deed of trust, or other encumbrance placed by Lessee on the Leasehold or on Lessee's interest in this Lease. Lessor agrees that upon request of any permitted sublessee, Lessor will enter into a nondisturbance and attornment agreement with such sublessee which shall provide that in the event of a termination of this Lease for any reason, the sublessee will attorn to and recognize the Lessor as its landlord, and the Lessor will in turn recognize the sublessee as its tenant pursuant to the terms and provisions of its sublease, which shall thereafter be deemed a direct lease between Lessor and such sublessee, to the extent permitted by law. Any lease between the Lessor and a corporation that is not qualified under §501 (c) (3) of the United States Internal Revenue Code will be for rent at market rate.

Section 8.07. No Encumbrances on Lessor's Title. As of the Effective Date, the Demised Premises, Land, and Garage Property shall be free and clear of all mortgage liens and other encumbrances except for Bond Covenants and Permitted Encumbrances. The "Permitted Encumbrances" are those encumbrances listed on EXHIBIT E, which is attached and incorporated as if fully set forth. "Bond Covenants" means the covenants securing County issued Parking Lot District Revenue Bonds, General Obligation Bonds affecting the Bethesda Parking Lot District, and any conduit bonds issued by the County for the benefit of Lessee's use of the Demised Premises. Any mortgage or other encumbrance placed on the Land or Demised Premises (or Lessor's fee interest therein) shall be subject and subordinate to this Lease, except that Bond Covenants affecting the Land, the Demised Premises, and the Garage Property must never be subordinated to the interest of Lessee or any Leasehold Mortgagee.

## ARTICLE IX INSURANCE

Section 9.01. Property and Casualty Insurance. Lessee shall carry or require the General Contractor to purchase and maintain a Builder's Risk Insurance Policy during the construction of

the Lessee's Improvements. The contractor shall provide a Builder's All Risk Policy including fire and extended coverage to protect the interest of the County, contractor and sub-contractors against loss caused by the perils insured in the amount of 100 percent of the insurable values of the Project. The coverage must be written on a completed value form. The policy shall also endorse a demolition and clearing clause, extra expense and loss of use coverages with a sub-limit of \$500,000 per occurrence.

Section 9.01(a). Lessee shall carry an All Risk Property Insurance Policy with respect to the Lessee's improvements. The Lessee shall provide an All Risk Policy including fire and extended coverage to protect the interest of the County and lessee against loss caused by the perils insured in the amount of 100 percent of the insurable values of the Project. The coverage must be written on a completed value form. The policy shall also endorse a demolition and clearing clause, extra expense and loss of use coverages with a sub-limit of \$500,000 per occurrence.

Section 9.01(b). Regardless of whether Lessee elects to carry an All Risk Policy or a traditional fire insurance policy, Lessee shall also carry the following types of coverage pursuant to endorsements or separate policies: Contingent Liability from the Operation of Building Laws; An Increased Cost of Construction; and Demolition Costs Which May be Necessary to Comply with Building Laws.

Section 9.01(c). The coverage limits of the Lessee's policies shall not be less than 100% of the cost of replacing the Lessee Improvements. Coverage shall be on a replacement cost basis. A deductible over \$1,000 must be approved by the County's Department of Finance, Division of Risk Management.

Section 9.01(d). The cost of replacing the Lessee Improvements is the cost of replacing damage to the Lessee Improvements with new materials of like kind and quality except for foundation, footings and other building elements customarily excluded from the applicable coverage.

Section 9.01(e). The Lessee shall carry or require its architects and engineers to purchase and maintain a Professional Liability Policy for the design of the Lessee's improvements in the amount of \$1,000,000 per claim and aggregate.

Section 9.01(f). Unless Lessor has elected to self-insure its own property and casualty risks, Lessor shall carry an All Risk Property insurance policy or a traditional fire insurance policy with respect to the Public Garage Improvements.

Section 9.01 (g). The coverage limits of the Lessor's policy shall not be less than 100% of the cost of replacing the Public Garage Improvements.9.01(i). The cost of replacing the

Public Garage Improvements is the cost of replacing damage to the Public Garage Improvements with new materials of like kind and quality except for foundation, footings and other building elements customarily excluded from the applicable coverage.

Section 9.02. Liability Insurance.

Section 9.02(a). Lessee shall maintain a commercial general liability insurance policy with respect to the Lessee Improvements (the "Lessee's CGL Policy").

Section 9.02(b). The Lessee's obligation to maintain such policy shall begin on the date when the Lessee executes this Lease. The obligation shall end on the date on which Lessee surrenders actual and exclusive possession of the Demised Premises including the Lessee Improvements.

Section 9.02(c). The Lessee's CGL Policy shall name Lessor and any reasonable designee of Lessor as additional insureds.

Section 9.02(d). The Lessee's CGL Policy shall insure Lessee, Lessor and any reasonable designee of Lessor against liability arising from occurrences on or about the Demised Premises and the Lessee Improvements.

Section 9.02(e). The Lessee's CGL Policy shall include a contractual liability endorsement which shall insure Lessor against liability arising from any claim against which Lessee is required to indemnify Lessor and others pursuant to the provisions of this Lease. The Lessee shall also provide Premises and Operations, Independent Contractors, Personal Injury Coverage, and Products and Completed Operations endorsements.

Section 9.02(f). The coverage limits shall be at least Five Million Dollars (\$5,000,000), single limit, for personal injury and property damage arising out of any single occurrence.

Section 9.02(g). Unless Lessor has elected to self-insure its own liability, Lessor shall maintain a commercial general liability insurance policy with respect to the Public Garage Improvements. Said policy shall include Garage Keeper's Liability provisions, either by endorsement or by means of a separate policy.

Section 9.02(h). The Lessor's said policy shall insure against liability arising from occurrences on or about the Public Garage Improvements.

Section 9.02(i). The Lessor's said policy shall include a contractual liability endorsement which shall insure Lessee against liability arising from any claim against which Lessor is required to indemnify Lessee pursuant to the provisions of this Lease. Any indemnification

given by Lessor in this Lease is limited by the damages caps, and notification requirements in the Local Government Tort Claims Act, Md. Code Ann. Cts & Jud. Proc., Sections 5-301 et seq. (1998 Repl. Vol.), as amended from time to time (the "LGTCA").

Section 9.02(j). The coverage limits for the Lessor's said policy must not exceed the damages caps in the LGTCA.

Section 9.03. General Provisions With Respect to Insurance.

Section 9.03(a). Each insurance policy carried pursuant to Sections 9.01 and 9.02 shall be issued by an insurance company with an A. M. Best Company policyholder's rating of A+ VIII, except that Lessor may, in Lessor's sole discretion, self-insure.

Section 9.03(b). Each insurance policy required to be carried by Lessee pursuant to Sections 9.01 and 9.02 shall be carried in favor of Lessee, Lessor and all Leasehold Mortgagees, if any, as their respective interests may appear.

Section 9.03(c). Any insurance policy required to be carried by Lessor pursuant to this Article 9 may be carried under a blanket policy covering the insured premises as well as other locations.

Section 9.03(d). With respect to any insurance policy required of Lessee under this Lease, prior to commencement of construction of the Lessee Improvements, Lessee shall deliver to Lessor a certificate of coverage and certified copies of the Insurance policies issued by the insurance carrier indicating that insurance coverage has been placed and is in effect.

Section 9.03(e). Each insurance policy carried by Lessee, and each insurance certificate issued with respect to such policy, shall provide that the policy may not be canceled by the insurer until at least forty-five (45) days after the insurer shall have so notified Lessor and Lessee in writing.

Section 9.03(f). Each insurance policy carried by Lessee and Lessor pursuant to this Article IX shall contain the following provisions:

(i) Losses shall be payable notwithstanding the negligence of any person having an insurable interest in the insured premises.

(ii) Losses pertaining to damage or destruction of the Lessee Improvements shall be adjusted, subject to the approval of Lessor in the case of a loss pertaining to the Lessee Improvements, by, and insurance proceeds shall be payable to, the primary insured as trust funds to be held for the repair and restoration of the Demised Premises pursuant to obligations set forth

in this Lease. Despite the foregoing, the proceeds of any insurance policy concerning casualty damage to Lessee Improvements that occurs within the final five (5) years of the Term may be applied first to the Leasehold Mortgage, and the remainder if any shall be applied to the restoration of the Demised Premises.

Section 9.03(g). Insurance proceeds are the proceeds received on insurance carried or required to be carried by a party pursuant to this Article IX with respect to property and casualty damage to the insured premises.

Section 9.03(h). Insurance proceeds pertaining to damage or destruction of the Lessee Improvements or the Public Garage Improvements, as the case may be, paid to a party shall be held as trust funds and applied first to the repair and replacement of damaged elements of the Lessee Improvements or the Public Garage Improvements, as the case may be.

## ARTICLE X DISCHARGE OF LIENS: NO IMPAIRMENT OF LESSOR'S INTEREST

Section 10.01. Prohibition Against Liens Lessee will not suffer any mechanics lien or other matter or thing arising out of Lessee's use and occupancy of the Demised Premises and the Lessee Improvements whereby the estate, rights and interests of Lessor in the Demised Premises, the Lessee Improvements, or any part thereof might be impaired.

Section 10.02. Removal of Liens. In the event that any lien, encumbrance or charge referred to in Section 10.01 shall at any time be filed against the Lessee Improvements or any part thereof, Lessee, within thirty (30) days after notice of the filing thereof, shall cause the same to be stayed or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise or shall provide other security satisfactory to Lessor for the payment thereof. If Lessee shall fail to cause such lien to be so stayed or discharged within such thirty (30) day period, then, in addition to any other right or remedy available to Lessor, Lessor may (but shall be under no obligation to) discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien, charge or encumbrance by deposit or by bonding proceedings. Any amount so paid by Lessor and all reasonable costs and expenses incurred by Lessor in connection therewith, together with interest on such sums at the Legal Rate from the respective dates of Lessor's making of the payment or incurring of the cost or expense to the date of repayment to Lessor by Lessee, shall constitute additional rent due and payable by Lessee under this Lease and shall be paid by Lessee to Lessor on demand. If Lessee or its general contractor obtains construction payment and performance bonds from its contractors, subcontractors and material suppliers in connection with the Lessee Improvements, the filing of an action against a surety with respect to such bonds shall not be construed to trigger the provisions of this Section 10.02.

ARTICLE XI  
INSPECTIONS

Section 11.01. Inspections. Either party (and/or agents designated by a party) may enter and inspect the Public Garage Improvements or the Lessee Improvements at all reasonable and agreed upon times set by the Parties, subject only to the reasonable safety and workflow requirements of the other party. Each party hereby indemnifies and agrees to hold the other party harmless from and against any and all claims, of whatever nature or type, arising out of or in connection with any such entry and inspection by such party. Each party shall allow the other party the right to review a copy of every inspection reports received by such party relating to the design and construction of the Public Garage Improvements and the Lessee Improvements. Any indemnification given by Lessor in this Lease is limited by the damages caps and notification requirements in the LGTCA.

Section 11.02. Obligation to Repair. The Parties acknowledge and agree that neither party shall be relieved of any of its obligations to repair and/or maintain the Public Garage Improvements (in the case of the Lessor) and the Lessee Improvements (in the case of the Lessee) in the manner required by this Lease by virtue of the inspections performed pursuant to this Section.

Section 11.03. Lessor's Right of Entry and Inspection. Lessor shall have the right to enter upon the Demised Premises and the Lessee Improvements at any reasonable time during regular business hours after reasonable notice required by this Lease during the Lease Term to show the Demised Premises to any prospective purchasers and mortgagees, and may enter upon the Demised Premises and the Lessee Improvements, or any part thereof, for the purpose of ascertaining their condition or whether Lessee is observing and performing its obligations hereunder, or for any other reasonable purpose, including, without limitation, the performance of repairs and maintenance which are required to be performed by Lessee in accordance with this Lease and which shall not have been performed by Lessee, without hindrance or molestation from Lessee or any sublessee. Such right of entry shall be exercised by Lessor at reasonable times and upon reasonable notice, except in the case of emergency, and shall be conducted in a manner which will minimize, to the extent reasonably practicable, the interruption to the operations of Lessee or its sublessees thereon. If Lessee fails to make the repairs or perform the maintenance to the portions of the Lessee Improvements contained in the Demised Premises as required by this Lease, Lessor may effect such repairs or perform such maintenance, and the cost thereof shall be due and payable immediately upon by Lessee to Lessor on demand as additional rent hereunder. If, in the reasonable opinion of Lessor, the performance of any such repair or maintenance requires the closing of such portion of the Demised Premises, Lessor, upon reasonable notice to Lessee (or without notice in the case of emergency), shall be entitled to close such portion of the Demised Premises for the time required to complete such repairs or maintenance and may exclude all third parties therefrom during such time. The Lessor will

pursue all such repairs diligently and on a reasonable schedule. Any indemnification given by Lessor in this Lease is limited by the damages caps and notification requirements in the LGTCA.

**ARTICLE XII**  
**DAMAGE OR DESTRUCTION**

**Section 12.01. Restoration of Premises.** If, at any time during the term of this Lease, the Lessee Improvements or any part thereof shall be damaged or destroyed by fire or other occurrence of any kind or nature (including any occurrence for which insurance coverage was not obtained or obtainable), Lessee shall give prompt written notice thereof to Lessor, and, except as otherwise provided in this Article XII, Lessee shall restore, repair, replace, rebuild or otherwise alter the remaining Lessee Improvements so as to return them as nearly as practicable to their character immediately prior to such damage or destruction (subject, however, to such changes or alterations as may be required by any change in any applicable building, zoning, or safety code or regulation, as well as any changes Lessee may determine appropriate subject to the provisions of Article IV hereof all in general conformity with the Lessee Plans and Specifications and subject to the terms and conditions pertaining to the original construction of the Lessee Improvements set forth in this Lease. Such restoration (which shall include all necessary design and permitting activities) shall be commenced reasonably promptly from the date of the occurrence of such damage or destruction, which time shall, however, be extended by a time commensurate with any delays attributable to adjustment or payment of insurance claims and other unavoidable delays, and shall thereafter be prosecuted with reasonable diligence in accordance with the provisions of Article IV hereof; provided, however, that Lessee shall promptly upon the occurrence of any such damage or destruction take all actions which a prudent tenant would reasonably expect to be necessary to secure and make safe the Demised Premises.

**Section 12.02. Application of Insurance Proceeds.** Except as otherwise provided in this Article XII, all insurance proceeds paid on account of damage or destruction as referred to in Section 12.01, less costs and expenses, if any, incurred in connection with adjustment of the loss and collection thereof, shall be applied to the payment of the costs of the aforesaid restoration, repairs, replacement, rebuilding or alterations, including the cost of temporary repairs or for the protection of property pending the completion of permanent restoration, repairs, replacements, rebuilding or alterations (all of which temporary repairs, protection of property and permanent restoration, repairs, replacements, rebuilding or alterations are hereinafter collectively referred to as the "Restoration"), and shall be paid out to, or at the direction of, Lessee from time to time as such Restoration progresses, in accordance with the terms of the Leasehold Mortgage which terms shall be satisfactory in all respects to Lessor.

**Section 12.02(a).** Despite any provision of this Lease to the contrary, insurance proceeds from any losses in connection with the Demised Premises or the Lessee Improvements, as the case may be, shall be deposited immediately into an account with Allfirst Bank (so long as said

bank is a Leasehold Mortgagee and thereafter with a bank mutually agreeable to Lessor and Lessee, the "Bank") pending application as set forth in this Section. Despite any provision of Articles IX or XII to the contrary, if a loss occurs with respect to the Demised Premises or the Lessee Improvements, the Lessee will retain an independent Architect, approved by the Bank, who will certify to the Lessor, the Lessee and the Bank, within 30 days of the loss, an estimated cost to restore the Demised Premises or the Lessee Improvements, as the case may be, and the Lessee will proceed as follows:

(i) If the Architect certifies that the insurance proceeds are sufficient to accomplish the restoration of the Demised Premises or the Lessee Improvements, as the case may be (including all soft costs) then, provided no Event of Default exists, the Bank shall transfer insurance proceeds funds to the Construction Fund maintained by the Bank for the Lessee pursuant to the Indenture to be advanced to pay costs of restoring the Demised Premises or the Lessee Improvements, as the case may be, pursuant to the requisition and draw process set forth in Article VII of the Letter of Credit Agreement between Lessee and the Bank. A copy of the Letter of Credit Agreement will be provided to Lessor prior to execution of this Lease.

(ii) If the Architect certifies that the insurance proceeds are not sufficient to accomplish the restoration of the Demised Premises or the Lessee Improvements, as the case may be (including all soft costs), then the Bank shall notify the Lessor and Lessee of the amount of the deficiency and grant the Lessee 180 days from the date of the deficiency notice to provide funds for the deficiency or a guaranty from a third party, in either case, satisfactory to the Bank in its sole and absolute discretion. If, at the end of the 180 day period, satisfactory additional funds or a guaranty have not been supplied, then (i) the Lessee, the Lessor and the Bank as Leasehold Mortgagee agree to apply the insurance proceeds first towards repayment of all amounts owed under the Leasehold Mortgage, then, to the extent of any remaining funds, towards payment of any amounts due under the Lease, and the remainder, if any, shall be paid over to Lessee, and (ii) the Lease shall automatically terminate on the date that is 30 days after the date of disbursement of insurance proceeds funds from the account of the Lessee established pursuant to this Section.

Section 12.03. Certificates. Any Leasehold Mortgage shall provide that any written request submitted by Lessee for payment of insurance proceeds pursuant to Section 12.02 shall include a verified certificate signed by Lessee and by the supervising architect or engineer in charge of the Restoration, dated not more than ten (10) days prior to such request, (a) setting forth that the sum then requested either has been paid by Lessee or is due to construction managers, contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or have furnished materials for the Restoration therein specified, and giving a brief description of such services and materials and the several amounts so paid or due to each of said persons in respect thereof, (b) stating that no part of such expenditures has been the basis for any previous draw, or is being made the basis for any pending request, for the

withdrawal of insurance proceeds or has been paid out of any insurance proceeds received by Lessee, and (c) setting forth a good faith estimate of the cost of completing the Restoration.

**Section 12.04. No Outstanding Liens.** Any Leasehold Mortgage shall provide that any written request submitted by Lessee for payment of insurance proceeds pursuant to Section 12.02 shall include, in addition to the certificate required under Section 12.03, documentation reasonably satisfactory showing that there has not been filed with respect to the Lessee Improvements or any part thereof, any vendor's, mechanic's, materialman's or other similar statutory or common law lien for work done by or at the request of Lessee or Lessee's contractors or subcontractors, which has not been stayed or discharged of record, except such as will be discharged by payment of the amount then requested. Nothing in this Section 12.04 shall be deemed to be a waiver or limitation of Lessee's obligation to keep the Demised Premises free of liens in accordance with Section 10.01 hereof regardless of whether arising out of work done by or at the request of Lessee or Lessee's contractors or subcontractors.

**Section 12.05. Failure to Commence Repairs.** If Restoration shall not have commenced within sixty (60) days from the date of the occurrence of such damage or destruction, which time shall, however, be extended by a time commensurate with any delays attributable to adjustment or payment of insurance claims and other unavoidable delays, Lessor may give Lessee and any Leasehold Mortgagee written notice of its intention to terminate this Lease, and if Restoration is not commenced in a good faith manner within sixty (60) days after such notice is given, Lessor may terminate this Lease and the insurance proceeds shall be distributed to the Lessor after payment to the Leasehold Mortgages.

**Section 12.06. Lessee's Option to Demolish and Reconstruct.** Subject to the provisions of this Article XII, in case of damage to or destruction of the Lessee Improvements, whether by fire or otherwise, which shall amount to substantial destruction thereof or shall otherwise be of such character as to make demolition of the remainder thereof necessary or desirable, Lessee shall have the right, at its option, either to restore or reconstruct the same as provided in this Article XII, or to demolish the remainder of the same and, subject to Section 12.05 hereof, to construct, in replacement thereof, new Lessee Improvements, subject to the Leasehold Mortgages and in all respects to the terms and conditions pertaining to the original construction of the Lessee Improvements set forth herein, and in connection therewith, Lessee shall comply with all provisions hereof. Lessee must submit all plans for reconstruction and renovation of the Demised Premises and the Lessee Improvements to Lessor for approval prior to the commencement of reconstruction or renovation not less than thirty (30) days prior to the issuance of permits for the reconstruction or renovation work. Lessee's repairs, reconstruction, and renovation activities must not interfere with the public's right to access and use the Public Garage.

**Section 12.07. Lessee's Continuing Liability.** No damage to or destruction of the Lessee Improvements, whether by fire or otherwise, shall permit Lessee to surrender this Lease or shall

relieve Lessee from its liability to pay the Rent, additional rent, and other charges payable under this Lease. In no event shall Lessee be entitled thereby to any abatement, allowance, reduction or suspension of Rent, additional rent or any such other charges.

Section 12.08. Effect of Damage to Garage. In the event that damage to or destruction of the Lessor's Garage causes the Lessee Improvements to be untenable, whether by reason of structural unsoundness or building code violations or otherwise, the obligation of Lessee to pay Rent and additional charges under this Lease shall abate until such time as the Lessor has remedied such condition and the Lessee Improvements become tenantable.

### ARTICLE XIII CONDEMNATION

#### Section 13.01. Condemnation of Demised Premises.

Section 13.01(a). A "Taking" is a taking of, or damage to, property pursuant to the exercise of a power of eminent domain or condemnation or a purchase of property induced by a threat that property will be taken pursuant to the exercise of this power. "Taken" means taken pursuant to a Taking. A "Taking Date" is the first date on which a governmental authority (including but not limited to Lessor) or public utility that exercises a power of eminent domain or condemnation has the right of possession of property it will have Taken.

Section 13.01(b). This Lease shall be terminated automatically as of the Taking Date if all of the Demised Premises is Taken or if the use of all of the Lessee Improvements is Taken for the remaining Term of this Lease.

Section 13.01(c). Lessee shall have the option to terminate this Lease if all or part of the Lessee Improvements is Taken for only part of the remaining Term of the Lease and Lessee is unable, because of the taking, in its sole but reasonable discretion, to satisfactorily continue its cultural/arts activities from the Demised Premises. Such option to terminate may be exercised only by giving notice to the Lessor prior to the 120<sup>th</sup> day after the Taking Date.

Section 13.02. Condemnation Awards. The Lessor will be entitled to 100% of any condemnation proceeds or awards for loss of the Land or loss of the use of the Land. The Lessee has the right to make a claim for a condemnation award for the value of the Lessee Improvements, and is entitled to 100% of any award made for the loss of the use of the Lessee Improvements.

Section 13.03. Notice of Proceedings. If either Party receives notice of any pending or threatened condemnation, that Party must immediately send a copy of the notice to the other Party.

**ARTICLE XIV**  
**REPRESENTATIONS WARRANTIES AND COVENANTS**

**Section 14.01. Lessor's Representations and Warranties.** Lessor hereby represents and warrants to Lessee, as of the Effective Date, that all necessary governmental actions have been taken by Lessor's County Council and administrative officers to authorize the execution and delivery of this Lease by Lessor, that this Lease has been duly executed and delivered by Lessor and constitutes a valid and binding obligation of the Lessor, enforceable in accordance with its terms.

**Section 14.02. Lessee's Representations and Warranties.** Lessee hereby represents and warrants to Lessor, as of the Effective Date, that all necessary corporate action has been taken by Lessee's Board of Trustees/Directors and officers to authorize the execution and delivery of this Lease by Lessee, that this Lease has been duly executed and delivered by Lessee and constitutes a valid and binding obligation of the Lessee, enforceable in accordance with its terms. Lessee further warrants that as of the Effective Date, Lessee is a duly incorporated and existing Maryland corporation in good standing, and is qualified under § 501 (c) (3) of the United States Internal Revenue Code.

**ARTICLE XV**  
**ESTOPPEL CERTIFICATES**

At any time and from time to time, within thirty (30) days after written request therefor from the other party, each party shall execute, acknowledge and deliver to the requesting party or to such other recipient (including, without limitation, any Leasehold Mortgagee or proposed Leasehold Mortgagee, any purchaser or proposed purchaser of the Leasehold or of Lessor's fee interest in the Demised Premises as limited by this Lease, and any fee mortgagee) as may be specified in the request, a statement certifying: (a) whether this Lease has been supplemented or amended and; (b) whether this Lease is in full force and effect in accordance with its terms; (c) whether the certifying party has knowledge of any default hereunder by the other party or any offsets, counterclaims or defenses hereunder on the part of the other party the nature of each such default, offset, counterclaim or defense; (d) the date to which the Rent has been paid in advance; and (e) the Effective Date and the expiration date of the term of this Lease.

**ARTICLE XVI**  
**LESSOR'S RIGHT TO PERFORM**

**Section 16.01. Performance by Lessor.** If Lessee shall at any time fail to pay any Imposition in accordance with the provisions of Article V of this Lease, or to obtain, pay for, maintain or deliver any of the insurance policies or certificates therefor as provided in Article IX,

or shall fail to make any other payment or perform any other act on its part required to be made or performed by Lessee under the terms of this Lease, then Lessor may (but shall be under no obligation to), if Lessee shall not have paid or performed (or commenced to perform) within ten (10) days after Lessor's written notice to Lessee thereof (or without prior notice in case of any emergency; provided that Lessor hereby agrees to give notice promptly thereafter), without waiving or releasing Lessee from any obligation of Lessee contained in this Lease or from any default by Lessee and without waiving Lessor's right to take such other action as may be permissible under this Lease as a result of such default: (a) pay any Imposition payable by Lessee pursuant to the provisions of Article V; (b) obtain, pay for and maintain any of the insurance policies provided for in Article IX; or (c) make any other payment or perform any other act on Lessee's part required to be made or performed by Lessee hereunder. For purposes of any of the foregoing, Lessor may enter upon the Demised Premises and take all such actions thereon as may reasonably be necessary in connection therewith after written notice to Lessee where required as aforesaid.

Section 16.02. Reimbursement by Lessee. All sums paid by Lessor in accordance with Section 16.01 and all costs and expenses incurred by Lessor, including reasonable attorneys' fees and expenses, in connection with the performance of any act performed by Lessor in accordance with Section 16.01, together with interest on the foregoing sums at the Legal Rate from the date of such payment or incurrence by Lessor of such cost or expense until the date of payment by Lessee, shall constitute additional rent immediately due and payable by Lessee under this Lease and shall be paid by Lessee to Lessor on demand by Lessor.

## ARTICLE XVII

### DEFAULT

Section 17.01. Events of Default. It shall be an Event of Default ("Event of Default") hereunder if any one or more of the following shall occur (it being understood that the occurrence of any one or more of the following events shall constitute a "Default" hereunder, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied):

Section 17.01(a). Lessee shall fail to pay any Rent, additional rent, Imposition or other amount payable under this Lease, when and as the same shall become due and payable, and such Default shall continue for a period of ten (10) days after receipt of notice from Lessor to Lessee as required by this Lease.

Section 17.01(b). Lessee shall fail to perform or comply with any of the agreements, terms, covenants, conditions or limitations provided in this Lease to be performed or complied with by Lessee (excepting payment obligations referred to in Section 17.01(a)) and such failure shall continue for a period of thirty (30) days after receipt of notice thereof from Lessor to Lessee

as required by this Lease, except that if such failure cannot be cured within such thirty (30) day period Lessor may, at Lessor's sole option then extend the period to cure for an additional period reasonably necessary to effect such cure, so long as Lessee is diligently and in good faith attempting to effect a cure that is satisfactory to Lessor.

Section 17.01(c). Any representation or warranty of Lessee made under this Lease shall prove to have been incorrect in any material respect and such state of facts shall continue to exist for a period of thirty (30) days after receipt of notice thereof from Lessor to Lessee as required by this Lease, except that if such breach cannot be cured within such thirty (30) day period, Lessor may, at Lessor's sole option then extend Lessor may, at Lessor's sole option for an additional period reasonably necessary to effect such cure, so long as Lessee is diligently and in good faith attempting to effect a cure that is satisfactory to Lessor.

Section 17.01(d). Any default by Lessee shall occur and continue beyond any notice and grace period applicable thereto under any Leasehold Mortgage, and the other party to any such contract, instrument or agreement shall not have waived or consented to such default.

Section 17.01(e). Lessee shall abandon the Demised Premises or any substantial part thereof.

Section 17.01(f). Any persistent and continuous failure by Lessee to complete the Lessee Improvements and proceed diligently therewith during the Initial Term.

Section 17.02. Major Defaults; Default Interest; Termination of Lease.

Section 17.02(a). Any of the following Events of Default shall constitute a Major Default ("Major Default"):

- (i) Failure to pay Rent as provided in Section 3.01;
- (ii) Material and substantial physical endangerment to the Lessee Improvements by Lessee;
- (iii) Change in the principal use of the Lessee Improvements without Lessor's written consent;
- (iv) Failure to commence construction of the Lessee Improvements in a timely manner or failure to complete the Lessee Improvements during the Initial Term except where specifically waived by Lessor in writing;
- (v) Failure to maintain the insurance required in Article IX; or

(vi) receipt by Lessor of a written notice of default from the Leasehold Mortgagee indicating that an event of default had occurred under the Leasehold Mortgage and indicating that the Leasehold Mortgagee desires such Leasehold Mortgage default to be deemed a Major Default under the Lease.

Section 17.02(b). Upon the occurrence and during the continuation of any Default involving Lessee's failure to pay Lessor any amounts owed hereunder when due, all such amounts shall bear interest, unless otherwise specifically set forth herein, at the Legal Rate from the date such amounts became due to the date paid in full.

Section 17.02(c). Upon the occurrence and during the continuation of any Major Default, Lessor may give written notice to Lessee and to any Leasehold Mortgagee as required by this Lease specifying such Major Default and stating that this Lease will terminate on the date specified in such notice, which date shall be not less than thirty (30) days after the giving of such notice. If such Major Default shall be continuing on the date specified for termination in such notice of termination, then, subject to the rights of all Leasehold Mortgagees provided in Article VIII of this Lease, the Lease and all rights of Lessee under this Lease will automatically expire and terminate, and Lessee shall remain liable as hereinafter provided. In the event Lessee has begun efforts to rectify the Major Default within said thirty (30) day period but the Major Default cannot be rectified within such time period, Lessee's right to continue to cure the Major Default shall continue until cured, provided Lessee is making diligent and good faith efforts to effect such cure. Upon the termination of this Lease due to a Major Default, all insurance proceeds or condemnation awards thereafter received with respect to the Demised Premises or the Lessee Improvements, shall be the exclusive property of Lessor (subject to the rights of any Leasehold Mortgagee under Article VIII of this Lease).

Section 17.03. Surrender of Demised Premises. Upon termination of this Lease pursuant to Section 17.02 for a Major Default, Lessee shall quit and peacefully surrender the Demised Premises and the Lessee Improvements to Lessor subject to the rights of any Leasehold Mortgagee. Upon the termination of this Lease, Lessor shall have the right to take possession of the Demised Premises and the Lessee Improvements or any part thereof by appropriate judicial proceedings and to remove Lessee and its agents, employees and independent contractors therefrom. Upon every such taking of possession, Lessor shall have the right to hold, store, use, operate, manage, control and maintain the Demised Premises and the Lessee Improvements and all materials, equipment and other property used in connection therewith or incorporated therein and conduct the business thereof, including, without limitation, the right to (a) complete the Lessee Improvements, if not at the time completed, with such additions, changes and corrections as may, in the sole discretion of Lessor, be necessary or desirable; (b) make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase and otherwise acquire additional fixtures, personalty and other property; (c)

insure or keep the Demised Premises and the Lessee Improvements insured; (d) manage and operate the Demised Premises and the Lessee Improvements and exercise all rights and powers of Lessee, in its name or otherwise, with respect to the Demised Premises and the Lessee Improvements; and (e) enter into any agreements with respect to the exercise by others of any of the rights and powers herein granted to Lessor, all as Lessor may from time to time determine, in its sole discretion, to be necessary or desirable. Lessor shall not be liable to Lessee, its employees, agents or independent contractors for or by reason of any such entry, taking of possession or removal, or holding, operation or management. Lessee shall be obligated to reimburse Lessor for any and all reasonable sums expended in connection with the exercise of any of its rights and powers under this Lease, including, without limitation, reasonable attorneys' fees and expenses.

Section 17.04. Reletting. At any time or from time to time after termination of this Lease pursuant to Section 17.02 for a Major Default and subject to the rights of any Leasehold Mortgagee, Lessor may, but is not obligated to, use commercially reasonable good faith efforts to relet the Demised Premises and the Lessee Improvements, or any part of the Demised Premises or the Lessee Improvements, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such other conditions (which may include concessions or free rent and alterations of the Lessee Improvements) as Lessor may determine, in its sole discretion, and Lessor may collect and receive the rents therefor.

Section 17.05. Continuing Liability of Lessee. Termination of this Lease pursuant to Section 17.02 for a Major Default shall in no event relieve Lessee of its liability and obligations under this Lease, and such liability and obligations shall survive any such termination. In the event of any such termination, whether or not all or any part of the Demised Premises or the Lessee Improvements shall have been relet, Lessee shall pay to Lessor the Rent and the Impositions and other additional rent required hereunder to be paid by Lessee up to the time of such termination, and thereafter Lessee, until the end of what would have been the term of this Lease in the absence of such termination, shall be liable to Lessor for, and shall pay to Lessor, as and for liquidated and agreed damages for Lessee's default, the equivalent of the amount of Rent and Impositions and other additional rent and charges which would be payable under this Lease by Lessee if this Lease were still in effect, less the net proceeds of reletting, if any, effected by Lessor pursuant to Section 17.04, after deduction of all of Lessor's reasonable expenses incurred in connection with such reletting (including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, attorneys' fees and disbursements, rent concessions, alteration costs and other expenses of preparing for such reletting). Lessee shall pay such damages to Lessor monthly on the days on which the Rent would have been payable under this Lease if this Lease were still in effect, and, Lessor shall be entitled to recover from Lessee each monthly deficiency as the same shall arise.

Section 17.06. No Waiver by Lessor or Lessee. No failure by Lessor or Lessee to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any such breach by Lessee, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with or observed by Lessee or Lessor, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Lessor or Lessee, as the case may be. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 17.07. Lessor's and Lessee's Legal and Equitable Remedies Preserved. In the event of any breach by Lessee or Lessor of any of the agreements, terms, covenants or conditions contained in this Lease, Lessor or Lessee, as the case may be, shall be entitled to enjoin such breach and shall have the right to invoke any right or remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

Section 17.08. Remedies Cumulative. Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or commencement of the exercise by Lessor or Lessee of any one or more of the rights and remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lessor or Lessee of any and all other rights and remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 17.09. Legal Rate. The Legal Rate is the rate of interest stated in Md. Code Ann. Com. Law II §12-102 (1975, 2000 Repl. Vol.), as amended from time to time.

## ARTICLE XVIII SURRENDER ON TERMINATION

Section 18.01. Surrender; Abandonment of Removable Property. Upon the expiration of the term of this Lease or any earlier termination hereof, Lessee shall peaceably and quietly leave, surrender and yield up to Lessor the Demised Premises and the Lessee Improvements, together with all carpeting, flooring, draperies, blinds, mechanical, electrical and plumbing equipment, HVAC facilities, security and fire safety systems, all of which shall be broom-clean and, except to the extent that Lessor has granted nondisturbance to a sublessee, shall be free of sublessees, occupants and all other users. Nothing herein contained shall require the Lessee to disturb any

sublessee lawfully in possession of any portion of the Demised Premises. Lessee shall have the right to remove all of its furniture, furnishings, equipment, trade fixtures, sound systems, specialty lighting, rigging and other special equipment and property relating to its theater operations. Lessee shall repair all damage to the Lessee Improvements caused by or resulting from the removal of any removable property of Lessee or any sublessee or other occupant or user. Any removable property of Lessee or any sublessee or other occupant or user which shall remain in or on the Lessee Improvements or the Demised Premises after Lessee's removal shall, at Lessor's option, be deemed to have been abandoned and either may be retained by Lessor as its property or may be disposed of, at Lessee's expense, in such manner as Lessor may see fit.

Section 18.02. Title to Lessee Improvements. Upon expiration of the term of this Lease or upon the earlier termination hereof in accordance with this Lease, title to the Lessee Improvements shall automatically vest in Lessor without requirement of any deed, conveyance, or bill of sale to evidence the same. Notwithstanding the foregoing, Lessee shall, promptly upon written request by Lessor, execute, acknowledge and deliver such deeds or other instruments of conveyance as Lessor reasonably may request in order to evidence such transfer of title.

Section 18.03. Voluntary Surrender. Lessee shall not voluntarily surrender, yield up, or otherwise voluntarily terminate this Lease nor shall Lessor accept such surrender without the written consent of the Leasehold Mortgagees known to Lessor.

Section 18.04. Survival of Provisions. The provisions of this Article XIX shall survive the expiration or earlier termination of this Lease.

#### ARTICLE XIX COVENANT OF QUIET ENJOYMENT

Subject to the conditions, terms, and provisions contained in this Lease, and as long as Lessee is not in default of any of the provisions of this Lease, Lessor covenants that Lessee shall quietly have and enjoy the Demised Premises during the term hereof, without hindrance or molestation by Lessor or by anyone claiming by, through or under Lessor.

#### ARTICLE XX INDEMNIFICATION

Section 20.01. Events Giving Rise to Indemnity Obligations of Lessee. Provided that Lessee is provided with prompt written notice of demands, claims, actions or causes of action, assessments, expenses, costs, damages, losses and liabilities subject to this Section 20.01, Lessee shall indemnify and hold Lessor harmless from and against any and all demands, claims, actions or causes of action, assessments, expenses, costs, damages, losses and liabilities (including, without limitation, reasonable attorneys' fees and disbursements and other reasonable costs.

incurred by Lessor in defending itself against same) which may at any time be asserted against, imposed upon, or suffered by Lessor, its successors or assigns, the Garage Property or any part hereof, by reason of, on account of or arising from Lessee's use, design, operation, repair or maintenance of the Demised Premises during the term of this Lease, only to the extent that any such demands, claims, actions or causes of action, assessments, expenses, costs damages, losses and liabilities are caused by, result from, or arise out of the negligence or other tortious conduct of Lessee or any of its agents in connection with the ownership, operation, repair or maintenance of the Demised Premises or the Lessee Improvements.

Section 20.02. Events Giving Rise to Indemnity Obligation of Lessor. Provided that Lessor is provided with prompt written notice, as required in the LGTCA of any demands, claims, actions or causes of action, assessments, expenses, costs, damages, losses and liabilities subject to this Section 20.02, Lessor shall indemnify and hold Lessee harmless from and against any and all demands, claims, actions or causes of action, assessments, expenses, costs, damages, losses and liabilities, up to the damages and liability caps imposed in the LGTCA, which may at any time be asserted against, imposed upon, or suffered by Lessee, its successors or assigns, the Demised Premises or the Lessee Improvements or any part thereof, only to the extent that any such demands, claims, actions or causes of action, assessments, expenses, costs damages, losses and liabilities are caused by, result from, or arise out of the negligence or other tortious conduct of Lessor or any of its agents in connection with the use, operation, repair or maintenance of the Garage Property except to the extent that such occurrences result from the negligence or other tortious conduct of Lessee or its agents or from Lessee's failure to meet its obligations hereunder. This indemnification is not intended to create any causes of action or any rights in any third parties.

## ARTICLE XXI ENVIRONMENTAL

Section 21.01. Environmental Obligations of the Parties. Before delivering the Demised Premises to Lessee, Lessor shall make an appropriate investigation of the soil and ground water conditions to ascertain to its sole but reasonable satisfaction that the Land and ground water are free of Hazardous Materials (as hereinafter defined.) Lessee covenants and agrees that it shall not bring onto or cause to be brought onto the Demised Premises any Hazardous Materials in violation of any federal, state or local law, ordinance or regulation. The term Hazardous Materials as used in this Lease includes without limitation (i) any hazardous or toxic substance, solid waste, hazardous waste, hazardous material, pollutants, flammable explosives, radioactive material or any other material defined in or regulated under any local, state or federal environmental statute, ordinance, rule or regulation (including without limitation, the federal statutes commonly known as the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Solid Waste Disposal Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act,

the Clean Water Act and the Occupational Safety and Health Act) or any regulations promulgated under any of the foregoing Acts, (ii) any substance that contains gasoline, diesel fuel or other petroleum hydrocarbons or derivatives, (iii) asbestos, (iv) polychlorinated biphenyls, (iv) paint containing lead, (vi) urea formaldehyde foam insulation and (vii) any other substance which contaminates soil or ground water and causes degradation of the soil or water to the extent that remediation or other actions are needed to restore the soil and water to their natural states. Notwithstanding anything to the contrary set forth in this Lease, in the event that, during the term of this Lease any Hazardous Materials are discovered in or under the Demised Premises, and it is established that such Hazardous Materials were present prior to the date that Lessor delivered possession of the Demised Premises to Lessee, then, to the extent that remediation or other action regarding the presence or removal of same is required under applicable environmental laws, Lessor shall undertake such remediation or other action at Lessor's expense and to the extent that such remediation or other action renders the Demised Premises partially or wholly unleaseable, Rent and additional rent shall abate for that portion of the Demised Premises rendered unleaseable until such time as five (5) days after the Premises are rendered wholly leaseable. Lessee shall in no way be responsible for the removal or abatement from the Land of any Hazardous Material, which Lessee did not introduce into the soil, nor shall Lessee be responsible for the removal of any Hazardous Material which seeps into the Lessee Improvements from above.

## ARTICLE XXII LIMITATION OF LIABILITY

Section 22.01. Duration of Lessor's Covenants. Lessor and each of Lessor's transferees are bound by the Lessor's covenants in this Lease only so long as the Lessor or Lessor's transferees own the Property in fee simple.

Section 22.02. Limited Liability to Lessee and Third Parties. Except as otherwise specifically stated in this Lease, Lessor shall have no liability whatsoever (in its capacity as Lessor hereunder, it being recognized, however, that nothing herein shall be construed as a waiver or limitation of any defenses the County may have as a governmental entity) now or in the future to Lessee, to any of Lessee's agents, contractors, servants, employees, sublessees or invitees hereunder, or to any other person or entity whatsoever, at law or in equity, for any damage or injury to any of the personal property of Lessee or any such person or entity, or for loss, death, or personal injury to Lessee or any such person or entity regardless of cause, including without limitation, any of the foregoing arising out of or related to the design, construction, engineering or condition of the Garage Property, except to the extent any such damage, loss, death or personal injury arises as a result of the negligence of the Lessor; provided, however that such liability with respect to Lessee's subtenants shall be limited to Lessor's gross negligence or willful misconduct. All subleases entered into by Lessee of the Demised Premises or the Improvements shall include a provision substantially similar to the following:

[Tenant] recognizes that the Lessee Improvements are constructed on land leased from Montgomery County, Maryland, or its successors or assigns under a Lease. The Lease provides that Montgomery County, Maryland, or its successors or assigns under the Lease shall have no liability to any tenant of for personal injury, property damage or other damages except to the extent that they result from the gross negligence or willful misconduct of Montgomery County, Maryland, or its successors or assigns under the Lease. Accordingly, [tenant] agrees that it shall assert no claim for personal injury or property damage arising in connection with its presents against Montgomery County, Maryland, its successors or assigns, under the Lease as a result of Montgomery County, Maryland's, or any successors or assigns as landlord under the Lease except as may arise solely as a result of gross negligence or willful misconduct of Montgomery County, Maryland, or its successors or assigns under the Lease.

Section 22.03. Limitation on Liability for Waterproof Membrane. The provisions of Section 22.02 shall apply specifically to losses or damages arising out of any failure of the waterproof membrane which Lessor is installing in the composite slab directly above the Demised Premises. Lessor shall enforce for Lessee's benefit any rights which Lessor may have under any contractor/subcontractor warranties related to such waterproof membrane, but in no event shall Lessor be liable to Lessee for property damage or personal injuries related to any failure of such membrane, unless the same arise solely as a result of the gross negligence or willful misconduct of Lessor.

Section 22.04. Limitation on Liability for Promenade between Auburn and Del Ray Avenues and public spaces on either Auburn or Del Ray Avenues.

The provisions of Section 22.02 shall apply specifically to losses or damages arising out of any failure to properly repair, maintain, or operate the Promenade area, or properly operate and maintain public areas along Auburn or Del Ray Avenues used by the Lessee under Section 6.08. In no event shall Lessor be liable to Lessee for property damage or personal injuries within the Promenade Area, or public areas along Auburn and Del Ray Avenues used by the Lessee under Section 6.08, unless the same arise solely as a result of the gross negligence or willful misconduct of Lessor.

#### ARTICLE XXIII MISCELLANEOUS

Section 23.01. Notices. All notices, demands, certificates, requests or other communications which may be or are required to be given, served or sent by either party to the other party pursuant to this Lease (whether or not the provision providing for such notice

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specifically refers to this Section 23.01) shall be in writing and shall be mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by hand delivery, addressed as follows:

If to Lessor:

Department of Public Works and Transportation  
Montgomery County Government  
101 Monroe Street  
Rockville, Maryland 20850  
Attention: Director

With a copy (which shall not constitute notice) to:

Office of the County Attorney  
Montgomery County Government  
101 Monroe Street, 3<sup>rd</sup> Floor  
Rockville, Maryland 20850  
Attention: County Attorney

With a copy (which shall not constitute notice) to:

Montgomery County Division of Risk Management  
Montgomery County Government  
101 Monroe Street, 5<sup>th</sup> Floor  
Rockville, Maryland 20850  
Attention: Division Chief

If to Lessee:

Prior to the completion and occupancy of the Lessee Improvements:

Imagination Stage, Inc.  
7300 Whittier Boulevard  
Bethesda, MD 20814  
Attention: Executive Director

With copies (neither of which shall constitute notice) to:

Mr. Eugene M. Smith  
E. M. Smith Associates  
4801 Hampden Lane, Suite 107  
Bethesda, MD 20814

and

Robert G. Brewer, Jr., Esq.  
Lerch, Early & Brewer  
3 Metro Center, Suite 380  
Bethesda, MD 20814

From and after the completion and occupancy of the Lessee Improvements:

Imagination Stage, Inc.  
4908 Auburn Avenue  
Bethesda, MD 20814

With copies (neither of which shall constitute notice) to:

Mr. Eugene M. Smith  
E. M. Smith Associates  
4801 Hampden Lane, Suite 107  
Bethesda, MD 20814

and

Robert G. Brewer, Jr., Esq.  
Lerch, Early & Brewer  
3 Metro Center, Suite 380  
Bethesda, MD 20814

With a copy (which shall constitute notice to a Leasehold Mortgagee but not to the Lessee) to:

Allfirst Bank  
601 13th Street, NW, Suite 1000 N  
Washington, DC 20005  
Attn: Not-for-Profit Banking Division

The Parties and each Leasehold Mortgagee may designate by notice in writing a new address to which any notice, demand, certificate, request or other communication may thereafter be so given, served or sent. Each notice or other communication which shall be mailed, delivered or transmitted in the manner described above shall be deemed sufficiently given, served, sent and received for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, or the affidavit of messenger being deemed conclusive (but not exclusive) evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

Section 23.02. No Brokers. Lessor and Lessee each represents and warrants to the other that it has engaged no broker, finder or agent in connection with this transaction and that it has not incurred any unpaid liability to any broker, finder or agent for any brokerage fee, finder's fee or commission with respect to the transactions contemplated under this Lease; and each agrees to indemnify the other and hold the other harmless from and against any claims asserted against the other for any such fees or commissions by any person purporting to act or to have acted in such capacity for or on behalf of the indemnifying party.

Section 23.03. Expenses. Except for costs and expenses specifically assumed by one of the parties under this Lease, each party hereto shall pay its own expenses incident to this Lease and the transactions contemplated herein, including all legal, consulting, accounting, architectural, and engineering fees and disbursements.

Section 23.04. Severability. In the event that any provision of this Lease or the application thereof to any party or circumstance shall be finally determined by a court of proper jurisdiction to be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provision to parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each other provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

Section 23.05. Waivers. No delay or failure on the part of either party in exercising any right, power or privilege under this Lease shall impair any such right, power or privilege or be construed as a waiver of or acquiescence in any default hereunder. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid unless made in a written instrument duly executed by the party against whom enforcement of such waiver is sought, and then only to the extent expressly specified therein.

Section 23.06. Binding Effect. Subject to the provisions hereof restricting assignment, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 23.07. Amendment. This Lease shall not be amended, altered or modified except by an instrument in writing duly executed by the parties hereto with the same formalities as this Lease.

Section 23.08. Pronouns. All pronouns and any variations thereof shall, in this Lease, be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the person or entity may require.

Section 23.09. Headings. The Article and Section headings contained in this Lease are inserted for convenience of reference only, shall not be deemed to be a part of this Lease for any purpose and shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof.

Section 23.10. Governing Law. This Lease shall be construed in accordance with the laws of the State of Maryland without regard to choice of law provisions.

Section 23.11. Time of Essence. TIME IS OF THE ESSENCE IN THIS LEASE.

Section 23.12. Construction. Each party hereto hereby acknowledges that both parties hereto participated actively in the negotiation and drafting of this Lease and that, accordingly, no court construing this Lease shall construe it more stringently against one party than against the other.

Section 23.13. Ethics. Pursuant to the requirements of Montgomery County Code (1994), as amended, Chapter 11B, notice is hereby given as follows:

Any public employee who has or obtains any benefit from any contract with any person transacting business with Montgomery County, Maryland (the "County") in which the public employee has an interest, financial or otherwise, must report such benefit to the Ethics Commission of the County. In the event that such public employee knows or should have known of such benefit, and fails to report such benefit to the Ethics Commission, he or she shall be in violation of the ethical standards of this Article. However, this provision shall not apply to a contract with a business entity where the employee's interest in the business has been placed in an independently managed trust.

It is unlawful for any person to offer, give or agree to give to any public or former public employee to solicit, demand, accept or agree to accept from another person, gifts for or because of:

(a) an official public action taken, or to be taken, or which could be taken;

(b) a legal duty performed or to be performed, or which could be performed; or

(c) a legal duty violated or to be violated, or which could be violated by such public or former public employee. It is unlawful for any payment, gift or benefit to be made by or on behalf of a subcontractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order. Unless authorized under Section 11B-52 of the Montgomery County Code (1994), as amended, it is unlawful for any person transacting business with the County to employ a public employee for employment contemporaneous with his or her public employment.

Section 23.14. No Partners. Nothing contained in this Lease shall be deemed (or be construed) to constitute a partnership or joint venture between Lessor and Lessee, nor shall Lessee, its employees or agents be considered agents or subagents of Lessor, respectively.

Section 23.15. Non-Discrimination. Lessee shall comply with the applicable non-discrimination in employment requirements of the Montgomery County Code (1994), as amended, and all Federal and State laws and regulations pertaining to non-discrimination in employment.

Section 23.16. Cooperation Between Parties. Lessor and Lessee shall meet annually to discuss matters relating to this Lease, the Demised Premises and the Lessee Improvements.

Section 23.17. No Merger. Any acquisition by Lessor of this Lease and Lessee's Leasehold interest in the Demised Premises, whether by purchase upon a foreclosure of any Leasehold Mortgage or otherwise, shall not effect a merger of this Lease and Lessor's fee interest in the Land, the Garage Property and the Lessee Improvements. So long as there exists a Leasehold Mortgage encumbering the estate of the Lessee, any acquisition by Lessee of the Lessor's interest in the Lease shall not effect a merger of this Lease and the Lessor's fee interest in the Land, the Garage Property and the Lessee Improvements.

Section 23.18. Consents. Unless otherwise specifically set forth herein, all consents and approvals required of Lessor under this Lease shall be granted in the sole and absolute discretion of Lessor, and shall not be subject to any standard of reasonableness.

Section 23.19. Business Days. As used in this Lease, the term "Business Day" shall mean any day other than a Saturday, Sunday or legal holiday in Montgomery County, Maryland.

Section 23.20. Books and Records. Lessor shall have the right, at any reasonable time upon ten (10) Business Day's prior notice to Lessee and for any reasonable purpose, including, without limitation, to determine the Lessee's financial condition, to review and inspect, or cause

to be reviewed and inspected, Lessee's books and records and to make and retain copies of same; provided, Lessor shall disclose such books and records and the contents thereof only to those officials in the Montgomery County Government directly charged with the enforcement of this Lease, including counsel retained specifically for such purpose, and shall otherwise keep such books and records confidential and shall not disclose them, or the contents of them, to any other person.

Section 23.21. Lessor's Acceptance Limited. Wherever pursuant to this Lease Lessor's acceptance or approval is given to any schematic drawing, design development or working drawing, any of the Lessee Plans and Specifications, or any assignment, contract, party or other matter, Lessor's acceptance shall be deemed only to evidence the consistency of the matter or party accepted to the Site Plan Opinion, the Project Plan Opinion, or Lessor's general rights or interests as landlord hereunder and shall not be deemed to be an approval of the soundness or sufficiency of the design, engineering or construction of the Lessee Development, or the legality, validity, qualification, suitability, or fitness of the matter accepted other than as being consistent with the general purposes of this Lease, nor shall such acceptance or approval be deemed to limit any of Lessor's rights under this Lease or under applicable law other than to object to the specific matter accepted or approved (absent fraud or material misrepresentation), it being understood that Lessor's acceptance is given solely as a property owner and not as an expert in matters of design, engineering, construction, law, licensing qualifications or any other matter requiring particular expertise. Lessor's acceptance of any of the foregoing shall not be deemed to be an agreement to assume or perform any of Lessee's obligations under any matter accepted.

Section 23.23. Rent Obligations Unconditional. All payments of Rent and additional rent due and payable by Lessee hereunder and all other costs, expenses and charges which Lessee in any of the provisions of this Lease assumes, agrees or becomes obligated to pay, shall be paid when due without notice (except as otherwise specifically provided herein) and without abatement (except as otherwise specifically provided herein), deduction or set-off.

Section 23.24. Limitations on Indemnifications Given by Lessor. Any indemnification given by Lessor in this Lease, whether or not specifically stated in the particular provision of this Lease in which the indemnification is given, is limited by the notice requirements and damages caps stated in the LGTCA. Indemnifications given by the Lessor are not intended to create any rights to file any causes of actions or to make any claims against Lessors in any third parties.

7-16-15 089

IN WITNESS WHEREOF, this Lease has been duly executed by the parties hereto, or the parties hereto have caused this Lease to be duly executed on their behalf, as of the date first set forth hereinabove.

LESSEE:

IMAGINATION STAGE, INC.

By: Robert G. Brewer, Jr.  
Robert G. Brewer, Jr.  
President

LESSOR:

MONTGOMERY COUNTY,  
MARYLAND

By: Douglas M. Duncan  
Douglas M. Duncan  
County Executive

RECOMMENDED BY

Albert J. Genetti  
Albert J. Genetti, Jr., Director  
Department of Public Works and  
Transportation

APPROVED AS TO FORM AND  
LEGALITY BY THE OFFICE OF THE  
COUNTY ATTORNEY:

Eileen J. Basanow  
Assistant County Attorney  
2/21/2013  
Date

20645 090

STATE OF MARYLAND

ss:

## COUNTY OF MONTGOMERY

I hereby certify that on this 21<sup>st</sup> day of February, 2002, before me, the subscriber, a Notary Public in and for the aforesaid state and county, personally appeared Robert G. Brewer, Jr., the President of the Imagination Stage, Inc., and did acknowledge that he executed the foregoing Lease on behalf of the Imagination Stage, Inc. for the purpose therein contained, and further acknowledged the foregoing Lease to be the act of the Imagination Stage, Inc.

As witness my hand and Notarial Seal.

## Notary Public

## My Commission Expires:

STATE OF MARYLAND

58

COUNTY OF MONTGOMERY

On this 22<sup>nd</sup> day of February, 2002, before me, the undersigned officer, personally appeared Douglas M. Duncan, County Executive of Montgomery County, Maryland, known to me (of satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he as such County Executive executed the same for the purposes therein contained, and further acknowledged the foregoing Lease to be the act of Montgomery County, Maryland.

As witness my hand and notarial seal,

Notary Public

### My Commission Expires:

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June 1, 2002

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PLEASE RETURN TO:  
LERCH, EARLY & BREWER  
3 Bethesda Metro Center, Suite 380  
Bethesda, Maryland 20814-5367

Attn: Judith A. Hill

File: 09507.001 / RGB

20645 091

EXHIBIT A

"Demised Premises"

Space Lease Agreement  
Between  
Montgomery County, Maryland  
And  
Imagination Stage, Inc.

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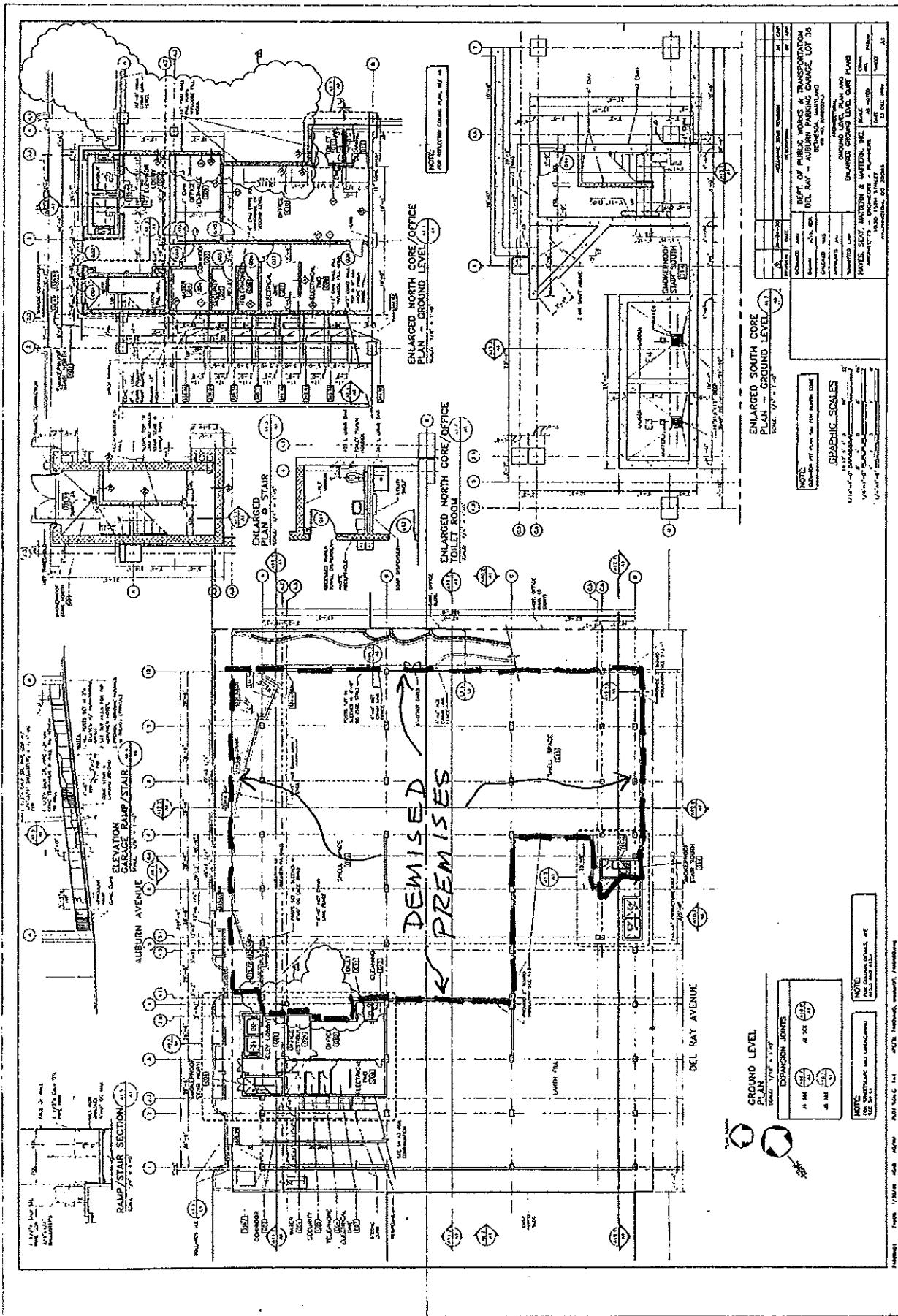


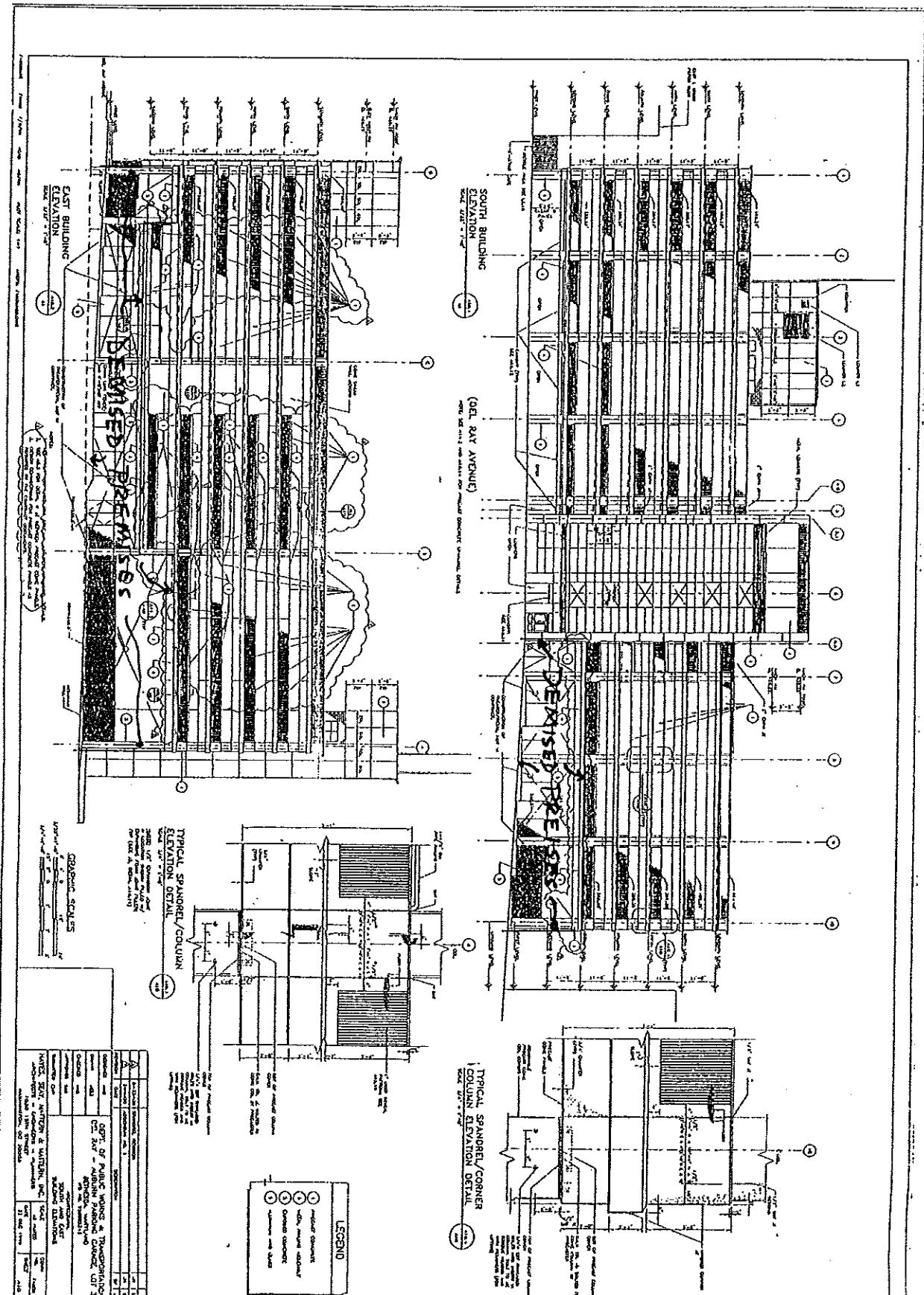
EXHIBIT A

A-1

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20645 7-93

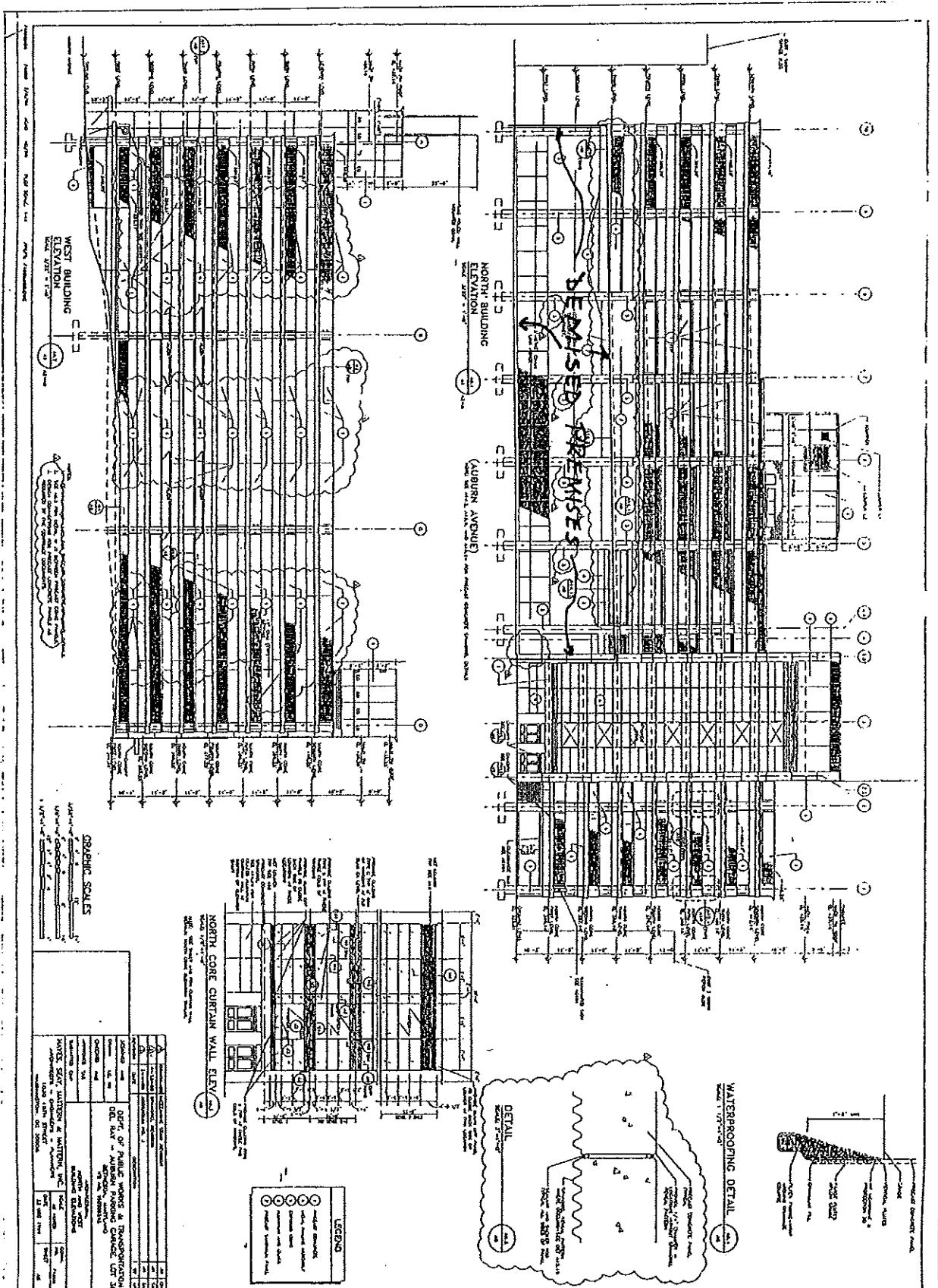
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EXHIBIT B

"PLANS AND SPECIFICATIONS FOR LESSEE  
IMPROVEMENTS"

Space Lease Agreement  
Between  
Montgomery County, Maryland  
And  
Imagination Stage, Inc.

## EXHIBIT "B"

Imagination Stage  
 List of Drawings, Specifications & Other Contract Documents  
 REVISED, 1/18/02

<u>TITLE</u>	<u>DATE</u>
COVER SHEET	10/31/01
CS1 CODE ANALYSIS PLANS	8/03/01
 <u>LANDSCAPE</u>	
L1.1 LANDSCAPE PLAN	8/03/01
 <u>ARCHITECTURAL</u>	
A0.1 EDGE OF CONC. SLAB DIMENSIONS - GROUND FLOOR NORTH	8/03/01
A0.2 EDGE OF CONC. SLAB DIMENSIONS - GROUND FLOOR SOUTH	8/03/01
A1.1 GROUND FLOOR PLAN NORTH	9/28/01
A1.2 GROUND FLOOR PLAN SOUTH AND TRAP ROOM PLAN	10/15/01
A1.3 MEZZANINE AND RETAIL SPACE PLANS	9/28/01
A1.4 ROOF PLAN	8/03/01
A1.5 TERRAZZO PLAN	10/15/01
A2.1 REFLECTED CEILING PLAN - GROUND FLOOR NORTH	10/05/01
A2.2 REFLECTED CEILING PLANS - GROUND FLOOR SOUTH AND TRAP ROOM	9/25/01
A2.3 REFLECTED CEILING PLANS - MEZZANINE AND STUDIO THEATER	9/25/01
A3.1 EXTERIOR ELEVATIONS	8/03/01
A3.2 EXTERIOR ELEVATIONS	10/31/01
A4.1 BUILDING SECTIONS	8/03/01
A4.2 BUILDING SECTIONS	8/03/01
A4.3 BUILDING SECTIONS	8/03/01
A4.4 BUILDING SECTIONS	8/03/01
A5.1 EXTERIOR WALL SECTIONS	10/15/01
A5.2 EXTERIOR WALL SECTIONS	10/05/01
A5.3 EXTERIOR WALL SECTIONS	10/31/01
A5.4 EXTERIOR WALL SECTIONS	10/31/01
A5.5 EXTERIOR DETAILS	10/31/01
A5.6 EXTERIOR DETAILS	10/05/01
A5.7 EXTERIOR DETAILS	8/03/01
A5.8 EXTERIOR DETAILS	10/15/01
A6.1 STAIRS, RAMP AND ELEVATOR DETAILS	8/03/01
A6.2 LOBBY STAIR AND RECEPTION DESK DETAILS	9/28/01
A7.1 MAIN THEATER INTERIOR ELEVATIONS	9/25/01
A7.2 STUDIO THEATER PLAN AND INTERIOR ELEVATIONS	8/03/01
A7.3 TOILET PLANS AND INTERIOR ELEVATIONS	8/03/01
A7.4 KITCHEN PLAN, EQUIPMENT AND INTERIOR ELEVATIONS	8/03/01
A8.1 INTERIOR ELEVATIONS	10/15/01
A8.2 INTERIOR ELEVATIONS	9/28/01
A8.3 INTERIOR ELEVATIONS	8/03/01
A9.1 DOOR SCHEDULE	9/28/01
A9.2 DOOR AND WINDOW DETAILS	8/03/01
A10.1 WALL TYPES AND DETAILS	9/28/01
A10.2 ROOM FINISH SCHEDULE	8/28/01
A10.3 INTERIOR WALL SECTIONS	9/28/01
A10.4 GALLERY GLASS WALL SECTIONS AND DETAILS	8/03/01
A10.5 CEILING PLANS AND DETAILS	10/05/01
A10.6 MEZZANINE GATE DETAILS	8/03/01
A10.7 MARQUEE SIGNAGE AND DETAILS	8/03/01
A10.8 GLASS COUNTER @ RECEPTION DESK MILLWORK DETAILS	10/10/01

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THEATER

T1.1	STAGEHOUSE PLANS	8/03/01
T1.2	STAGEHOUSE PLANS	8/03/01
T1.3	FLY GALLERY PLAN & SECTION, RIGGING SCHEDULE	8/03/01
T1.4	STUDIO THEATRE SYSTEMS	8/03/01
T2.1	STAGEHOUSE SECTIONS	8/03/01
T2.2	STAGEHOUSE SECTIONS	8/03/01
T3.1	STAGE - TRAPROOM DETAILS	8/03/01
T3.2	STAGEHOUSE DETAILS	8/03/01
T3.3	STAGEHOUSE DETAILS	8/03/01

THEATER EQUIPMENT

TE1	MAIN THEATER EQUIPMENT PLANS	8/03/01
TE2	STUDIO THEATER EQUIPMENT PLANS	8/03/01

THEATER LIGHTING RISERS

TL-1	STUDIO THEATER LIGHTING CONTROL & POWER RISER	8/03/01
TL-2	MAIN THEATER LIGHTING CONTROL & POWER RISER	8/03/01

AUDIO/VISUAL

AV1-6	CONDUIT LAYOUTS - MAIN THEATER, A/V DIAGRAMS, SPEAKER LAYOUT	8/03/01
AV7-12	INTERCOM & THEATER CONTROL DIAGRAMS, CONDUIT PLAN – STUDIO THEATER	8/03/01
AV13-16	AUDIO/PAGING DIAGRAMS, SPEAKER LOCATIONS, STAGE PLATES	8/03/01

TECHNOLOGY SYSTEMS

TEC 0-1	LEGEND, SYMBOLS, GENERAL NOTES	8/31/01
TEC 1-1	TECH PLAN - GROUND FLOOR	8/31/01
TEC 1-2	TECH PLAN – SECOND FLOOR	8/31/01
TEC 3-1	TECH CLOSET LAYOUTS/BACKBONE	8/31/01
TEC 6-1	EQUIPMENT DETAILS	8/31/01

STRUCTURAL

S-1	FOUNDATION & SLAB ON GRADE PLAN, PARTIAL FRAMING PLANS	7/13/01
S-2	COLUMN LOADS, DETAILS AND SECTIONS	7/13/01
S-3	CEILING SUPPORT FRAMING PLAN, SECTIONS, AND DETAILS	7/13/01
S-4	TYPICAL DETAILS AND STRUCTURAL NOTES	7/13/01
S-5	SECTIONS AND DETAILS	8/29/01

MECHANICAL

M-1	MECHANICAL COVER SHEET	8/31/01
M-2	MECHANICAL DETAILS SHEET	8/31/01
M-3	MECHANICAL PART PLANS	8/31/01

MECHANICAL/PLUMBING

MP-1	MECHANICAL/PLUMBING – MAIN LEVEL	8/31/01
MP-2	MECHANICAL/PLUMBING – MEZZANINE LEVEL	8/31/01
MP-3	MECHANICAL/PLUMBING – 8 <sup>TH</sup> LEVEL	8/31/01

PLUMBING

P-1	PLUMBING COVER SHEET	8/31/01
P-2	PLUMBING DETAILS	8/31/01
P-3	PARTIAL FLOOR PLAN – PLUMBING	8/31/01
P-4	RISER DIAGRAMS – PLUMBING	8/31/01

**ELECTRICAL**

E-1	ELECTRICAL COVER SHEET	8/31/01
E-2	ELECTRICAL MAIN LEVEL LIGHTING PLAN	10/3/01
E-3	ELECTRICAL MAIN LEVEL POWER PLAN	10/1/01
E-4	ELECTRICAL MEZZANINE LIGHTING PLAN	8/31/01
E-5	ELECTRICAL MEZZANINE POWER PLAN	8/31/01
E-6	ELECTRICAL PART PLANS AND NOTES	10/1/01
E-7	ELECTRICAL RISER SHEET	10/3/01
E-8	ELECTRICAL PANEL SCHEDULES	10/3/01
E-9	FIRE ALARM RISER DIAGRAM, ANNUNCIATOR AND DETAILS	10/1/01
E-10	TELECOMMUNICATIONS PLAN	8/31/01
E-11	DIMMING SCHEDULES AND WIRING DIAGRAMS	8/31/01

**INTERIOR DESIGN****THEATER, ADMINISTRATION, AND BOUTIQUE AREAS**

I-1	MEZZANINE FINISH PLAN, INTERIOR SCHEDULE, & ELEVATIONS	9/25/01
I-2	MEZZANINE REFLECTED CEILING PLAN & DETAILS	9/25/01
I-3	BOUTIQUE AND CAFÉ FINISH PLAN & DETAILS	9/25/01
I-4	MAIN THEATER FINISH PLANS	9/25/01
I-5	MAIN THEATER INTERIOR ELEVATIONS	9/25/01
I-6	STUDIO THEATER FINISH PLAN & ELEVATIONS	9/25/01
I-7	FIRST FLOOR ROOM FINISH SCHEDULE	9/25/01
I-8	SECOND FLOOR ROOM FINISH SCHEDULE	9/25/01

**EXHIBITS AND ADDENDA**

Exhibit "A"	List of Drawings, Specifications & Other Contract Documents, Revised	11/16/01
Exhibit "B"	Construction Schedule (to be determined)	
Exhibit "C"	Contractor's Insurance Certificate (to be determined)	
Exhibit "D"	Standard Form of Subcontract (to be determined)	
Exhibit "E"	Schedule of Values (Bid format)	8/3/01
Exhibit "F"	Instruction to Bidders and Clarifying Notes	9/4/01
Exhibit "G"	Retail Fixtures Scope of Work	9/4/01
Exhibit "H"	Gensler Sketches & Sections for Theater Suspended Cloud Ceiling	9/4/01
Exhibit "I"	Specification Section 09512, Acoustical Theater Ceiling	9/4/01
Exhibit "J"	Addendum One Scope of Work Clarifications	9/25/01
Attachment J-1	Specification Section 02940 – Planting Soil	9/25/01
Attachment J-2	ReSTL Sheet S-4 notating As-built Steel Embed Locations	9/25/01
Attachment J-3	Sketches 1 through 4 showing As-built Steel Embed Locations	9/4/01 & 6/5/01
Attachment J-4	Theater Suspended Cloud Ceiling Rigid Hanger Detail	9/19/01
Attachment J-5	GHT Plumbing Cover Sheet Revision to Kitchen Equipment	9/18/01
Exhibit "K"	Addendum Two Scope of Work Clarifications	10/1/01
Attachment K-1	SK&A Sketch on Limestone Panel Support Angels	10/1/01
Attachment K-2	Wood & Zapata Fax Memo Addendum 2 Finish Hardware Revisions	10/1/01
Exhibit "L"	Addendum Three Scope of Work Clarifications	10/5/01
Attachment L-1	Section 03450 Architectural Precast Concrete	10/4/01
Attachment L-2	Polysonics addendum to Audio/Video Systems	10/2/01
Attachment L-3	Fixture Type RB-3 (for Display Case) Annotated Cut Sheet	10/3/01
Attachment L-4	Fixture Type RW-3 & RW-4 (Theater Aisle & Step Lights) Annotated Cut Sheet	10/3/01
Attachment L-5	Fixture Type RB-9 (Boutique Display Case) Annotated Cut Sheet	10/5/01
Attachment L-6	Specification Sheet 05411-2, Light Gauge Metal Framing	8/3/01
Attachment L-7	Revised Specification Section 05500 Metal Fabrications	10/4/01
Attachment L-8	Specification Section 07140, Metal Oxide Waterproofing	10/5/01
Attachment L-9	Specification Section 02712, Foundation Drainage System	10/5/01
Attachment L-10	Specification Section 10910 Ballet Bar	10/5/01
Exhibit "M"	Addendum Four Scope of Work Clarifications	10/8/01
Attachment M-1	Structural Section for Raised Seating Sections in Main Theater	10/8/01
Exhibit "N"	Addendum Five Scope of Work Clarifications	10/11/01
Attachment N-1	Miller & Long Preliminary Schedule	10/11/01

**EXHIBITS AND ADDENDA, continued**

Attachment N-2	Brick Sidewalk Detail	10/11/01
Exhibit "O"	Addendum Six Scope of Work Clarifications	10/15/01
SK-A004A	Lighting Coves @ Bathrooms-Reflected Ceiling Plan	9/25/01
SK-A004B	Lighting @ Bathrooms_153 & 154 Section Detail	9/25/01
SK-A005	Main Theater Ramp & Stair Elevations	9/25/01
SK-A006A	Ground Floor Plan Banquette Seating	9/25/01
SK-A006B	Elevation Banquette Seating	9/25/01
SK-A007A	Ground Level Floor Plan Revised Wall Types	9/25/01
SK-A007B	Ground Level Floor Plan Revised Wall Types	9/25/01
SK-A0008A	Revised Light Fixtures Ground Floor RCP (partial plan)	9/25/01
SK-A0008B	Revised Light Fixtures Ground Floor RCP (partial plan)	9/25/01
SK-A0008C	Revised Light Fixtures Ground Floor RCP (partial plan)	9/25/01
SK-A0008D	Revised Light Fixtures Ground Floor RCP (partial plan)	9/25/01
SK-A0008E	Revised Light Fixtures Trap Room RCP	9/25/01
SK-A0008F	Revised Light Fixtures Mezz. Floor RCP (partial plan)	9/25/01
SK-A0008G	Revised Light Fixtures Mezz. Floor RCP (partial plan)	9/25/01
SK-A0008H	Revised Light Fixtures Mezz. Floor RCP (partial plan)	9/25/01
SK-A009A	Fire Annunciator Panel Option 1	9/25/01
SK-A009B	Fire Annunciator Panel Option 2	9/25/01
SK-P010A	Mezzanine Floor Plan Costume Storage, Shop	9/28/01
SK-A010B	Costume Storage Section @ Shelving	9/28/01
SK-A010C	Costume Storage Cutting Table Details	9/28/01
SK-A011A	Ground Level Plan at Reception Desk	9/28/01
SK-A011B	Glass Countertops at Reception Desk-Plans	9/28/01
SK-A011C	Section Detail at Reception Desk W/Glass Top	9/28/01
SK-A011D	Section Detail at Reception Desk W/Glass Top	9/28/01
SK-A011E	Section Detail at Reception Desk W/Glass Top	9/28/01
SK-A011F	Section Detail at Reception Desk W/Glass Top	9/28/01
SK-A1012A	Display Case Lighting Plans	9/28/01
SK-A1012B	Display Case Lighting Elev./Section	9/28/01
SK-A013	Wall Type Z Shaft Wall	9/28/01
SK-A014A	St Stl. Channel Reveal Alternative 1	9/28/01
SK-014B	St. Stl. Channel Reveal Alternative 2	9/28/01
SK-A014	Acoustic Ceiling System	10/5/01
SK-A015	Revised Lighting @ Boutique Display	10/5/01
SK-A016A	Revised Lighting at Box Office #118	10/5/01
SK-A016B	Revised Lighting at Box Office #118(Section)	10/5/01
SK-A016C	Revised Lighting at Box Office #118(Section)	10/5/01
SK-A016D	Revised Lighting at Box Office #118(Section)	10/5/01
SK-A017	Expansion Joint Cover – Partial Wall Section	10/5/01
SK-A018A	Limestone Panel Revision (Elevation)	10/5/01
SK-A018B	Limestone Panel Revision (Elevation)	10/5/01
SK-A018C	Limestone Panel Revision (Elevation)	10/5/01
SK-A018D	Limestone Panel Revisions – Partial Wall Section	10/5/01
SK-A018E	Limestone Panel Revisions – Partial Wall Section	10/5/01
SK-A018F	Limestone Panel Revisions – Partial Wall Section	10/5/01
SK-A018G	Limestone Panel Revisions	10/5/01
SK-A018H	Limestone Panel Revisions	10/5/01
SK-A018J	Limestone Panel Revisions (Partial Wall Section)	10/5/01
SK-A018K	Limestone Panel Revisions (Partial Wall Section)	10/5/01
SK-A018L	Limestone Panel Revisions (Partial Wall Section)	10/5/01
SK-A018M	Limestone Panel Revisions (Partial Wall Section)	10/5/01
SK-A018N	Limestone Panel Revisions (Partial Wall Section)	10/5/01
SK-A018P	Limestone Panel Revisions (Partial Wall Section)	10/5/01
SK-A018Q	Limestone Panel Revisions (Partial Wall Section)	10/5/01

**EXHIBITS AND ADDENDA, continued**

SK-A018R	Limestone Panel Revisions (Angle Detail)	10/5/01
SK-A019A	Shoe Cubby Details	10/10/01
SK-A019B	Shoe Cubby Details	10/10/01
SK-A019C	Shoe Cubby Details	10/10/01
SK-A019D	Shoe Cubby Details	10/10/01
SK-A019E	Shoe Cubby Details	10/10/01
SK-A020A	Production Studios 171 & 174 Revisions Ground Floor Plan	10/15/01
SK-A020B	Production Studios 171 & 174 Revisions Wall Section (partial)	10/15/01
SK-A020C	Production Studios 171 & 174 Revisions Interior Elevations	10/15/01
SK-A020D	Production Studios 171 & 174 Revisions Mullion Details (plan)	10/15/01
Exhibit "P"	Addendum Seven Scope of Work Changes and Clarifications	10/31/01
SK-A021A	Addendum 7- Revised Elevations w/Copper Panels	10/31/01
SK-A021B	Addendum 7- Revised Elevations w/Copper Panels	10/31/01
SK-A021C	Addendum 7- Revised Elevations w/Copper Panels	10/31/01
SK-A021D	Addendum 7- Revised Wall Sections w/Copper Panels	10/31/01
SK-A021E	Addendum 7- Revised Wall Sections w/Copper Panels	10/31/01
SK-A021F	Addendum 7- Revised Wall Sections w/Copper Panels	10/31/01
SK-A021G	Addendum 7- Revised Elevations w/Copper Panels	10/31/01
SK-A021H	Addendum 7- Section Details @ Alum. Reveal w/Lip and @ Copper Recess	10/31/01
Exhibit "Q"	Addendum Eight Scope of Work Changes and Clarifications	11/14/01

**RFIs**

RFI #1	Bidders RFI #1	10/3/01
RFI #2	Bidders RFI #2	10/5/01
RFI #3	Bidders RFI #3	10/5/01
RFI #4	Bidders RFI #4	10/8/01
RFI #5	Bidders RFI #5	10/11/01
RFI #6	Bidders RFI #6	10/15/01
RFI #7	Bidders RFI #7	10/16/01
RFI #8	Bidders RFI #8	10/17/01
Attachment 8-A	Miller & Long Partial foundation Plan at Tower Crane	Fax Dated 10/17/01
Attachment 8-B	Typ. Catwalk Section	10/17/01

## Imagination Stage

## List of Specifications

<u>BIDDING REQUIREMENTS, CONTRACT FORMS, AND CONDITIONS OF THE CONTRACT</u>		<u>DATE</u>
Document 00320	Geotechnical Data	8/3/01

SPECIFICATIONSDIVISION 1 - GENERAL REQUIREMENTS

Section 01010	Summary Of Work	8/3/01
Section 01020	Allowances	8/3/01
Section 01026	Unit Prices	8/3/01
Section 01027	Application For Payment	8/3/01
Section 01028	Modification Procedures	8/3/01
Section 01030	Alternates	8/3/01
Section 01040	Coordination	8/3/01
Section 01045	Cutting And Patching	8/3/01
Section 01050	Field Engineering	8/3/01
Section 01090	References	8/3/01
Section 01200	Project Meetings	8/3/01
Section 01300	Submittals	8/3/01
Section 01410	Testing Laboratory Services	8/3/01
Section 01500	Construction Facilities And Temporary Controls	8/3/01
Section 01600	Material And Equipment	8/3/01
Section 01630	Substitution Request Form	8/3/01
Section 01700	Contract Closeout	8/3/01

DIVISION 2 - SITE CONSTRUCTION

Section 02712	Foundation Drainage System	10/5/01
Section 02940	Planting Soil	9/25/01

DIVISION 3 - CONCRETE

Section 03300	Cast-In-Place Concrete (refer to requirements on SK&A's drawings)	
Section 03450	Architectural Precast Concrete	10/4/01

DIVISION 4 - MASONRY

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"PLANS AND SPECIFICATIONS FOR GARAGE"

Space Lease Agreement  
Between  
Montgomery County, Maryland  
And  
Imagination Stage, Inc.

EXHIBIT 'C'

SPECIFICATIONS  
FOR

Del Ray/Auburn Avenue Parking Garage 36

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## SECTION 01000

## SPECIAL CONDITIONS

## PART 1 GENERAL

## 1.1 LOCATION OF THE WORK

The site of the Del Ray/Auburn Avenue Parking Garage 36 is located in the Woodmont Triangle of Bethesda, Maryland to the north of Old Georgetown Road and to the south of Norfolk Avenue, between Auburn and Del Ray Avenues.

## 1.2 GENERAL DESCRIPTION OF THE WORK

## 1.2.1 Description

The work includes the construction of a seven-level post tensioned concrete structure of approximately 242' x 186'; two stair towers containing two traction elevators each; shell space for a future children's theatre; site and landscape development; pre-cast exterior spandrels, relocation of high voltage power lines along Del Ray Avenue, and ancillary lighting, drainage, electrical service and mechanical systems. Also included is the demolition of a 2-story building.

## 1.2.2 Disclaimer

This short description, however, shall not, in any way, be construed to limit the Contractor's obligation for compliance with the contract documents.

## 1.3 DRAWINGS

The following drawings accompany the project manual and form a part thereof:

## Sheet No. Title

G1 Cover Sheet  
G2 Abbreviations, Legend and Site Plan  
G3 Code Analysis Plans

L1 Streetscaping Plan  
L2 Streetscaping Details  
L3 Streetscaping Details

C1 Existing Conditions Plan  
C2 Demolition Plan

- C3 Grading and Drainage Plan
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- A1 Ground Level Plan and Enlarged Ground Level Core Plans
- A2 First Level Plan and Enlarged First Level Core Plans
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- A9 North and West Building Elevations
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- A17 Window, Door and Finish Schedules
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- AG101 Sign Location Plan, Level G Plan - Auburn Ave
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S3 First Level Plan  
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S5 Third Level Plan  
S6 Level 4, 5 and 6 Plan  
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MP1 Legend and General Notes  
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Machine Room Plans  
M2 Schedules and Details

P1 Ground Level Plan  
P2 First Level Plan  
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PEPCO

1 of 2 Remove Poles and Overhead Wires; Build Conduit and Install U.G. Cables  
2 of 2 Remove Poles and Overhead Wires; Build Conduit and Install U.G. Cables

1.4 REFERENCED SECTIONS

- a. Divisions 2 through 16 specification sections referenced in the text of those sections are listed in PART 1 Article "Referenced Sections" of the Division 2 thru 16 sections.
- b. Division 1 specification sections referenced in specification Divisions 2 through 16 are as follows:
  - (1) Section 01000 - Special Conditions
  - (2) Section 01020 - Allowances
  - (3) Section 01039 - Coordination and Meetings
  - (4) Section 01090 - References
  - (5) Section 01300 - Submittals
  - (6) Section 01400 - Quality Control
  - (7) Section 01500 - Temporary Facilities
  - (8) Section 01600 - Material and Equipment

EXHIBIT D  
"LETTER OF INTENT"

Space Lease Agreement  
Between  
Montgomery County, Maryland  
And  
Imagination Stage, Inc.



EXHIBIT 'D' 20645 114

7300 Whittier Boulevard  
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20817

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December 6, 2001

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A not-for-profit  
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The Honorable Douglas M. Duncan  
County Executive  
Montgomery County, Maryland  
Executive Office Building  
101 Monroe Street  
Rockville, Maryland 20850

Re: Proposed Montgomery County, Maryland  
Economic Development Revenue Bonds  
(Imagination Stage, Inc. Facility)

Dear Mr. Duncan:

The undersigned Imagination Stage, Inc. ("ISI"), formerly the Bethesda Academy of Performing Arts, Inc. or "BAPA", respectfully requests that Montgomery County, Maryland (the "Public Body") authorize, issue, and sell its economic development revenue bonds, in a principal amount not to exceed \$4,060,000 (the "Bonds") pursuant to the provisions of the Maryland Economic Development Revenue Bond Act (codified at Sections 14-101 through 14-109, inclusive, of Article 41 of the Annotated Code of Maryland) (the "Act"), or such other statutory authority as may exist when the Bonds are issued. This letter is intended as a "letter of intent" under the Act.

ISI proposes that the Public Body lend the proceeds of the sale of the Bonds to ISI under a loan agreement (within the meaning of the Act).

ISI will use the proceeds of the Bonds to finance: (1)(a) the construction of an approximately 37,400 square foot facility to be located in a tract of land in the central business district of Bethesda, Maryland known as Woodmont Subdivision within the block bounded by Old Georgetown Road, Auburn Avenue, Norfolk Avenue and Del Ray Avenue, and further described as part of Lots 367, 368, 369, 370, 371, 372 and 373, and part of Lots 363, 364, 365 and 366, and part of Lots 338 and 339, and part of Lot 340, and part of Lots 341, 342 and 343, and original Parking Lot 36 by virtue of deeds filed in the County Land Records shown on Plat 4, Plat Book 1 of the Land Records of Montgomery County, Maryland, (b) the completion of the interior of such facility, and (c) the acquisition of furnishings, fixtures and equipment for such facility and landscaping, roads or other rights of access, utilities and other site preparation as may be necessary or suitable for the foregoing (collectively, the "Facility"); (2) capitalized interest on the Bonds during construction; and (3) the costs of issuing the Bonds. ISI will own, within the meaning of §145(a) of the Internal Revenue Code of 1986, as amended



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(the "Code"), all of the leasehold improvements and furniture, fixtures, and equipment which are to be financed by the net proceeds of the Bonds.

ISI is a "501(c)(3) organization", within the meaning of §150(a) of the Code. Founded in 1979 as the Bethesda Academy of Performing Arts in response to the unmet need for arts education for children and young, the organization has grown from serving a handful of children in a single classroom to a regional, multi-disciplinary arts organization serving nearly 45,000 children and their families each year. ISI's programs utilize the arts to educate, enlighten, encourage self-esteem, and provide skills necessary for future success.

Believing that all young people benefit—physically, cognitively, and spiritually—from having the arts in their lives, ISI's mission is to integrate the arts into the lives of ALL children. Throughout its history, the organization has promoted the value of inclusion, reaching out to children with physical and cognitive disabilities and children who need scholarship assistance. ISI's goals are to provide children and young people with opportunities: (1) for arts education; (2) to perform; and (3) to enjoy professional children's theatre that reflects the diversity of the community. In 1987, ISI (formerly BAPA) established an Arts Access Program for children with physical and cognitive disabilities, and two years later a similar program was established for children who are deaf or hard of hearing. In 1995, the organization's Deaf Access Company was featured on *CNN Headline News* and in the *Washington Post*.

ISI's goal to integrate the arts into the lives of ALL children, regardless of their physical or cognitive abilities or their financial resources, is hindered only inadequate facilities. ISI needs a single, modern facility located in an urban setting proximate to public transportation. ISI currently operates out of two extremely compromised facilities; one in a former women's dress shop in a suburban mall and the other in a former public elementary school in a suburban area remote from public transportation and sorely in need of extensive renovations. These inadequate facilities impede ISI's ability to reach many children and their families, and to provide state-of-the-art theatre education to all students, especially those with disabilities and those who are eligible for scholarships.

The purpose of this project is to construct a new facility for ISI that will be built as a store-front level theater facility of a new Montgomery County 750-car parking garage and will be an innovative example of mixed public/private use. ISI's new facility will serve as a regional showcase for arts education for children and their families in the Washington, D.C. metropolitan area.

ISI's 37,400 square foot *Imagination Stage* will house a state-of-the-art 450-seat professional children's theatre; an education suite with studios for drama, dance, music, the Deaf Access Program, and the Arts Access Program (serving students with and without disabilities); a 200-seat studio theatre for student performances; a cafe; a shop specializing in unique, theatre-related gifts for children; and bright and inviting Lobby and Gallery; a landscaped promenade; and administrative offices. The construction of *Imagination Stage* will resolve ISI's most serious current challenges. It will:



20645

11b

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- provide a location that is readily accessible to public transportation, thereby enabling ISI to accommodate a broad public from across the metropolitan region, including those with disabilities and those who are eligible for scholarships (ISI projects more than 90,000 students and patrons in its first year in *Imagination Stage*);
- offer state-of-the-art educational facilities for drama, dance, and music, and a multi-media center that will offer students opportunities in film, video, and computer graphics;
- provide a state-of-the-art professional theatre space that will attract top quality scriptwriters, producers, directors, performers, and technical crews;
- create a significant children's arts center in a readily accessible area of the Washington, D.C. metropolitan area that will claim its place as one of the handful of dedicated professional children's theatres nationally and a unique arts education center with tremendous breadth and depth of offerings; and
- attract a sound base of public and private funding to support ISI's programs on an ongoing basis.

It is currently estimated that the "total costs" to develop the Facility will be approximately \$10,000,000 of which up to \$4,060,000 would be provided by the Bonds. The remaining monies would be contributed by ISI from other sources, including State, County, and private grants. Included in the "total costs" are capitalized interest, a debt service reserve fund, and the fees for construction, architectural, engineering, construction of utilities, financial and certain legal services, and other costs of issuing the Bonds. Any funds raised from State Bond Bills, Montgomery County, and fund raising would reduce the amount of money that ISI will need from the Industrial Revenue Bonds.

#### Acknowledgment by ISI

ISI acknowledges that federal legislation may be enacted which may limit the ability of the Public Body to issue the Bonds and similar obligations. ISI hereby acknowledges that the Public Body reserves the right, in its sole and absolute discretion, to take any actions which the Public Body may deem necessary in order to ensure that the Public Body (1) complies with all federal and state laws, whether proposed or enacted, which may restrict the issuance of its economic development revenue bonds, and (2) issues such bonds to finance facilities which the Public Body determines, in its sole and absolute discretion, will provide the greatest benefits to the Public Body. Specifically, the Public Body reserves the right to choose to issue its economic development revenue bonds for facilities other than the Facility, and to issue or not issue such bonds in the order of priority which the County Executive, in his sole and absolute discretion, may determine.



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### Compliance with Act

The Act defines "acquisition" to include the construction, equipping or improvement of one or more facilities. The acquisition (within the meaning of the Act) of the Facility will benefit the Public Body and the State of Maryland in accordance with the stated purposes of the Act by (i) sustaining jobs and employment, thereby relieving conditions of unemployment in the State and in the County; (ii) encourage the increase of industry and commerce and a balanced economy in the State and in the County; (iii) assist in the retention of existing industry and commerce in the State and in the County; (iv) promote economic development; and (v) generally promote the health, welfare and safety of the residents of the County.

The Bonds will be limited obligations of the Public Body, the principal of, premium, if any, and interest on which shall be payable solely from the revenue derived from loan repayments (both principal and interest) made to the Public Body by ISI pursuant to the terms and provisions of the Loan Agreement (hereinafter defined) and from any other moneys made available to the Public Body for such purposes. ISI proposes that the Public Body lend the proceeds of the Bonds (the "Loan") pursuant to the terms and provisions of a Loan Agreement to be entered into by and between the Public Body and ISI (the "Loan Agreement"). The Loan Agreement will require ISI to use the proceeds of the Loan for the sole and exclusive purposes set forth above in this letter of intent.

The Loan Agreement will require ISI to make loan payments (both principal and interest) sufficient to pay (1) the principal of and interest and redemption premium, if any, on the Bonds and (2) all expenses incurred by the Public Body in connection with issuance and sale of the Bonds and the making and administration of the Loan, as the same become due and payable. ISI agrees that all costs of the construction and equipping of the Facility in excess of the proceeds of the Loan will be paid by ISI. The Loan Agreement will contain such other provisions as may be required by law or as may be agreed to by ISI and the Public Body. Financial considerations have been a factor leading to ISI's decision to undertake the construction and equipping of the Facility, and that decision has been influenced materially by the availability of economic development revenue bond financing from the Public Body.

The Act empowers all the counties and municipalities of the State to borrow money by issuing negotiable economic development revenue bonds and to lend the proceeds of the sale thereof to a Facility Applicant (as defined in the Act). ISI is a "facility applicant" and "facility user" within the meaning of the Act. The Facility constitutes a "facility" as defined by the Act.

It is expressly understood and agreed that (1) the Public Body will not incur any liability, direct or indirect, or any cost, direct or indirect, in connection with the issuance or sale of the Bonds, the making of the Loan or the construction or equipping of the Facility, and (2) the use of the proceeds of the Loan to construct or equip the Facility will conform to the requirements of ISI. Accordingly, ISI shall (1) negotiate and approve all financing arrangements in connection with the construction and equipping of the Facility, and (2) pay all costs incurred by or on behalf of the Public Body in connection with construction and equipping of the Facility. ISI shall also



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pay all costs incurred in connection with the development of the appropriate legal documents necessary to effectuate the proposed construction and equipping of the Facility, including (without limitation) the fees of bond counsel to the Public Body and compensation to any other person (other than full-time employees of the Public Body) or entity performing services on behalf of the Public Body in connection with the transactions contemplated by this letter to intent, whether or not the proposed financing is consummated.

Prior to the issuance of the Bonds, in accordance with the Act and a resolution of the County Council of the Public Body specifying the proposed undertaking, the County Executive shall, by order or otherwise, specify, prescribe, determine, provide for or approve the amount of the Bonds to be issued, the rate or rates of interest the Bonds are to bear (or the method of determining such rate or rates), and other such provisions not inconsistent with the Act as shall be determined by the County Executive to be necessary or desirable to effect the financing of the construction and equipping of the Facility, including (without limitation) the times and place or places that interest on the Bonds is to be paid, the time that the Bonds are to be executed, issued and delivered, the form, tenor and denominations of the Bonds, the times and place or places of payment of the Bonds and the amounts payable at such times.

The principal of, premium, if any, and interest on the Bonds shall never constitute an indebtedness or a charge against the general credit or taxing powers of the Public Body, within the meaning of any constitutional or charter provision or statutory limitation, and shall never constitute or give rise to any pecuniary liability of the Public Body. The principal or premium, if any, and interest on the Bonds shall be payable solely from the revenues received in connection with the financing of the Facility and from any other moneys made available to the Public Body for such purpose. Moreover, nothing contained in this letter of intent shall be deemed to constitute an undertaking by the Public Body to expend any of its funds to effect any or all of the transactions contemplated by this letter of intent.

#### Acceptance of Letter of Intent

It is further understood and agreed to by ISI that the proposal contained herein is subject to (1) the approval and appropriate action by the County Executive and County Council of the Public Body, and (2) the approval of detailed provisions of all documents pertaining to the financing as yet to be developed. The acceptance of this letter of intent by the Public Body shall be evidence of the bona fide present intent of the Public Body to authorize the issuance, sale and delivery of the Bonds and to authorize the Loan for the purposes described herein; provided, however, that ISI recognizes that:

1. The Public Body cannot make an absolute guarantee, promise or assurance that the terms and conditions of the Bonds (including, but not limited to, the principal amount of the Bonds to be issued, the rate or rates of interest the Bonds are to bear, the times and places that the Bonds are to be executed, issued and delivered, the redemption provisions for the Bonds, the form, tenor and denominations of the Bonds and the amounts payable at such times, as actually authorized to be issued, will be acceptable to ISI and



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2. The Public Body can give no guarantee, promise, or assurance as to the availability of one or more purchasers of the Bonds to whom the Bonds may lawfully be sold under, among other, applicable federal and state securities and legal investment laws.

If at any time ISI determines not to proceed with the issuance, sale and delivery of the Bonds, ISI will promptly advise the Public Body, in writing, of such determination, stating its reasons.

Sincerely,

Imagination Stage, Inc.

By *Bonnie Fogel*  
Bonnie Fogel  
Executive Director

ACCEPTED:

MONTGOMERY COUNTY, MARYLAND

By \_\_\_\_\_  
Douglas M. Duncan  
County Executive

Date: \_\_\_\_\_

20545 120

EXHIBIT E

"PERMITTED ENCUMBRANCES"

Space Lease Agreement  
Between  
Montgomery County, Maryland  
And  
Imagination Stage, Inc.

**EXHIBIT "E"**  
**PERMITTED ENCUMBRANCES**

1. Public Utility Easements and Sewer and Water Easements of Record