

City Council Workshop

Agenda Item #1

July 15, 2013

Hutchins School Lease

The Mad Horse Theater Company has requested to extend its lease of the former Hutchins Elementary School at 24 Mosher St. for another five year term, in the amount of \$900/month for years 1 -3, and \$1,000/month for years 4 – 5. The Theater Company has been using the former school for wardrobe and prop storage, theater rehearsals, and theater programming and classes for children. The lease was amended over the initial 5-year term to allow performances to take place within the building. The Theater Company, who is a 501(c) (3) organization, is responsible for all utilities and maintenance of the building. The adjacent park will continue to be maintained by the City for use by City residents.

Mad Horse has brought forward the request to extend the lease based on the need to schedule performances over the next twelve months. The existing lease for Mad Horse expires in April of 2014 and they are seeking assurances that they will still be leasing the building over the next year.

The theater group would still rent out a third story apartment for a building superintendent. The Theater has also subleased space to a “for-profit” children’s theater company, which is not in accordance with the **Assignment of Lease** section of the lease agreement. At this time the lease prohibits the subleasing of space to “for-profit” entities. The Theater has requested the opportunity to amend the lease language to include “for-profit theater”.

Mad Horse has provided just over 28K in building improvements since the beginning of the lease. Electrical work, insulation, fire doors and a new furnace are just a few of the items they have addressed. The City of South Portland’s CDBG program has funded two phases of exterior renovations to the building. The second phase, painting of the exterior, is only weeks away from beginning.

Staff recommends finalization of the amended lease arrangement by extending the lease for another five years. This will enable the Theater to move forward and schedule performances over the next twelve months.

  
City Manager

**FIRST AMENDMENT OF LEASE**

THIS AMENDMENT OF LEASE IS MADE THIS \_\_\_\_\_ day of \_\_\_\_\_, 2013~~2~~, by and between the CITY OF SOUTH PORTLAND, a municipal corporation existing under the laws of the State of Maine and located in the County of Cumberland, State of Maine (hereinafter "LANDLORD"), and MAD HORSE THEATRE COMPANY, a Maine non-profit corporation with a place of business in South Portland, County of Cumberland, State of Maine (hereinafter referred to as "TENANT").

**WITNESSETH**

WHEREAS, LANDLORD owns the real property commonly known as the Hutchins Elementary School located at or about 24 Mosher Street in South Portland, Maine, which premises are comprised of the land and building more particularly shown on Assessor's Map 8, Lot 9 (hereinafter "Leased Premises"); and

WHEREAS, TENANT desires to lease the Leased Premises to provide place of assembly, theater arts materials storage, rehearsal space, workshops, children's programming, for profit theater, and residential quarters for a building superintendent and no more than one other household member under the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the mutual conditions and covenants contained herein, the parties agree as follows:

1. Lease of Premises. LANDLORD hereby demises and leases unto TENANT, and TENANT hereby demises, leases, and takes upon, subject to the conditions hereinafter expressed, the Leased Premises.
2. Term. The term of this Lease extension shall commence on ~~May 1, 2009~~ May 1, 2014 and terminate ~~April 30, 2014~~ April 30, 2019, unless sooner terminated in accordance with the terms and conditions hereof. TENANT shall have the exclusive possession, use and occupancy of the Leased Premises during the lease term.
3. Rent/Consideration. In consideration of this agreement, TENANT agrees to pay to LANDLORD the sum of ~~\$4900~~ per month for Years 1-~~23~~ and ~~\$1000800~~ per month for Years 34-5 and other valuable considerations in the form of making ~~the following~~ improvements to the Leased Premises valued at a minimum of \$4,000 annually. valued at and costing approximately \$24,500:

Construction	\$13,500
Paint	\$3,500
Plumbing	\$7,500
TOTAL	\$24,500

Said improvements will belong to the LANDLORD at the end of the term or upon TENANT's vacation of the Leased Premises. All of the aforesaid improvements shall be made at the expense of TENANT; provided, however, that no improvement, renovation or alteration of the Leased Premises shall be undertaken without the prior approval of the City Manager or his designee. The aforesaid work shall be completed according to a schedule and manner satisfactory to the City Manager or his designee and all applicable state, federal or local applicable building, fire and safety codes.

The City Manager shall have the authority to approve change orders in the list of improvements; however, the total value of the improvements shall not be less than \$4,000 annually.

~~In the event that LANDLORD terminates the Lease for convenience before the end of the lease term as stated in Paragraph 2, the consideration paid by TENANT shall be pro-rated. The value of the lease for Years 1-3 shall be \$14,400 and \$19,200 for Years 4-5. LANDLORD shall therefore repay TENANT any amount of consideration for improvements actually completed that exceeds the amount times the number of years or portions thereof that TENANT has been in possession of the Leased Premises.~~

In the event that LANDLORD terminates the Lease for convenience before the end of the lease term set forth in Paragraph 2, TENANT shall be reimbursed on a pro-rated basis for any improvements actually completed for that lease year prior to the date of termination. For example, if LANDLORD terminates the lease as of August 1 of a lease year, it shall repay TENANT 8/12 of the cost of improvements actually completed by TENANT since April 1 of that lease year.

In addition, TENANT shall pay to LANDLORD a monthly rent of \$4900.00 for Years 1-23, increasing to \$81000 per month for Years 34-5. Rent is payable in advance on the first day of each month. TENANT agrees to pay the monthly rent at such place as LANDLORD may from time to time direct by notice in writing to TENANT.

Further, TENANT shall allow no lien, claim or other encumbrance on any of LANDLORD's property at this location or otherwise in connection with this ~~Lease, Lease~~ and TENANT's failure to remove the same immediately after notice by LANDLORD shall be cause for immediate termination of this Lease.

4. Rehabilitation Work/Improvements. If LANDLORD gives TENANT notice, TENANT agrees to allow LANDLORD to perform rehabilitation work and/or make improvements to any portion of the Leased Premises. LANDLORD agrees to confine its rehabilitation and improvement activities to such dates and times as will not unreasonably interfere with TENANT's use of the Leased Premises.
5. Maintenance of Premises. TENANT shall keep and maintain the Leased Premises clean and in good order and condition and will return said Leased Premises to LANDLORD in said condition, normal wear and tear excepted. TENANT shall provide all routine

maintenance and repairs including, without limitation, repairs to plumbing fixtures, electrical fixtures, the boiler, interior painting, and glass replacement, at its sole cost and expense; provided, however, the TENTANT may elect to have any or all such items of routine maintenance performed by LANDLORD, subject to its manpower availability, to be billed separately and paid within thirty (30) days of billing. TENANT shall also pay for the cost of all utilities and maintenance necessary to operate the Leased Premises, including, without limitation, installation and maintenance of telephone service, heat, water, sewerage, electricity, maintenance of the existing sprinkler system, garbage removal, snow removal and sidewalk shoveling. TENANT shall maintain all front and side yards. TENANT shall be responsible for policing the grounds for litter and for any additional grounds maintenance or landscaping desired. Further, TENANT will not make any change, alteration, or improvement in the Leased Premises other than those improvements specified in Paragraph 3 without the prior written consent of LANDLORD.

6. Use and Improvement of Premises. TENANT will use the Leased Premises only for the purposes of place of assembly, theater arts materials storage, rehearsal space, workshops, children's programming, and residential quarters for a building superintendent and no more than one other household member unless TENANT receives the prior written permission from the City Manager to use the Leased Premises for another purpose. In addition, other not-for-profit theatre groups may be allowed to use the Leased Premises temporarily for theatre arts purposes with TENANT's permission. Notwithstanding any written permission from the City Manager, all uses of the Leased Premises shall conform to all applicable federal, state and local laws. TENANT shall also be responsible for determining if alterations or improvements to the Leased Premises, other than those specified in Paragraph 3, are required by any federal, state or local law, ordinance or regulation as a result of TENANT's use thereof.
7. Restrictions. TENANT shall not do or permit any act or thing on the Leased Premises that shall be unlawful or create a nuisance or shall vitiate any insurance coverage thereon or do or permit any act that causes the payment of any extra insurance premiums unless the same is with the prior written consent of LANDLORD.
8. Assignment of Lease. TENANT agrees that it will not assign or sublet the Leased Premises without the prior written consent of LANDLORD; provided, however, LANDLORD expressly reserves to itself the right to assign this Lease.
9. Indemnification. TENANT shall defend, indemnify, and hold harmless LANDLORD, its officer, agents, and employees from and against any and all claims, liability, damage, expense, causes of actions, suits or judgments, including reasonable attorney's fees and costs of suit, by or on behalf of any person, firm, or corporation arising from TENANT's possession, use or occupancy in or about the Leased Premises by TENANT or any representative, invitee, officer, employee or agent of TENANT. Likewise, LANDLORD shall defend, indemnify, and hold harmless TENANT, its officers, agents, and employees from any claim arising from LANDLORD's use or occupancy of the Leased Premises. This LANDLORD indemnification provision shall not be interpreted to waive the

monetary limits or substantive areas of immunity under the Maine Tort Claims Act (14 M.R.S.A. Sec. 8101 *et. seq.*) or any other immunities or defenses under that Act or other applicable law.

10. Insurance. TENANT agrees to take out and maintain in full force and effect at all times during the term of this Lease insurance coverage including professional liability, workers' compensation and general liability with a company licensed to do business in the State of Maine. With respect to such general liability insurance, the initial requirements until the same are modified by LANDLORD pursuant to its rights hereunder, shall be as follows: TENANT shall maintain with respect to the Leased Premises public liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) for injury to or death of, one person, and for injury to, or death of, more than one person in a single accident or occurrence, and property damage insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00), and Two Million Dollars (\$2,000,000.00) general aggregate, with companies qualified to do business in the State of Maine insuring LANDLORD, TENANT and any designee of LANDLORD against injury to persons or damage to property as herein provided. In no event shall the limits of said policies be considered as limiting the liability of TENANT under this Lease. TENANT shall also maintain fire and casualty insurance in an amount at least equal to the replacement cost of the building, as such replacement cost may from time to time be determined by agreement or by appraisal made at the TENANT's expense by an accredited insurance appraiser approved by the LANDLORD. TENANT shall also maintain boiler and machinery insurance on the building. Such insurances shall bear an endorsement requiring thirty (30) days prior notice to LANDLORD before cancellation, non-renewal or material change in coverage or form. TENANT shall provide LANDLORD with written evidence of such insurances upon the commencement date of this Lease and upon the anniversary of the commencement date of this Lease thereafter. This insurance provision shall not be interpreted to waive the monetary limits or substantive areas of immunity under the Maine Tort Claims Act (14 M.R.S.A. Sec. 8101 *et. seq.*) or any other immunities or defenses under that Act or other applicable law.
11. Access. TENANT will permit LANDLORD, its agents or employees to enter at all reasonable times upon the Leased Premises, to inspect or repair the same, provided, they do not unduly interfere with the operation of TENANT's classes.
12. Fitness of Use. In case the Leased Premises or any substantial part thereof during said term be so destroyed or damaged by fire or other casualties that the Leased Premises become unfit for use as contemplated herein, the consideration hereinbefore reserved or a fair and just proportion thereof, according to the nature and extent of the damages sustained, shall be reasonably delayed until the Leased Premises shall be rebuilt or put in property condition by LANDLORD for use and occupancy and improvement by TENANT; or this Lease shall, at the election of either the said LANDLORD or the said TENANT, their respective successors or assigns, upon written notice thereof to be given within thirty (30) days after such destruction, thereby be terminated and ended.

13. Default. (a) The following events shall be “Events of Default” under this Lease: (i) TENANT shall fail to pay any installment of rent or other monetary payment required to be paid under this Lease as and when the same shall become due and shall not cure such default within thirty (30) days after written notice thereof is given by LANDLORD to TENANT; or (ii) TENANT shall fail to comply with any term, provision or covenant of this Lease and shall not cure such failure within thirty (30) days after written notice thereof is given by LANDLORD to TENANT.
- (b) Upon the occurrence of an Event of Default, LANDLORD shall have the option to pursue any one or more of the following remedies without any further notice or demand whatsoever: (i) terminate this Lease, in which event TENANT and anyone claiming through TENANT shall immediately surrender the Leased Premises to LANDLORD (subject to TENANT’s rights under Paragraph 14), and if TENANT or anyone claiming through TENANT fails to do so, LANDLORD may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Leased Premises (subject to TENANT’s rights under Paragraph 14) and expel or remove TENANT and any other person who may be occupying the Leased Premises, or any part thereof, without being liable to prosecution or for any claim for damages; TENANT agrees to pay LANDLORD on demand the amount of all loss and damage which LANDLORD may suffer by reason of such termination; and (ii) enter upon the Leased Premises, without being liable to prosecution or for any claim of damages, and, with or without entering the Leased Premises, do and perform whatever TENANT is obligated to do under the terms of this Lease; and TENANT agrees to reimburse LANDLORD on demand for any reasonable expenses which LANDLORD may incur in thus effecting compliance with TENANT’s obligations hereunder. The rights and remedies provided by this Lease are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other available remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise. Forbearance by LANDLORD to enforce one or more of the remedies herein provided upon the occurrence of an Event of Default shall not be deemed or construed to constitute a waiver of such default.
14. Right of Termination. Either party may terminate this Lease, without cause, at any time by giving the other party written notice at least ninety (90) days in advance at the address listed in Paragraph 16. If TENANT shall make or suffer or permit any waste or strip of the Leased Premises, or shall fail to quit and surrender the same to LANDLORD at the end of said term in the manner aforesaid, or TENANT shall violate any of the conditions or covenants of this Lease, then and in any such case LANDLORD may thereupon, or at any time thereafter, and notwithstanding any license or waiver of any prior breach of conditions or covenant, terminate this Lease and repossess the Leased Premises and upon entry as aforesaid this Lease shall terminate; provided, however, all rights of LANDLORD which shall have accrued prior to such termination shall survive such termination. After the termination of this Lease by either party, TENANT will have a period of fourteen days (14) days from the date of termination to remove any of TENANT’s personal property; any personal property remaining thereafter shall be deemed abandoned in favor of LANDLORD.

15. Non-discrimination. TENANT shall not discriminate on the grounds of sex, race, color, creed, national origin, sexual orientation, or age in the possession, use and occupancy of the Leased Premises, nor shall TENANT discriminate in any other manner prohibited by law against any person in the performance of its obligations under this Lease or in its employment practices.

16. Notice. Any notice, demand or request which may be given pursuant to this Lease shall be delivered in person or sent by United States certified mail, postage prepaid and shall be address:

(a) TO LANDLORD: City Manager  
South Portland City Hall  
25 Cottage Road  
P.O. Box 9422  
South Portland, ME 04116-9422

(b) TO TENANT: Executive Director  
Mad Horse Theatre Company  
24 Mosher Street  
South Portland, ME 04116

or at such other address as either party may from time-to-time designate by written notice.

17. Mediation. LANDLORD and TENANT have entered into this Lease in good faith and in the belief that it is mutually advantageous to them. With that same spirit of cooperation, LANDLORD and TENANT agree to attempt to resolve any dispute amicably without the necessity of litigation. Accordingly, except in the event of an emergency requiring immediate injunctive or other relief, the parties shall endeavor to enter into good faith negotiations and non-binding mediation through a neutral mediator within thirty (30) days (or such greater period as may be agreed to by the parties) of notice of any dispute from the other party in order to attempt to resolve their differences, prior to any litigation.

18. Miscellaneous. (a) This Lease contains the entire agreement of the parties hereto with respect to the subject matter hereof and can be altered, amended or modified only by written instrument executed by all such parties. This Lease is made and shall be construed under the laws of the State of Maine except any choice of law rule that may direct the application of the laws of any other nation or jurisdiction.

(b) Failure of LANDLORD or TENANT to complain of any act or omission on the part of the other no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by LANDLORD or TENANT at any time, express or implied, of any breach of any other provision of this Lease or a consent to any subsequent breach of the name or any other provision. If any

action by either party shall require the consent or approval of the other party, the grant of such consent or approval on any one occasion shall not be deemed a consent to or approval of that action on any subsequent occasion or of any other action on any subsequent occasion.

- 19. Applicability of Terms. All of the foregoing agreements, covenants and conditions shall apply to and be binding upon the parties hereto and their respective successors or assigns.
- 20. Severability. If any portion(s) of this Indenture of Lease shall be held invalid, such invalidation shall not affect the validation in the remaining portions.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

WITNESSES

\_\_\_\_\_

\_\_\_\_\_

CITY OF SOUTH PORTLAND

By: \_\_\_\_\_  
James H. Gailey  
It's City Manager

MAD HORSE THEATRE  
COMPANY

By: \_\_\_\_\_  
~~David Jacobs~~ Barbara Truex  
~~Board President~~ Its Executive  
~~Director~~, duly authorized

**Schedule of Improvements to Hutchins School, 24 Mosher Street done under the terms of the lease between Mad Horse Theatre and the City of South Portland dated May 1, 2009**

<b>Date</b>	<b>Amount</b>	<b>Description</b>	<b>Vendor/MHTC person</b>
<b>2009-2010 Season</b>		<b>July 1, 2009- June 30, 2010</b>	
7/13/2009	\$ 9,645.00	Installation of ADA compliant Bathroom	Rollover Services
7/14/2009	\$ 100.00	Electrical work	Rollover Services
9/11/2009	\$ 274.13	Fillor repair	Amber Callahan
12/21/2009	\$ 300.00	Energy audit	Blower Door Testing of Maine
12/23/2009	\$ 1,100.00	Attic hatch, fire proof spray foam, install insulation	Hollis Micklon
12/27/2009	\$ 960.75	Insulation materials	Kamco Supply
1/4/2010	\$ 409.85	Insulation materials	Clyde McCulley
3/31/2010	\$ 43.24	Paint purchase	Clyde McCulley
	<b>\$ 12,832.97</b>		
<b>2011-12 Season</b>		<b>July 1, 2011--June 30, 2011</b>	
3/31/2011	\$ 3,500.00	Painting of interior of Hutchins	El Carlson and Board of MHTC
	<b>\$ 3,500.00</b>		*agreed to by Eric Carson
<b>2012-13 Season</b>		<b>July 1, 2012- June 30, 2013</b>	
11/14/2012	\$ 2,000.00	Deposit for furnace replacement	Gelinas HVAC
11/29/2012	\$ 1,970.00	Reline chimney to bring to code	Pickett's Chimney
1/22/2013	\$ 2,334.40	Second installment for furnace replacement	Gelinas HVAC
1/22/2013	\$ 1,501.60	Final payment for furnace replacement	Gelinas HVAC
5/2/2013	\$ 3,000.00	Deposit for replacement of exterior fire doors	Rollover Services
5/23/2013	\$ 3,000.00	Second installment for fire doors	Rollover Services
5/31/2013	\$ 1,500.00	Keyless entry system	Rollover Services
6/4/2013	\$ 408.60	Final balance fire door replacement	Rollover Services
	<b>\$ 15,714.60</b>		
<b>Less contribution by</b>			
<b>City of South Portland</b>	<b>\$ (3,903.00)</b>		
<b>Net Total 2012-13</b>	<b>\$ 11,811.60</b>		
<b>Grand total</b>	<b>\$ 28,144.57</b>		
<b>Required by Lease</b>	<b>\$ 24,500.00</b>		