

**CITY MANAGER'S OFFICE**

1420 Miner Street
 Des Plaines, IL 60016
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MEMORANDUM

Date: February 24, 2025

To: Dorothy Wisniewski, City Manager

From: Jeff Rogers, Director of Community and Economic Development *JWR*
 Jack Tierney, Management Analyst

Subject: Amended and Restated Lease Agreement for the Des Plaines Theatre at 1476, 1486, and 1486 ½ Miner Street

Issue: Onesti DPT, Inc. requests City Council consideration of an amended and restated lease agreement for the operation of the Des Plaines Theatre.

Analysis: The City entered into an agreement with Onesti Entertainment Corporation on May 20, 2019, via Resolution R-107-19, allowing Onesti Entertainment to operate at 1476, 1486, and 1486 ½ Miner Street. The original agreement established a term of five years beginning on the Operational Date as defined in the contract, such term being initiated on October 31, 2021.

An initial amendment to the agreement was approved in 2022 via Resolution R-191-21 which assigned the original lease from Onesti Entertainment Corporation to Onesti DPT, Inc., a subsidiary special purpose entity.

The amended and restated agreement currently proposed updates to various financial and contractual terms:

- a. Payments for real estate taxes owed from November 2021 through April 2022 in the amount of \$63,242.81 would be waived in a manner similar to the rent waiver previously approved for this period;
- b. Payments for real estate taxes for the period of January 2025 through October 2026 would be increased from \$10,083 per month to \$15,500 per month.
- c. Rent payments for the period of January 2025 through December 2025 would be reduced from a range of \$16,000–\$18,000 per month to \$2,000 per month.
- d. Rent payments for the period of January 2026 through October 2026 would be reduced from \$18,000 per month to \$4,000 per month.
- e. The amended agreement would remove renewal rights included under the original agreement.

All other terms of the original agreement remain unchanged.

Recommendation: Staff recommends that the City Council approve the amended and restated lease agreement with Onesti DPT, Inc. for the operation of the Des Plaines Theatre.

Attachments:

Resolution R-51-25

Exhibit A: Amended and Restated Lease Agreement

CITY OF DES PLAINES

RESOLUTION R - 51 - 25

**A RESOLUTION APPROVING AN AMENDED AND
RESTATED LEASE AGREEMENT BY AND BETWEEN
THE CITY OF DES PLAINES AND ONESTI DPT, INC.
REGARDING THE DES PLAINES THEATRE.**

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

WHEREAS, in 2018, the City purchased the property commonly known as the Des Plaines Theatre, located at 1476 Miner Street and 1486 and 1486 ½ Miner Street, in the City ("**Property**"); and

WHEREAS, the City renovated the main theater building in order for it to be used as a modern live performance space; and

WHEREAS, on May 20, 2019, as authorized by Resolution No. R-107-19, the City and Onesti Entertainment Corporation ("**Initial Operator**") entered into a lease agreement ("**Original Lease**") pursuant to which the City leased the Property to Operator, subject to certain operational conditions; and

WHEREAS, on November 15, 2021, as authorized by Resolution No. R-191-21, the City approved an assignment of the Original Lease to Onesti DPT, Inc. ("**Current Operator**") a special entity created to replace the Initial Operator; and

WHEREAS, Current Operator has been unable to pay the full rent and property tax payments due under the Original Lease in a timely manner; and

WHEREAS, the City and Current Operator desire to amend, restate, and replace the Original Lease Agreement to remove all renewal rights and make certain rent adjustments ("**Amended and Restated Lease**"); and

WHEREAS, the City Council has determined that it is in the best interest of the City to approve the Amended and Restated Lease;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

SECTION 2: APPROVAL OF AMENDED AND RESTATED LEASE. The Amended and Restated Lease, in substantially the form attached to this Resolution as **Exhibit A**, and in a final form to be approved by the General Counsel, is hereby approved.

SECTION 3: AUTHORIZATION TO EXECUTE. The City Manager and the City Clerk, as applicable, are authorized and directed to execute and seal, on behalf of the City, the final Amended and Restated Lease.

SECTION 4: EFFECTIVE DATE. This Resolution shall be in full force and effect from and after its passage and approval according to law.

PASSED this ____ day of _____, 2025.

APPROVED this ____ day of _____, 2025.

VOTE: AYES ____ NAYS ____ ABSENT ____

MAYOR

ATTEST:

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

DP-Resolution Approving Amended and Restated Lease for 1476 Miner Street (Des Plaines Theatre)

AMENDED AND RESTATED LEASE AGREEMENT
(1476 Miner Street, 1486 and 1486 ½ Miner Street, Des Plaines – Des Plaines Theatre)

This Amended and Restated Lease Agreement (the “**Lease**”) is made and entered into as of the Effective Date (as defined in Section 2), by and between the **CITY OF DES PLAINES**, an Illinois home rule municipal corporation (“**Landlord**” or “**City**”), and **ONESTI DPT, INC.**, an Illinois corporation (“**Tenant**”). This Lease amends, restates and supersedes in its entirety the prior Lease Agreement dated May 20, 2019, as amended by that First Amendment to Lease Agreement dated _____, 2020 (collectively, the “**Original Lease**”).

SECTION 1. RECITALS*

A. Landlord is the owner of a theatre with a concession area, a restaurant area and other improvements located at 1476 Miner Street Des Plaines Illinois 60016, and two storefronts commonly known as 1486 and 1486 ½ Miner Street, Des Plaines, Illinois 60016, and collectively defined in Section 2 of this Lease as the “**Premises**”.

B. On May 20, 2019, City and Tenant entered into the Original Lease for the Premises which was approved by the Landlord's City Council on May 20, 2019 pursuant to City of Des Plaines Resolution R-107-19.

C. The parties wish to amend and restate the Original Lease to modify certain monetary and other obligations.

SECTION 2. BASIC LEASE TERMS AND DEFINITIONS.

Whenever used in this Lease, the following terms shall have the following meanings unless a different meaning is required by the context:

“**Accessory Spaces**”: Those storefront spaces located at 1486 and 1486 ½ Miner Street that are included in the Premises.

“**Buildings**”: Collectively, the structures located on the Premises as of the Lease Execution Date including the theatre building at 1476 Miner Street and two street facing tenant spaces at 1486 and 1486 ½ Miner Street.

“**Commencement Date**”: The Commencement Date of the Original Lease was November 1, 2021.

“**Effective Date**”: The Effective Date of this Amended and Restated Lease is January 1, 2025.

“**Environmental Law**”:

- a. Any applicable federal, state or local statute, law, ordinance, rule, regulation, code, license, permit, authorization, approval, consent, order, judgment, decree, injunction, directive, requirement by, of, or agreement with any Governmental

* All capitalized words and phrases throughout this Lease shall have the meanings set forth in the preamble above, in Section 2 of this Lease, or as defined within this Lease.

Agency, existing as of the Lease Execution Date and as amended thereafter, relating to:

- i. the protection, preservation or restoration of the environment (including, without limitation, air, water, vapor, surface water, ground water, drinking water supply, surface land, subsurface land, plant and animal life, or any other natural resource), or to human health and safety; or
 - ii. the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of, Hazardous Substances.
- b. Environmental Law also includes, without limitation, any common law or equitable doctrine (including, without limitation, injunctive relief and tort doctrines such as negligence, nuisance, trespass, and strict liability) that may impose liability or obligations for injuries or damages related or incidental to, or threatened as a result of, the presence of or exposure to any Hazardous Substance and the following statutes and implementing regulations:
- i. the Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*);
 - ii. the Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*);
 - iii. the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 *et seq.*);
 - iv. the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. § 9601 *et seq.*);
 - v. the Toxic Substances Control Act, as amended (15 U.S.C. § 2601 *et seq.*); and
 - vi. the Occupational Safety and Health Act, as amended (29 U.S.C. § 651 *et seq.*).

“Fixtures”: The Fixtures shall include, without limitation, the Restaurant bar, banquets and all built-in furniture, cabinets, displays, floor coverings, paneling, railing, all electrical, plumbing, heating and sprinkling equipment, fixtures, outlets, window treatments, partitions, railways, gates, doors, vaults, paneling, molding, shelving, radiator enclosures, cork, rubber, linoleum and composition floors, ventilating, silencing, air conditioning and cooling equipment, fire suppression and/or life safety systems, refrigeration systems, stoves, ovens, grills, dishwashers, refrigerators and all other appliances and/or appurtenances of a similar nature or purpose whether or not attached to or built into the Premises and installed by Tenant or at Tenant’s direction.

“Governmental Agency”: Any federal, state or local government, subdivision, district, agency, department, court, tribunal, officer, board, commission, or other instrumentality including the Landlord acting in its governmental capacity.

“Hazardous Substance”: Any substance, whether liquid, solid or gas, that is listed, defined, designated or classified as toxic, hazardous, radioactive or dangerous under any Environmental Law, whether by type or by quantity. Hazardous Substance includes, without limitation, any explosive or radioactive material, asbestos, asbestos containing

material, urea formaldehyde foam insulation, polychlorinated biphenyls, special waste or petroleum products or any derivative or by-product thereof, methane, toxic waste, pollutant, contaminant, hazardous waste, toxic or hazardous substances or related materials, as defined in any applicable Environmental Law.

“Intended Uses”: The uses as set forth in **Exhibit A**.

“Landlord’s Work”: All construction and decoration of the Theatre proper required to be conducted by Landlord; excludes Operator Build-Out Improvements.

“Lease Execution Date”: The Original Lease was executed on May 20, 2019.

“Lease Year”: The first Lease Year shall be for a period of 12 consecutive calendar months beginning on the Operational Date, except if the Operational Date shall be any day other than the first day of a calendar month, the first Lease Year shall be the period beginning on the Operational Date and ending on the last day of the calendar month in which it shall occur, plus the following 12 calendar months. Each subsequent Lease Year shall be a successive period of 12 calendar months.

“Operational Conditions”: Those certain conditions, requirements, and obligations governing Tenant’s operation of the Premises for the Intended Use as set forth in **Exhibit B**.

“Operational Date”: November 1, 2021.

“Operator Build-Out Improvements”: Those certain improvements to the Buildings to be constructed or installed by Tenant in the manner contemplated in **Exhibit E** of this Lease.

“Premises”: Those certain parcels of real property commonly known as the “**Des Plaines Theatre**” and located at 1476 Miner Street, and the “**Accessory Spaces**” and located at 1486 and 1486 1/2 Miner Street, Des Plaines, Illinois 60016 collectively also referred to herein as the “**Theatre**” and legally described in **Exhibit C**, including the Buildings, and certain rights of ingress and egress thereto.

“Property Taxes”: Ad valorem real property taxes and assessments (whether general or special) that are lawfully levied or assessed by any Governmental Agency and that become a lien on, or are levied against, the tax parcel of which the Premises is a part during the Term of the Lease. Property Taxes are levied a year behind in Cook County Illinois and therefore Tenant will be responsible for Taxes that come due after the termination of the Lease.

“Rent”: The amounts set forth in **Exhibit D** to be paid on a monthly basis by Tenant to Landlord for use of the Premises as well as all other amounts owed by Tenant under this Lease.

“Rent Commencement Date”: The Rent Commencement Date shall be the first day after the substantial completion and approval by Landlord/City of the Operator Build-Out Improvements described in **Exhibit E**, as evidenced by the issuance of a certificate of occupancy by the appropriate Governmental Agency, but in no event later than six months after the Operational Date.

“Restaurant”: As defined in Section 10 of this Lease.

“Restaurant Space”: That approximately 3,000 square foot portion of the Theatre building located on the second floor to be improved pursuant to ***Exhibit E***.

“Restaurant Improvements”: A subset of the Operator Build-Out Improvements defined in ***Exhibit E***.

“Term”: The Term of this Lease is five years, beginning on November 1, 2021 and expiring on October 31, 2026.

“Utility Services”: All water, gas, electric, heat, light, power, sewer, refuse and telecommunications and other utilities and services supplied to the Premises.

SECTION 3. DEMISE.

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises to be operated for the Intended Use and in accordance with the Operational Conditions.

SECTION 4. TERM AND TERMINATION.

A. Term. Tenant shall have and hold the Premises, and such related uses of the Premises as may be described in this Lease, for the Term, unless sooner terminated as hereinafter provided.

B. No Renewal Term. The parties acknowledge that Tenant has no right to extend the Term.

C. Termination. Notwithstanding anything in this Lease to the contrary, if Ron Onesti, designated as Key Personnel in the Operational Conditions, is no longer the owner or an employee of Tenant, or is unable to perform his duties in accordance with the Operational Conditions for any reason, including death or disability, then Landlord, in its sole discretion may terminate this Lease upon written notice to Tenant, effective within 45 days after such notice.

SECTION 5. SECURITY DEPOSIT AND RENT.

A. No security deposit shall be required of Tenant at the commencement of this Lease. Landlord reserves the right, in its sole discretion, to require a security deposit from Tenant at any time during the Term.

B. Commencing on the first day of the Rent Commencement Date, and on the first day of every month thereafter, Tenant shall pay to Landlord, in advance, the Rent. Notwithstanding the Rent amounts set forth on ***Exhibit D***, Landlord and Tenant agree that commencing January 1, 2025, Tenant shall pay to Landlord in advance the following Rent:

Rent Period	Monthly Rent
January 1, 2025 – June 30, 2025	\$0.00
July 1, 2025 – December 31, 2025	\$2,000.00
January 1, 2026 – October 31, 2026	\$4,000.00

C. Tenant shall pay the Rent to Landlord at the following address:

Des Plaines City Hall
1420 Miner St.
Des Plaines, Illinois 60016,
Attn: Director of Finance.

D. Tenant shall pay to Landlord a late payment charge equal to five percent (5%) of the total amount due for any amount of the Rent not paid within 10 days after the date on which such Rent is due.

E. All amounts owing by Tenant to Landlord (other than Rent) shall be deemed additional rent. For purposes of this Lease, the term "**Rent**" shall mean collectively, the sum of the Rent and any additional rent. In the event of any default in the payment of any additional rent, Landlord shall have the same rights and remedies as are available with respect to a default in the payment of Rent.

SECTION 6. TAXES.

A. The Premises, as of the Commencement Date, are either exempt from Property Taxes or the Premises have been assessed based on its status as a vacant real estate. However, when the Premises, or any portion of or interest in, is determined to be subject to Property Taxes by a Governmental Agency with appropriate jurisdiction, then Tenant shall be solely responsible for, and shall timely pay to Landlord pursuant to Paragraph 6.B of this Lease, any and all Property Taxes levied and assessed, if any, against the Premises, as additional Rent beginning on the Rent Commencement Date to and including the last day of the Term. Tenant shall not be required to pay any Property Taxes assessed for the time period before the Rent Commencement Date. The parties recognize that Illinois is a year behind in the levying of Property Taxes and agree that Tenant will pay the Property Taxes assessed for Term of the Lease, even though this may mean a payment of Property Taxes will be due from Tenant to Landlord after the Lease Term has ended and the Lease has been terminated.

B. Beginning on the Rent Commencement Date, Tenant will pay to Landlord, on a monthly basis, a 1/12 share of an amount equal to the real property taxes assessed against the Premises in its first full year of operation and each subsequent year thereafter ("**Monthly Estimated Property Taxes**"). The Monthly Estimated Property Taxes due from Tenant was initially \$10,083 per month. Commencing on January 1, 2025 and continuing throughout the Term, Tenant is required to pay Monthly Estimated Property Taxes to Landlord in the amount of **\$15,500** per month. In the event that the sum of the Monthly Estimated Property Taxes paid by Tenant are not sufficient to pay the taxes actually levied for a tax year, Landlord shall invoice Tenant for the difference, which amount shall be paid to Landlord with the Monthly Estimated Property Taxes on a pro-rated basis over the following twelve months unless the Lease is expired or terminated, then Tenant shall pay the amount requested within thirty days of the invoice from Landlord. Likewise, if the sum of the Monthly Estimated Property Taxes paid by Tenant exceed the amount actually levied, then Tenant shall be entitled to a refund payable either in (i) a lump sum with Landlord paying the latest tax installment; or (ii) in a monthly pro-rated reduction in the Monthly Estimated Property Taxes for the following twelve months, unless it is at the end of the Term, then Landlord will retain with the balance of the Estimated Monthly Property Taxes held by Landlord until the second installment of the tax bill for the last year of the Term is issued and Landlord will pay the tax bill.

C. The Monthly Estimated Property Taxes collected from Tenant were not sufficient to pay the real property taxes assessed against the Premises for the period of November, 2021 through April, 2022. Effective as of the Effective Date, Landlord agrees to waive Tenant's obligation to pay property taxes for the period from November 2021 to April 2022 in the total amount of \$63,242.81. This amount shall be considered as fully satisfied and will not be due or payable by the Tenant.

D. Tenant may not protest the assessment of the Premises or amount of the Property Taxes, or undertake any action to divide or consolidate the Premises, without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion.

SECTION 7. USE, ZONING, AND PARKING.

A. Prior to commencing the Intended Uses, Tenant shall obtain any and all approvals that may be required by any and all Governmental Agencies (including the Landlord/City conditional use permit) and any other applicable entities in connection with the use of the Premises.

B. Tenant shall have the right to use the Premises solely for the Intended Uses and no other use. Tenant shall not use the Premises in any manner that violates the Operational Conditions or the laws or ordinances of Landlord or of any other Governmental Agency with jurisdiction.

C. Tenant shall be entitled to conduct valet parking for events held at the Premises, subject to the terms of a license agreement with Landlord for use of a municipal parking lot structure ("***Parking License Agreement***") to be negotiated in good faith between the parties at a later date.

SECTION 8. TITLE, QUIET ENJOYMENT, AND ACCESS.

A. Landlord warrants that it has title to the Premises in fee simple.

B. Subject to the other terms and provisions of this Section 8 and Section 22 of this Lease, Landlord covenants and agrees that upon (i) payment by Tenant of Rent as set forth in Section 5 of this Lease and (ii) performance by Tenant of all terms, covenants and conditions of this Lease applicable to Tenant or all terms, covenants and conditions of the Operational Conditions, Tenant shall peaceably and quietly hold and enjoy the Premises and the rights and privileges granted for the Term demised without hindrance or interference by Landlord, and Landlord shall perform all of its obligations under this Lease.

C. Notwithstanding Tenant's exclusive use and control of the Premises, Landlord and its agents, employees, and independent contractors shall have the right to enter in and upon the Premises at any time during the Term for the purpose of examining and inspecting the Premises, provided, however, that in entering in or upon the Premises such persons shall not unreasonably interfere with Tenant's use and occupancy of the Premises.

SECTION 9. UTILITIES.

From the Rent Commencement Date and continuing throughout the Term, Tenant shall be responsible for (i) obtaining all Utility Services supplied to the Premises, and (ii) the prompt payment of all charges for Utility Services supplied to the Premises.

SECTION 10. OPERATOR BUILD-OUT IMPROVEMENTS.

A. Restaurant Space: Landlord will deliver to Tenant the Restaurant Space in a “vanilla box” condition, suitable for buildout as a first-class, full-service sit-down restaurant and bar with all utilities operational (“**Restaurant**”). Landlord will install in the Restaurant, at its cost and prior to delivery to Tenant, a kitchen hood and duct ventilation system complete with a fire suppression system. Tenant shall, at its own expense, make the alterations, improvements, and additions in and to the Restaurant Space necessary to convert it into a full-service sit-down restaurant and bar in compliance with the terms of **Exhibit E** “Operator Build-Out Improvements,”

B. Accessory Spaces: Landlord will deliver to Tenant the Accessory Spaces in a “vanilla box” condition, suitable for buildout as offices, dressing rooms, or ticket windows, as may be required for the operation of the Theatre in Tenant’s discretion (“**Accessory Uses**”). Tenant shall, at its own expense, make the alterations, improvements, and additions in and to the Accessory Spaces necessary for the Accessory Uses in compliance with the terms of **Exhibit E** “Operator Build-Out Improvements,”

C. All proposed alterations, improvements, or additions made by Tenant shall be consistent with the historic nature of the Premises and approved by Landlord.

D. Upon termination of this Lease, it shall be the responsibility of Tenant to return the Restaurant Space and Accessory Spaces to substantially the conditions they were delivered by the City.

SECTION 11. CONDITION AND MAINTENANCE.

A. Condition of Premises. Tenant agrees to accept the Premises in the condition it is in at the Operational Date.

B. Maintenance Standards. Tenant shall, at its sole cost and expense, maintain the Premises and all of its improvements, equipment, and other personal property located upon or within the Buildings in first-class condition and repair, including but not limited to the Theatre entrance (doors), with the exception of those portions of the Premises that are listed in Section 11.D of this Lease and designated as the responsibility of Landlord. Such maintenance shall include any and all regular and customary maintenance as is reasonably required.

C. Tenant’s Maintenance Responsibilities. Tenant shall, at its sole cost and expense, (i) provide adequate janitorial service for the Buildings, which shall include keeping the interior and exterior of the Buildings in a clean and orderly condition, free of accumulations of dirt, rubbish, unlawful obstructions, and any dangerous, noxious, hazardous, or offensive conditions, (ii) maintain all landscaping on the Premises in first-class condition, (iii) pay Landlord for snow removal for the public and private sidewalks and roads on and adjacent to the Premises in the manner provided below in Section 11.D, (iv) pay all day-to-day maintenance expenses incurred as a result of Tenant’s occupation and operation of the Premises including interior maintenance (including, without limitation, interior painting, plumbing, and repair of theatre seating) as well as any damages caused by Tenant, its employees, or any person attending an event on the Premises scheduled and hosted by Tenant; (v) independently contract for the extermination of the Premises (on a monthly basis, or more frequently, if needed), to prevent insect and rodent infestation, (vi) clean out grease traps on a monthly basis, or more frequently, if needed; and (vii) maintain, repair, and replace components of the Lighting and Sound Equipment (defined in Subsection 11.D.13 below) required as a result of ordinary wear and tear or damage done to such equipment by employees, customers, clients, guests, or invitees of Tenant.

D. Landlord's Maintenance Responsibilities. Landlord shall, at its sole cost and expense, be responsible for the maintenance and repair of the following portions of the Premises and the Buildings to the extent provided for in this Section 11.D; provided, however that Tenant shall remain responsible and liable for any repairs or maintenance required as a direct result of the negligence of Tenant, or its contractors, employees, agents, invitees, licensees, or permittees, and Landlord shall have no responsibility for or financial obligation arising from such repairs or maintenance.

1. Structural Elements: Landlord shall, at its sole cost and expense, keep in good order, condition, and repair (including replacement, when necessary) the structural components of the Buildings, including, without limitation, the roof, exterior walls, and load bearing elements;
2. HVAC: Landlord will perform bi-monthly maintenance and inspections on all heating, ventilation, and air conditioning systems and pay for repairs;
3. Elevator: Landlord will perform monthly maintenance and inspections on the elevator and pay for repairs;
4. Fire Alarm: Landlord will perform maintenance and annual inspections on the fire alarm and pay for repairs;
5. Fire Suppression System: Landlord will perform monthly maintenance and annual inspections on the fire suppression system and pay for repairs;
6. Backflow/RPZ Devices: Landlord will perform annual maintenance and inspections on the backflow devices and pay for repairs;
7. Building Exterior: Landlord will perform regular maintenance and inspections on the building exterior and pay for repairs with the exception of damage by Tenant or its employees, customers, clients, guests, or invitees (e.g. broken windows or doors);
8. LED Marquee: Landlord will perform regular maintenance and inspections as it pertains to the lighting and display components of the LED marquee. Costs for repair/replacement of the LED marquee, after initial installation, and associated software shall be shared equally between the parties;
9. Sanitary Sewer: Landlord will responsible for the maintenance and repair of the sanitary sewer from the exterior building line to the main-line sewer. Maintenance of all internal sewage waste pipes including grease traps are the responsibility of Tenant;
10. Domestic Water Supply: Landlord will be responsible for the domestic water supply from the meter to Landlord-owned water main. Maintenance of all other internal domestic water supply pipes and appurtenances are the responsibly of Tenant;
11. Electric Service: Landlord will be responsible for the electric service from the point of delivery from ComEd to the main electric distribution panels. Tenant is responsible for all electric wiring and system beyond the main panels including sub-panels;

12. Snow and Ice Removal. Landlord will perform snow and ice removal from the public walkways adjacent to the Premises on Miner Street, Lee Street, and the rear walkway on the east side of the Premises at no charge through and until December 31, 2020. After December 31, 2020, City reserves the right to establish a special service area (SSA) or other legal legally permitted assessment to fund or reimburse the cost of snow and ice removal from the sidewalks within the City's Central Business District. Tenant agrees it will not challenge, impede, or otherwise object to the creation of such special service area or the levying of such assessment and shall pay its proportional share of costs arising from the City's snow and ice removal activities as may be required under law; and
13. Theatre Lighting and Sound Equipment. Prior to Tenant's occupancy, Landlord will procure and install on the Premises the "Rigging Equipment" listed in **Exhibit F** attached hereto ("**Rigging Equipment**") for the purpose of supporting lighting and sound systems suitable for live performance of music and theatre. Tenant shall be responsible for the purchase and installation of all other lighting and sound equipment necessary for its proposed operations on the Premises, consisting of comparable makes, models, and features to those described in **Exhibit F** ("**Lighting and Sound Equipment**"). Any specialty equipment needed for specific events will also be procured, installed, and maintained by Tenant. After installation, title to the Lighting and Sound Equipment shall remain with the Tenant notwithstanding its installation and attachment to the Premises.

SECTION 12. INDEMNIFICATION.

Tenant shall indemnify and save Landlord, Landlord, its elected and appointed officials, officers, agents, attorneys, employees, contractors, successors, and assigns, harmless from and against any and all losses, expenses, claims, costs, causes, actions, litigation costs, attorney's fees, suits, and damages, relating to personal or bodily injuries, death, or damages or injuries to property arising from, occurring, growing out of, incident to, or resulting directly or indirectly from the use of, or contact with, the Premises by Tenant or its contractors, employees, engineers, agents, invitees, licensees, or permittees, arising from Tenant's occupation of the Premises or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or from any act or negligence of Tenant, its agents, servants, employees or invitees, in or about the Premises. In case of any action or proceeding brought against Landlord, its agents or employees, successors or assigns, by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel reasonably satisfactory to Landlord. Notwithstanding anything to the contrary herein, Tenant shall not indemnify Landlord or its agents and employees (or its successors and assignees) with respect to any claim, demand, cost or expense caused by or, arising out of Landlord's or its agents' and employees' gross negligence or willful misconduct. Notwithstanding the foregoing, Landlord, as an Illinois municipal corporation does not waive any of its rights under the Illinois Local Government and Governmental Employees Tort Immunity Act (745 ILCS 10/1 *et seq.*) and can only be held accountable for its willful and wanton misconduct. Tenant's obligations under this Section shall be in addition to, and shall not be limited or waived by any insurance, including any insurance provided by Tenant pursuant to this Lease, or any insurance provided by Landlord.

SECTION 13. INSURANCE.

A. Insurance Required. Landlord has caused the Premises to be self-insured or insured by responsible insurance compan(ies) in an amount sufficient to cover the replacement costs thereof in case of loss by fire or other casualty or disaster. In the event of such loss, Landlord, in its sole discretion, may terminate the Lease upon written notice to Tenant and not restore or repair of the Premises. Tenant hereby waives any rights in said policies maintained by Landlord and agrees that Tenant shall not be entitled to be named an insured thereunder.

B. Required Coverages. Tenant shall maintain, at its sole cost and expense, throughout the Term, the following policies of insurance:

1. General Liability Insurance. Insuring Tenant against liability for personal injury, death or damage to property arising out of the use of the Premises by Tenant. Such insurance shall provide coverage with policy limits of not less than \$1 million in the event of bodily injury or death to one or more persons and in an amount of not less than \$1 million for property damage, and umbrella liability insurance providing excess coverage with policy limits of not less than \$5 million, and including a contractual liability endorsement covering Tenant's indemnification obligations pursuant to this Lease;
2. Workers' Compensation and Employer's Liability Insurance. With such limits as are required by law, and employees' liability insurance, with limits not less than \$500,000 per person-injury and \$1 million per occurrence. Worker's compensation, disability and such other similar insurance with statutory limits covering all persons that are performing alterations, installation, additions or working in the Premises, and with respect to whom death or bodily injury claims could be asserted against Landlord;
3. Dram Shop Insurance. In the event any alcoholic beverages, including, but not limited to beer and wine, shall be sold in or upon the Premises, Tenant shall carry insurance against any and all liability, claims, damages and liabilities, related to, resulting from or caused in whole or in part by the selling of such alcoholic beverages required under Section 6-21 of the Illinois Liquor Control Law (235 ILCS 5/6-21, the "***Dram Shop Act***") and under any future law, statute, rule or ordinance pertaining to the storage, sale, use or gift of alcoholic beverages on or from the Premises, with limits no less than \$1,000,000.00 per occurrence;
4. Automobile Insurance. Automobile liability for all owned or hired automobiles operated in conjunction with the Theatre;
5. Coverage for Operator Build-Out Improvements and Personal Property. All-risk coverage, vandalism, malicious mischief, water damage and special extended coverage for the full cost of replacement of all Operator Build-Out Improvements and all items that are not the expressed responsibility of Landlord to insure under this Lease; and
6. Umbrella Coverage. The required coverages set forth below may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy

exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss. The limit of any umbrella policy shall be an additional \$5,000,000.

All of said insurance shall be with commercially reasonable deductibles and shall provide that it shall not be subject to cancellation, termination or change (except for changes that increase coverage), except upon at least thirty (30) days' prior written notice to Landlord and any other additional insureds. All liability insurance coverage shall cover Landlord, its principals, its boards, committees, commissions, elected and appointed officials, officers, agents, employees, engineers, representatives and attorneys. All insurance policies shall be written by good and solvent insurance companies authorized to do business in the State of Illinois, and having a rating in A.M. Best's Guide of A-VIII or higher (or a comparable or higher rating issued by another nationally recognized rating organization).

C. Waiver of Subrogation. Notwithstanding any other provision to this Lease to the contrary, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law, Landlord and Tenant each hereby releases and waives all right of recovery against the other or any one claiming through or under each of them by way of subrogation or otherwise. The foregoing release and waiver shall be in force only if both releasors' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance and also provided that such a policy can be obtained without additional premiums.

D. Notification of Cancellation or Modification. With respect to all insurance policies required to be maintained by Tenant pursuant to this Lease, the policy shall contain the following endorsement:

"The insurer shall give the City of Des Plaines no less than thirty days prior written notice of any intention not to renew such policy or to cancel, replace, or materially alter the same, such notice to be given by certified mail, return receipt requested, addressed to: City Manager, City of Des Plaines, 1420 Miner Street, Des Plaines, Illinois 60016."

Tenant shall send a certificate of insurance for each such policy to Landlord prior to the Operational Date, annually thereafter upon renewal, or any time a new policy is issued.

Each policy (with the exception of workers compensation and employer's liability) (i) shall name Landlord as an additional insured; (ii) shall include a waiver of subrogation in favor of Landlord; and (iii) shall contain a primary/noncontributory endorsement in favor of Landlord. Umbrella coverages shall follow form.

SECTION 14. DAMAGE AND DESTRUCTION.

A. Except as otherwise provided in Section 13.A of this Lease, if the Premises shall be damaged or destroyed by fire or other casualty, either in whole or in part, Landlord shall restore the Premises to its condition prior to such damage or destruction with such insurance proceeds as may be available. If insurance proceeds are not available, and Landlord, in its sole discretion, elects not to restore the Premises, Landlord shall have the right to terminate this Lease by giving Tenant written notice, effective within 30 days after such notice.

B. Except as otherwise provided in Section 13.A of this Lease, if the Premises shall be damaged or destroyed to the extent that the Premises are rendered untenable, Landlord and Tenant shall each have the right to terminate this Lease by giving notice to such effect to the other party at any time following the expiration of 120 days after such damage or destruction occurred unless at the time of the giving of such notice a contract for such work of restoration shall have been awarded by Landlord.

C. Anything herein to the contrary notwithstanding, if, during the last six months of the Term, the Premises should be damaged or destroyed by fire or other cause to such an extent that the cost of restoration would exceed 50% of the amount it would have cost to replace the Premises in its entirety at the time such damage or destruction took place, either Landlord or Tenant shall have the right to terminate this Lease by giving the other party notice to such effect within 30 days after such damage or destruction shall have taken place, and if such notice is given, the term of this Lease shall terminate as of the earlier of the date Tenant vacates the Premises or 60 days after the giving of such notice.

D. During the course of restoration of the Premises there shall be no abatement of Rent unless the Premises shall have been rendered untenable by reason of such damage or partial destruction, in which case the Rent, which is fairly allocable to the space which is being restored, shall abate until such restoration work shall have been completed.

SECTION 15. EMINENT DOMAIN.

In the event that all or substantially all of the Premises shall be taken by any Governmental Agency (other than Landlord) or utility that has the power of eminent domain, then Tenant shall have the right to terminate this Lease within 60 days thereafter. Each party shall have the right to maintain its own respective action against such Governmental Agency or utility for its respective damages and neither party shall have any interest in any award granted to the other. Notwithstanding the foregoing, in the event Landlord exercises its eminent domain authority with respect to the Premises, either Landlord or Tenant shall have the right to terminate this Lease.

SECTION 16. ENVIRONMENTAL COMPLIANCE.

A. Tenant shall, at Tenant's sole cost and expense, comply with all Environmental Laws pertaining to Tenant's operations on the Premises and shall not cause or permit any Hazardous Substance to be brought, kept, stored, or used in or about the Premises.

B. If Tenant causes or permits any Hazardous Substance to be brought, kept, stored, or used in or about the Premises and such violation results in the contamination of the Premises, Tenant shall indemnify, save harmless and defend Landlord, and its boards, committees, commissions, elected and appointed officials, officers, agents, and employees, against any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses, including attorneys' fees and administrative expenses, that may arise, or be alleged to have arisen, out of or in connection with Tenant's acts or omissions in connection with such Hazardous Substance whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or fault of Tenant, except to the extent caused by the sole negligence of Landlord.

C. Tenant represents, covenants and warrants that Tenant's operations in, on, or under the Premises shall be in compliance with all applicable Environmental Laws.

SECTION 17. ASSIGNMENT AND SUBLETTING.

Tenant shall not assign or sublet this Lease, in whole or in part, without the express, prior written consent of Landlord, which Landlord may, in its sole and absolute discretion, withhold. Any assignment or sublease without such written consent shall, at Landlord's option, be deemed to be void and of no force or effect. In the event of any sublease or assignment, Tenant shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants or conditions of this Lease.

SECTION 18. DEFAULT.

A. Tenant shall be in default of this Lease if Tenant:

1. fails to pay, when due, any Rent or any other sums due and payable hereunder (including, without limitation Property Taxes and Utility Service charges) within 15 days after notice by Landlord to Tenant specifying the amount and details of unpaid Rent or other sums due hereunder; or
2. breaches any other covenant or condition of this Lease and does not cure such other default within 30 days after notice from Landlord specifying the default complained of (provided that if such default is not reasonably susceptible of cure within said 30 day period and if Tenant is diligently and continuously pursuing such cure to completion then such cure period may be extended by up to 60 additional days);
3. abandons the Premises for a period of 45 or more consecutive days;
4. is adjudicated as bankrupt or makes an assignment for the benefit of creditors;
5. becomes legally insolvent; or
6. is in violation of any term or provision of the Operational Conditions and fails to cure such violation in accordance with the timeline set forth in Section 18.D below.

B. In the event of a default as described above, Landlord shall have the right, at its option, in addition to and not exclusive of any other remedy Landlord may have in law or equity with only such further demand or notice as may be required by applicable law, to re-enter the Premises and eject all persons therefrom, and either:

1. declare this Lease at an end, in which event Tenant shall immediately remove its facilities, equipment and property and pay Landlord a sum of money equal to the total of: (i) the amount of the unpaid Rent accrued through the date of termination; (ii) the amount by which the unpaid Rent reserved for the balance of the Term exceeds the amount of such loss of Rent that Tenant proves could be reasonably avoided (net of the costs of such reletting); and (iii) any other amount necessary to compensate Landlord for all detriment directly and proximately caused by Tenant's failure to perform its obligation under the Lease; or
2. without terminating this Lease, relet the Premises, or any part thereof, for the account of Tenant upon such terms and conditions as Landlord may

deem advisable, and any monies received from such reletting shall be applied first to the expenses of such reletting and collection, including reasonable attorneys' fees, any real estate commissions paid, and thereafter toward payment of all sums due or to become due Landlord hereunder, and if a sufficient sum shall not be thus realized to pay such sums and other charges, Tenant shall pay Landlord any deficiency monthly upon demand.

C. No re-entry and taking of possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease, regardless of the extent of renovations and alterations by Landlord, unless a written notice of such intention is given to Tenant by Landlord. Notwithstanding any reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

D. Landlord shall be in default of this Lease if Landlord shall breach any of its covenants contained in this Lease and does not cure such default within 30 days after notice from Tenant specifying the default complained of (provided that if such default is not reasonably susceptible of cure within said 30 day period and if Landlord is diligently and continuously pursuing such cure to completion, then such cure period may be extended by up to 90 additional days).

E. In any action or proceeding hereunder, the prevailing party shall be entitled to recover from the other the prevailing party's reasonable costs and expenses in such action or proceeding, including, without limitation, reasonable attorneys' fees. In the event either party is sued by a third party as a result of a violation of a covenant or warranty herein contained by the other party hereto, then the party who has violated the covenant or warranty shall be responsible for the reasonable costs and expenses in such action or proceeding against the non-violating party, including, without limitation, reasonable attorneys' fees.

SECTION 19. FORCE MAJEURE.

Except as otherwise expressly set forth herein, in the event either party hereto shall be delayed or hindered in, or prevented from, the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive laws or regulations of Governmental Agencies, riots, insurrection, war, or other reasons of a like nature not the fault of the party delayed in doing acts required under the terms, covenants and conditions of this Lease (all of such reasons or causes referred to in this Lease as "**Force Majeure**"), then performance of such acts shall be excused for the period of the delay and the period of the performance of any such act shall be extended for a period equivalent to the period of such delay.

SECTION 20. ESTOPPEL CERTIFICATE.

Upon notice from either Landlord or Tenant to the other party, such other party shall, within 20 days of receipt of such notice, execute and deliver to the requesting party, without charge, a written statement ratifying this Lease and certifying that (i) this Lease is in full force and effect, if such is the case, and has not been modified, assigned, supplemented or amended, except by such writings as shall be stated; (ii) all terms, covenants and conditions under this Lease to be satisfied and performed have been satisfied and performed, except as shall be stated; (iii) the other party is not in default under this Lease; except as shall be stated; and (iv) the amount of advance rental, if any, paid by Tenant and the date to which rental has been paid.

SECTION 21. SUBORDINATION.

A. Landlord reserves the right to subject and subordinate this Lease at all times to the lien of any first mortgage or deed or trust or bond now or hereafter placed upon Landlord's interest in the Premises; provided, however, that Tenant's (i) possession of the Premises shall not be disturbed so long as Tenant continues to perform its duties and obligations under this Lease; and (ii) duties and obligations under this Lease shall not be expanded nor its rights diminished by the operation of this Section.

B. Tenant shall attorn to the mortgagee, trustee, beneficiary or bond holder under any such mortgage, deed of trust or bond, and to the purchaser in a sale pursuant to the foreclosure thereof; provided, however, that Tenant's possession of the Premises shall not be disturbed so long as Tenant shall continue to perform its obligations under the Lease.

SECTION 22. SURRENDER OF PREMISES.

A. **Surrender.** On the earlier of (i) the date the Term expires, or (ii) the date the Lease is terminated in accordance with any applicable provision of this Lease, Tenant shall surrender the Premises to Landlord in the same condition as when Tenant accepted the Premises pursuant to Section 11.A of this Lease, excepting, however, ordinary wear and tear, and alterations, improvements, and additions made by Tenant pursuant to Section 10 of this Lease.

B. **Holding Over.** If Tenant retains possession of the Premises or any part thereof after the termination of the Term or any extension thereof, by lapse of time or otherwise, Tenant shall pay Landlord the monthly Base Rent, at 150% of the rate payable for the month immediately preceding said holding over for each month or part thereof that Tenant thus remains in possession as liquidated damages. The provisions of this Section do not exclude Landlord's rights of re-entry subject to applicable law or any other right hereunder.

SECTION 23. NO BROKER'S COMMISSION.

Landlord and Tenant each warrant to the other that they have used no brokerage entity in connection with this Lease and that no brokerage fees or commissions are owed in connection therewith. Each party shall, and does hereby, indemnify, save harmless, and agree to defend the other from any liability for any such fees and commissions.

SECTION 24. GENERAL.

A. **Notices.** Any notice or communication required or permitted to be given under this Lease shall be in writing and shall be delivered (1), personally, (2) by a reputable overnight courier, (3) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, and (4) by facsimile. Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (1), (2) or (3) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Lease, notices shall be deemed received upon actual receipt. By notice complying with the requirements of this Section, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to Landlord shall be addressed to, and delivered at, the following address:

City Manager
1420 Miner Street
Des Plaines, Illinois 60016
Facsimile: 847-391-5451

With a copy to:

Elrod Friedman LLP
325 North LaSalle Street, Suite 450
Chicago, Illinois 60654
Attention: Peter Friedman
Facsimile: 312-578-6666

Notices and communications to Tenant shall be addressed to, and delivered at, the following address:

Onesti Entertainment Corporation
2720 S. River Rd Suite 254
Des Plaines IL 60018
Attention: Ron Onesti

With copy to:

B. Time of the Essence. Time is of the essence in the performance of all terms, covenants, and conditions of this Lease.

C. Rights Cumulative. Unless expressly provided to the contrary in this Lease, each and every one of the rights, remedies and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

D. Non-Waiver. The failure of Landlord or Tenant to enforce against the other any term, covenant, or condition of this Lease shall not be deemed a waiver thereof, nor void or affect the right of the aggrieved party to enforce the same term, covenant, or condition on the occasion of any subsequent breach or default; nor shall the failure of either party to exercise any option in this Lease upon any occasion arising therefore be deemed or construed to be a waiver of the right to exercise that same kind of option upon any subsequent occasion.

E. Consents. Whenever the consent or approval of either party is required in this Lease, such consent or approval shall be in writing and shall not be unreasonably withheld or delayed, and, in all matters contained herein, both parties shall have an implied obligation of reasonableness, except as may be expressly set forth otherwise.

F. Governing Law. This Lease shall be governed by, construed, and enforced in accordance with the internal laws, but not the conflict of laws rules, of the State of Illinois.

G. Severability. It is hereby expressed to be the intent of the parties hereto that should any provision, covenant, agreement, or portion of this Lease or its application to any person, entity, or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Lease and the validity, enforceability, and application to any person, entity, or property shall not be impaired thereby, but such remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Lease to the greatest extent permitted by applicable law.

H. Entire Agreement. This Lease shall constitute the entire agreement of the parties hereto; all prior agreements between the parties, whether written or oral, are merged herein and shall be of no force and effect.

I. Grammatical Usage and Construction. In construing this Lease, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires.

J. Interpretation. This Lease shall be construed without regard to the identity of the party who drafted the various provisions hereof. Moreover, each and every provision of this Lease shall be construed as though all parties hereto participated equally in the drafting thereof. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable hereto.

K. Headings. The table of contents, heading, titles and captions in this Lease have been inserted only for convenience and in no way define, limit, extend or describe the scope or intent of this Lease.

L. Exhibits. Exhibits A, B, C, D, E, and F attached to this Lease are, by this reference, incorporated in and made a part of this Lease. In the event of a conflict between an exhibit and the text of this Lease, the text of this Lease shall control.

M. Amendments and Modifications. No amendment or modification to this Lease shall be effective unless and until it is reduced to writing and approved and executed by all parties to this Lease in accordance with all applicable statutory procedures.

N. Changes in Laws. Unless otherwise explicitly provided in this Lease, any reference to any statute, code, ordinance, or law shall be deemed to include any modifications thereof, or amendments thereto as may, from time to time, hereinafter occur.

O. Warranties Regarding Execution.

1. In order to induce Tenant to enter into this Lease, Landlord hereby warrants and represents to Tenant as follows:
 - a. Landlord has the authority and legal right to make, deliver and perform this Lease and has taken all necessary actions to authorize the execution, delivery, and performance of this Lease; and
 - b. the execution, delivery and performance of this Lease (i) is not prohibited by any requirement of law under any contractual obligation of Landlord; (ii) will not result in a breach or default under any agreement to which Landlord is a party or to which Landlord is bound; and (iii) will not violate any restrictions, court order, or agreement to which Landlord is subject; and
 - c. The party executing this Lease on behalf of Landlord has full authority to bind Landlord to the obligations set forth herein.
2. In order to induce Landlord to enter into this Lease, Tenant hereby warrants and represents to Landlord as follows:

- a. Tenant has the authority and legal right to make, deliver and perform this Lease and has taken all necessary actions to authorize the execution, delivery, and performance of this Lease; and
- b. the execution, delivery and performance of this Lease (i) is not prohibited by any requirement of law under any contractual obligation of Tenant; (ii) will not result in a breach or default under any agreement to which Tenant is a party or to which Tenant is bound; and (iii) will not violate any restrictions, court order, or agreement to which Tenant is subject; and
- c. The party executing this Lease on behalf of Tenant has full authority to bind Tenant to the obligations set forth herein.

P. No Joint Venture. It is hereby understood and agreed that nothing contained in this Lease shall be deemed or construed as creating the relationship of principal and agent, partnership or joint venture between the parties hereto, it being agreed that no provision herein contained nor any acts of the parties herein shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

Q. Successors and Assigns. The terms, covenants and conditions of this Lease shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, and authorized successors and assigns.

R. Calendar Days and Time. Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday, or State or Federal holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday, or State or Federal holiday.

S. No Third Party Beneficiaries. No claim as a third party beneficiary under this Lease by any person, firm, or corporation shall be made, or be valid, against Landlord or the Developer.

T. Counterpart Execution. This Lease may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Facsimile or electronic counterpart copies of this Lease will be considered for all purposes, including delivery, as originals.

U. Certain Rights Reserved by Landlord. Landlord reserves and may exercise the following rights without affecting Tenant's obligations hereunder:

1. to decorate, remodel, repair, alter or otherwise prepare the Premises for re-occupancy if Tenant vacates and abandons the Premises prior to the expiration of the Term for a period in excess of thirty (30) consecutive days;
2. to exhibit the Premises to others during the last ninety (90) days of the term of this Lease;
3. to exhibit the Premises to prospective purchasers upon reasonable advance notice, but not less than one (1) day prior notice, at any time during business hours during the Term provided that Landlord will cooperate with

Tenant in taking reasonable measures to preserve the confidentiality of Tenant's trade secrets; and

4. to take any and all measures, including inspections, as may be reasonably necessary or desirable for the safety, protection or preservation of the Premises or Landlord's interests.

[SIGNATURE PAGE FOLLOWS]

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

ATTEST/WITNESS:

ATTEST/WITNESS:

LANDLORD:

CITY OF DES PLAINES, an Illinois home rule municipal corporation

By: _____
Dorothy Wisniewski, City Manager

TENANT:

ONESTI DPT, INC., an Illinois corporation

By: _____
Ron Onesti, President

EXHIBIT A

INTENDED USES

Subject to and in accordance with all legal and insurance requirements, Tenant agrees that it shall use the Premises for the operation of a first-class live entertainment theatre, accessory concession areas (collectively "**Theatre**"), and a first-class restaurant and bar ("**Restaurant**") as well as such other assembly uses as may be appropriate and permitted by the Operational Conditions. The storefronts located at 1486 and 1486 ½ Miner ("**Accessory Spaces**") may be used for ticket windows, green rooms, dressing rooms, and/or other accessory uses necessary for the operation of the Theatre at the discretion of Tenant.

All uses of the Premises by Landlord, its employees, customers, clients, guests, and invitees will be governed by the Operational Conditions set forth in **Exhibit B**.

EXHIBIT B

OPERATIONAL CONDITIONS

The Tenant ("**Operator**" for purposes of this **Exhibit B**) has, as a condition of the Lease with the Landlord ("**Owner**" for the purposes of this **Exhibit B**), agreed to operate the Premises, including the Theatre and the Restaurant, in full and strict compliance with the following Operational Conditions. A violation of these Operational Conditions shall be, and is hereby declared to be a violation of the Lease. All capitalized terms, if not herein defined, shall have the meanings attributed to them in the Lease.

A. Management Services. Operator is required to perform the Management Services during the Term, as defined in the Lease. The "**Management Services**" to be performed include but shall not be limited to:

1. Bookings. Operator will take all commercial reasonable steps to maximize the frequency of live entertainment bookings and door entries to the Theatre. Operator will work to attain cumulative annual door entry numbers equivalent to or greater than the Arcada Theatre in St. Charles by the second anniversary of the Operational Date as defined in the Lease. A representative sample of monthly bookings from the Arcada Theatre is included in the Business Plan (defined below). Owner and Operator shall cooperate and collaborate to establish standards and guidelines for booking to ensure that all events conducted by Operator meet community standards and reflect well upon the character and culture of the City of Des Plaines.
2. Liquor. Operator shall apply for an alcoholic beverages license for on-premises consumption subject to compliance with all requirements of the City's licensing requirements including background checks. No such license shall be granted by the City unless and until Operator submits a valid application and pays all required license fees. In no case shall the City issue a license for the Premises that would allow the service of liquor after 2 a.m. any day of the week.
3. Licenses, Permits, and Accreditations. Operator shall apply for and use its best efforts to obtain and maintain all licenses, permits, and accreditations required in connection with the management and operation of the Theatre, at Operator's sole cost.
4. Pre-Operational Date Cooperation Consulting. Owner and Operator acknowledge and agree that the Owner's decision to enter into this Agreement is based on Ron Onesti's extensive personal knowledge and experience operating entertainment venues. Ron Onesti shall consult and cooperate with the Owner on a cost-free basis during the Owner's construction and renovation of the Premises to ensure that the décor, furnishings, electrical supply/wiring, and audio/visual systems will meet or exceed the industry standards for an entertainment venue.

5. Employees and Key Personnel.

- a. Theatre and Restaurant Staff. Operator shall (i) determine personnel requirements, recruitment schedules, and compensation levels and (ii) establish forms and procedures for employee compensation. Operator shall hire, promote, discharge, and supervise all employees performing services in and about the Theatre. All of the employees of the Theatre shall be employees of Operator and not of Owner. The costs of salaries, benefits and bonuses for staff, management, and all employees at the Theatre shall be paid by Operator. Operator shall pay, at its sole cost and expense without reimbursement, all costs and expenses, including attorneys' fees, for any and all employment-related suits, hearings and actions. Operator shall indemnify, defend and hold Owner harmless against all loss, cost and expense arising out of Operator's employment activities for the Theatre.
- b. Key Personnel. Ron Onesti is identified as "**Key Personnel**" for the purposes of these Operating Conditions and the Lease. Owner reserves the right to designate additional members of the Operator's organization as Key Personnel. Key Personnel shall be primarily responsible for carrying out the Management Services. The Key Personnel shall not be changed without the Owner's prior written approval. Death, disability, separation from or termination by the Operator of any Key Personnel will be grounds for termination of this Agreement by Owner.

Upon written notice from Operator that Mr. Ron Onesti or other Key Personnel are unable to manage the Premises due to reasons of poor health, or for any other reason, Owner shall have the right, but not the obligation, to terminate this Agreement, in which case this Agreement shall terminate 45 days after Operator's receipt of such notice from the Owner.

5. Business Plan. The Premises shall be operated by the Operator at all times in conjunction with an agreed upon "**Business Plan**" which shall serve as a supplement to the Lease. The Business Plan will be the Operator's "Proposal to the City of Des Plaines re: Operator of the Des Plaines Theatre" dated August 3, 2018 that is attached hereto and made a part hereof as **Exhibit 1**. Owner may, from time to time, request that Operator update the Business Plan to reflect current state of operations.
6. Marketing. Landlord shall own all marks, identifications, Theatre specific advertising and marketing campaigns developed by Operator to advertise and market the Theatre. Operator is prohibited from accepting sponsorships or advertising from any other casino other than Rivers Casino and shall not allow advertising on the LED Marquee of the Theatre for any entity other than the performers at the Theatre nor shall Operator advertise third party sponsors of events on the exterior of the Theatre whether on the LED Marquee, poster boxes etc. Prior to altering any Theatre logo, letterhead, signage, or other related insignia or material to identify Operator as the managing agent for Owner, Operator shall obtain Owner's consent to the design, size, materials, method of installation and location of any such identifying marks.

7. Contracts. The Operator shall negotiate, consummate, enter into, and perform, such agreements as are necessary or advisable for the furnishing of all food, beverages, utilities, concessions, entertainment, operating supplies, equipment, repairs and other materials and services as Operator determines, in the exercise of its commercially reasonable judgment, are needed from time to time for the management and operation of the Theatre.
 8. Restaurant Space Operations.
 - i. The Operator will take all commercially reasonable steps to develop and operate the Restaurant Space in a manner comparable to the Club Arcada Speakeasy & Restaurant (St. Charles, IL) and the Bourbon 'n Brass (Evanston, IL) restaurant/bar spaces operated by the Operator.
 - ii. The Restaurant may operate seven days a week during hours determined by the Operator.
 - iii. Operator will be required to supply and maintain commercial kitchen hood cleaning for the Restaurant Space as required; and
 - iv. Operator is required to clean all grease trap(s) in the Restaurant Space on a monthly basis or more frequently if needed.
 9. Other Duties and Prerogatives. Operator shall perform any act that is necessary to operate and manage the Theatre and the Property during the Term, subject to the terms and conditions hereof. In fulfilling its operational and managerial responsibilities hereunder, Operator shall have all rights ordinarily accorded to a manager in the ordinary course of business, including, without limitation, the collection and deposit of proceeds from the operation of the Theatre and the Property in accordance with the Business Plan; the incurring of trade debts (other than mortgage indebtedness); the approval and payment of obligations; and the negotiating, signing and payment with funds from the Operator's funds for leases and contracts.
- B. Receipts and Proceeds.** The Operator's compensation for performing the Management Services shall be limited to the following:
1. Ticket Sales: Operator shall be entitled to retain all proceeds from the sale of tickets to events that Operator schedules and hosts on the Premises.
 2. Food and Beverage: Operator shall be entitled to retain all proceeds from the sale of food and beverages on the Premises, upon payment of all applicable food and beverage taxes.
- C. Pre-Approved Uses of Premises by Third Parties.** Operator shall permit the use of the Premises by the following designated parties at no charge.
1. City or Other Civic Organizations. Subject to the prior booking of any pre-contracted and paying events, Operator shall permit the City or its related or approved, not-for profit organizations, to schedule and host on the Premises no less than eight (8) events each year at no charge to the City or the applicable civic

organization. Such City or civic sponsored events may only be scheduled on Sundays through Thursdays, unless otherwise agreed to by Operator. Operator will staff each of these functions and may retain all food and beverage proceeds earned during these events, after the payment of all applicable food and beverage taxes.

2. Use of Premises by Rivers Casino. Subject to the prior booking of any pre-contracted and paying events, Operator shall permit the Rivers Casino to schedule and host on the Premises no less than eight (8) events each year at no charge. Rivers Casino's events may only be scheduled on weekdays during daytime business hours, unless otherwise agreed to by Operator. Operator will not be required to staff these events beyond providing access, lighting, and audio/visual support.

D. Acknowledgements. A donor wall, prominently displayed and located near the front entrance of the Theatre shall acknowledge Rivers Casino as a principal sponsor of the revitalizing of the Theatre. The donor wall shall also display the names of the private citizens who contributed funds to assist in the renovation and restoration of the Theatre. The donor wall shall be installed by the Owner and may not be damaged or removed by the Operator.

E. General Conditions.

1. Compliance with Law; Expenditures Required for Compliance with Law. In carrying out the Management Services and its general occupancy and operation of the Premises, Operator shall comply with all laws, ordinances, rules, or governmental regulations now or hereafter in force, or by order of any governmental or municipal power, department, agency, authority, or officer, including specifically the City's Code of Ordinances (collectively "**Laws**") in respect of the operation, maintenance, repair and restoration of the Premises.
2. No Unlawful or Dangerous Use. Operator shall not make or permit to be made any use of the Premises which is forbidden by public law, or by any ordinance or governmental regulation or which may be dangerous to persons or property, or which may invalidate or materially increase the premium cost of any policy of insurance carried on the Premises or covering its operations (unless Operator shall pay the increase in premium cost). Operator shall not do or permit to be done, any act or thing upon the Premises which will be in conflict with fire insurance policies covering the Premises. Operator, at its sole expense, shall comply with all ordinances, laws and statutes and all rules, regulations or requirements of the local government authorities, or any other similar body, and shall not do, or permit anything to be done upon the Premises, or bring or keep anything thereon in violation of rules, regulations or requirements of the Fire Department, local government authorities or other authority having jurisdiction and then only in such quantity and manner
3. No Pyrotechnics or Smoke/Fog Machines. The use of pyrotechnics on the Premises is expressly prohibited. Smoke or fog machines may be used if approved in writing by the City of Des Plaines Fire Chief.
4. No Video Gaming. No video gaming or gambling shall be permitted on the Premises.

F. No Partnership or Joint Venture. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of (i) a partnership, or (ii) a joint venture between the parties hereto; it being understood and agreed that neither any provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of Owner and Operator .

[INSERT BUSINESS PLAN AS EXHIBIT 1]

EXHIBIT C

LEGAL DESCRIPTION OF PREMISES

The Premises is legally described as follows:

PARCEL 1:

LOT 68 AND 69 (EXCEPT THE NORTHEASTERLY 8 FEET TAKEN FOR ALLEY) IN ORIGINAL TOWN OF RAND (NOW VILLAGE OF DES PLAINES) A SUBDIVISION OF PART OF SECTIONS 16, 17, 20 AND 21, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.s: 09-17-415-010-0000

Commonly known as 1470-1476 Miner St., Des Plaines, Illinois

PARCEL 2:

THE SOUTHEAST 30.0 FEET OF LOT 67 (EXCEPT THE NORTHEASTERLY 8 FEET TAKEN FOR ALLEY) IN TOWN OF RAND, BEING A SUBDIVISION OF PARTS OF SECTIONS 16, 17, 20 AND SECTION 21, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.s: 09-17-415-024-0000

Commonly known as 1486 and 1486 1/2 Miner St., Des Plaines, Illinois

EXHIBIT D
RENT PAYMENTS

Rent Period	Monthly Rent
Commencement Date through Operational Date	\$0.00
Operational Date through 6th Monthly Anniversary of Operational Date/Rent Commencement Date (aka First Six Months of Operation)	\$0.00
Remaining Six Months in 1 st Year of Operation (Months Seven through Twelve of Operation)	\$10,000.00
2 nd Year of Operation	\$12,000.00
3 rd Year of Operation	\$14,000.00
4 th Year of Operation	\$16,000.00
5 th Year of Operation	\$18,000.00

EXHIBIT E

OPERATOR BUILD-OUT IMPROVEMENTS

- A. Improvement to Restaurant Space. Tenant shall, at its own expense, make such alterations, improvements, additions and changes to the Restaurant Space as it may deem necessary or expedient in connection with the initial construction and equipping of the Restaurant ("**Restaurant Improvements**"); the parties acknowledge that Tenant may have access prior to the Operational Date hereof permitting Tenant access to the Buildings to commence construction of the Restaurant Improvements. Notwithstanding the foregoing, without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, Tenant shall not tear down or materially demolish any of the improvements on the Restaurant Space or make any material change or alteration in such improvements which, when completed, would substantially diminish the value of the Restaurant Space, require or result in structural changes to the Restaurant Space, or significantly alter the exterior of the Restaurant Space. Tenant shall not make any change in or alteration to the Restaurant Space which would violate the terms of any policy of insurance in force with respect to the Restaurant Space or required to be provided by Tenant under the provisions of this Lease. No other alterations to the Restaurant Space or the Buildings shall be permitted unless Landlord approves same and the conditions set forth below are satisfied, which such approval shall not be unreasonably withheld, conditioned or delayed.
- B. Landlord Review and Approval. The plans, specifications and contract or contracts (and building department permits therefor) to be entered into by Tenant pertaining to the Restaurant Improvements shall be submitted to and approved in writing by Landlord ("**Approved Plans**"); provided, however, that if Landlord fails to approve Tenant's submission within ten (10) business days of submission Landlord shall be deemed to have given its approval. Tenant or its contractor shall deposit with Landlord an insurance policy or policies in an amount reasonably satisfactory to Landlord and issued by a company or companies reasonably satisfactory to Landlord, indemnifying Landlord against any and all claims of every kind, because of accident, injury or damage to any person or property arising out of the work done in connection with the making of such alterations. If Landlord disapproves of any plans, specifications, contract or contracts, Landlord's notice to Tenant of its disapproval shall specify the reasons for such disapproval. Landlord shall have the right at all times during any construction or alteration to inspect and monitor said construction and alteration and to require changes reasonably necessary and appropriate to assuring that the improvements located on the Premises will be in conformity with applicable laws, ordinances and codes, and in compliance with the Approved Plans.
- C. Permits and Conduct of Construction. All Restaurant Improvements, and the construction thereof, shall at all times comply with all applicable laws, ordinances, rules and regulations of governmental authorities having or asserting jurisdiction on the Premises. Tenant, at its expense, shall (i) obtain all necessary municipal and other governmental permits, authorizations, approvals, and certificates for the commencement and prosecution of such Restaurant Improvements and for final approval thereof upon completion, (ii) deliver three copies thereof to Landlord, and (iii) cause all Restaurant Improvements to be performed in a good and workmanlike manner, using materials and equipment at least equal in quality to the original installations of the building of the then standards for the Buildings established by Landlord. Improvements shall be promptly commenced and completed and shall be performed in such manner so as not to materially interfere with the occupancy

of any guests of the Buildings nor impose any additional expense upon Landlord in the construction, maintenance, cleaning, repair, safety, management, security or operation of the Buildings or any building equipment; and if any such additional expenses shall be incurred by Landlord as a result of Tenant's performance of any Restaurant Improvements, Tenant shall pay such additional expense as additional rent upon ten (10) days written notice. Tenant shall furnish Landlord with satisfactory evidence that the insurance required during the performance of the Restaurant Improvements is in effect at or before the commencement of the Restaurant Improvements.

- D. Proof of Compliance. Upon completion of any alterations or additions, including without limitation the Restaurant Improvements, Tenant shall furnish Landlord with: (i) evidence satisfactory to Landlord that all of Tenant's trade fixtures and installations have been fully paid for; (ii) contractor's affidavits and full and final waivers of lien or receipted bills covering all labor and materials expended and used; and (iii) with an endorsement to Landlord's title insurance policy insuring over all claims arising from such constructions, alterations and additions, obtained by Tenant, but which will be paid for by Landlord. All alterations and additions shall comply with all ordinances and regulations of any pertinent governmental Agency. All alterations and additions shall be constructed in a good and workmanlike manner and good grades of new materials shall be used.
- E. Mechanic's Liens. Tenant shall promptly pay all contractors and materialmen and vendors of trade fixtures and shall not permit or suffer any lien or secured interest to attach to the Buildings, the Premises or Tenant's Fixtures or any part thereof, and shall indemnify and save harmless Landlord against the same. In the event any such secured interest or lien or claim for lien is filed and Tenant fails to contest or cause said lien or claim for lien to be effectively removed of record or insured over by the title company issuing title insurance coverage to Landlord to Landlord's reasonable satisfaction within thirty (30) days after Landlord's notice to do so, Landlord, may, at its election, remove such lien or claim for lien by paying the full amount therefor or otherwise without any investigation or contest of validity thereof, and Tenant shall pay to Landlord upon demand the amount paid out by Landlord in such behalf, including Landlord's reasonable costs, expenses and counsel fees, and interest at the rate of interest equal to the "prime rate" last announced, as of the date such proceeding is initiated by MB Financial Bank, N.A. plus 4% ("**Lease Interest Rate**"). In the event Tenant contests any claim, Tenant shall provide security against such claim reasonably satisfactory to Landlord. The provisions of this Section shall survive the expiration or earlier termination of this Lease.
- F. Limitation of Landlord's Liability. No approval of plans or specifications by Landlord or consent by Landlord allowing Tenant to make Restaurant Improvements in the Premises shall in any way be deemed to be an agreement by Landlord that the contemplated improvements comply with any applicable laws, ordinances, rules and regulations of governmental authorities having or asserting jurisdiction in the Premises or the certificate of occupancy for the Restaurant Space nor shall it be deemed to be a waiver by Landlord of the compliance by Tenant of any of the terms of this Lease. Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant and that no mechanics or other lien for such labor or materials shall attach to or affect any estate or interest of Landlord in the Buildings.
- G. Removal and Restoration by Tenant. All alterations, changes and additions and all improvements, including leasehold improvements, made by Tenant shall remain Tenant's property for the Term of this Lease, so long as Tenant is not then in default hereunder

beyond any applicable grace and/or cure period after applicable notice. When the Lease terminates, (i) Tenant shall not be required to remove any improvements or alterations made with Landlord's approval or Landlord's Work, and (ii) Landlord shall advise Tenant concurrently with the giving of such approval, if any, whether Landlord shall require Tenant to remove any or all Operator Build-Out Improvements or alterations made to the Premises during or prior to the expiration of the Lease Term. Any improvements that Landlord does not require to be removed shall belong to Landlord without compensation, allowance or credit to Tenant, except movable trade fixtures, furnishings and equipment of Tenant that can be removed without defacing the Premises or the Buildings (subject to Tenant's right to remove provided any damage to the Premises is repaired by Tenant). Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's trade fixtures, furnishings and equipment.

- H. Required Components of Restaurant Improvements. Tenant shall, at Tenant's sole cost and expense, maintain: (i) a hood system to prevent grease from exhaust systems serving the Restaurant Space from dripping onto the roof of the Buildings, and (ii) its own individual grease trap (grease interceptor system including all requisite plumbing associated therewith) to prevent fats, oils and grease generated from Tenant's business operations at the Premises from entering and clogging the sanitary sewer system of the Buildings. Tenant's maintenance of the hood system and grease trap/grease interceptor system shall be in accordance with all applicable laws, codes, regulations and ordinances of governmental authorities. Such hood system and grease trap/grease interceptor system shall be properly maintained, operated, cleaned, repaired and replaced periodically by Tenant at its sole cost and expense, in accordance with all applicable laws, building codes, regulations and ordinances of governmental authorities and any replacement of the hood system and/or grease trap/grease interceptor system shall be in accordance with the requirements herein for the installation thereof. Tenant shall dispose of all cooking grease, oils, fats and filters generated from its business operations at the Premises in compliance with the maintenance and disposal standards and procedures established from time to time by Landlord in its reasonable judgment and all applicable Federal, State and local laws, building codes, regulations and ordinances.

EXHIBIT F
SOUND AND LIGHTING EQUIPMENT
[TO BE INSERTED]