

AMENDED AND RESTATED LEASE FOR THE
EBERBACH CULTURAL ARTS BUILDING

This Amended and Restated Lease is made on _____, 2014, by the City of Ann Arbor, a Michigan municipal corporation, with its offices at 301 E. Huron St., Ann Arbor, Michigan 48104 (“Landlord”), and the Public Schools for the City of Ann Arbor, a body corporate organized and existing under the Michigan Revised School Code, with its offices at 2555 S. State Street, Ann Arbor, Michigan 48106 (“Tenant”), upon the following terms and conditions.

1. Description of the Premises/Acknowledgement. Landlord leases to Tenant and Tenant rents from Landlord the land and improvements at 1220 Wells Street, Ann Arbor, Michigan 48104, consisting of Eberbach Cultural Arts Building (“Building”), containing approximately 4,350 square feet which is shown on the diagram attached as Exhibit A, along with the parking area and surrounding land (“Land”), as legally described on Exhibit B and as shown on the diagram attached as Exhibit C (Collectively, the “Premises”). Landlord and Tenant acknowledge that Tenant is in possession of the Premises pursuant to the terms of a certain Lease dated February __, 2009 (“Prior Lease”) and that this Lease shall amend and restate the Prior Lease in its totality, but not otherwise terminate or extinguish the rights, claims or privileges which either party would have under the Prior Lease. This Amended and Restated Lease is effective on the Commencement Date (to wit: April 1, 2014) and on such date, the terms and conditions of the Prior Lease shall be deemed to have been amended and restated by the terms hereof and this Amended and Restated Lease shall govern and control all future obligations of the parties.
2. Term. This Lease shall be for the term of five years commencing on April 1, 2014, and ending on March 31, 2019. Notwithstanding the foregoing, in the event that certain Agreement between the City of Ann Arbor and the Public Schools for the City of Ann Arbor regarding the Joint Recreation Programs for calendar year 2014-2015 is terminated by either party or not renewed following the expiration of its stated term, then, in that event, Tenant shall have the right to terminate this Lease upon 30 days advance written notice to the Landlord whereupon this Lease shall terminate on the date so stated and Tenant’s notice as if the natural term hereof had expired.
3. Rent. Tenant shall pay to Landlord as annual rent the sum of \$1, payable on April 1 of every year. Additional rent payments set forth in Section 4 shall be paid to Landlord annually, in advance, on April 1, with the initial payment due on April 1, 2014. All rent shall be paid to Landlord at the address set forth above, to the attention of the Parks and Recreation Services Manager, or at any other address that Landlord designates in writing, without any prior demand by Landlord and without any deduction or offset, except as otherwise provided herein.

If Tenant fails to pay any amount it owes to Landlord under this Lease when that amount is due, and such failure is not cured within five (5) days of written notice,

the amount shall be assessed a one-time late charge in the amount of 5 percent of the late rental payment.

4. Capital Facilities Expense. Tenant shall also pay to Landlord as additional rent, a capital facilities payment for each year of this Lease with the first such payment due on April 1, 2014. Tenant shall pay this additional rent in an annual lump sum in accordance with the terms of section 3 above. Landlord shall provide Tenant, at the address set forth above, with a fund balance total on March 1 of each year of this lease. If the fund balance is at \$50,000.00 no capital facilities expense shall be due from the Tenant by April 1st. If the fund balance is between \$40,100.00 and \$49,999.00 the Tenant shall pay the difference between the fund balance and \$50,000.00 by April 1st. If the fund balance is less than \$40,100.00 a capital facilities payment in the amount of \$9,900.00 shall be due by April 1st.

Landlord shall establish and maintain these rent payments for capital facility expenses in a separately maintained Eberbach Capital Facilities Fund (the "Fund"). During the term of this Lease, the Fund shall only be used for the capital facility needs for the Premises, as well as for certain repairs and general maintenance for the Premises that exceed \$3,000 per incident. If Tenant's tenancy is extended through an extension of this Lease, or a replacement lease with modified terms, Landlord shall carry over any remaining balance of the Fund at the end of the term of this Lease for capital building needs, repairs and general maintenance for the Premises in additional terms. The parties acknowledge by execution hereof, that the Fund balance on the date hereof is \$_____ and that the annual capital facilities payment due under this section as of April 1, 2014 is the sum of \$_____ which if not paid on the date hereof shall be paid within thirty (30) days.

5. Maintenance and Repair. Tenant shall maintain the Premises: (1) in good repair to the reasonable satisfaction of Landlord, (2) in a clean and safe condition, (3) in compliance with all applicable laws, and (4) in accordance, at a minimum, with the Inspection and Maintenance Schedule attached as Exhibit D. The Tenant shall perform the following responsibilities at its sole cost and expense with respect to the Premises: (1) custodial upkeep, (2) snow removal and exterior grounds care, (3) maintenance and repair of the parking lot, (4) maintenance and repair of the heating, ventilation, air conditioning, plumbing and electrical systems, (5) installation and maintenance of exterior signs identifying the Building, (6) interior painting, (7) general inspection, repairs and maintenance, including at a minimum, all items listed in the Inspection and Maintenance Schedule. Furthermore, the tenant is financially responsible for all property taxes and assessments, real, personal, general, and special, if any, and water, sewer, electivity, gas, and other sources of power for heating, ventilation, or air conditioning. Landlord shall perform capital facilities work, as well as repairs and general maintenance for the Premises that exceed \$3,000 per incident and that are not repairs or replacements occasioned by the negligence or willful act of the Tenant or its agents, employees, invitees or licensees. Landlord shall schedule such work with Tenant at such times as may be reasonably acceptable to both

parties. Landlord and Tenant shall meet onsite annually for an inspection of the premises.

6. Use. Tenant shall use and occupy the Premises as a public recreational facility, and related office use and shall not use the Premises for any other purpose without the prior written consent of Landlord. Tenant shall not intentionally and knowingly use the Premises for any purpose or in any manner in violation of any law, ordinance, rule, or regulation adopted or imposed by any federal, state, county, or municipal body or other governmental agency. Tenant shall not deface or injure the Premises, or permit any activity in the Premises that will result in an increase of any insurance premium on the Premises or the Building.
7. Assignment and Subletting. Tenant shall not assign, transfer or encumber this lease in whole or in part or sublet all or any portion of the Premises without written consent of the Landlord.
8. Utilities. Tenant shall provide all utilities for the Premises, including electricity, heat, air-conditioning, ventilation, water, and sewer services. Landlord shall not be liable in damages should the furnishing of any utilities be interrupted by fire or other casualty, accident, strike, labor dispute or disagreement, the making of any necessary repairs or improvements, or any other causes beyond the reasonable control of Landlord. Tenant shall provide and pay for phone service for the Premises, as needed.
9. Insurance. Landlord shall, at its expense, insure the Premises against loss or damage. Tenant shall indemnify and hold Landlord harmless from any and all liabilities, liens, demands, damages, costs and expenses, including reasonable attorney fees for the defense thereof, or claims for damages that may be asserted against Landlord because of any accident or casualty occurring on or about the Premises, or arising from the conduct or management of Tenant's use of the Premises, or from any act or omission by Tenant, Tenant's agents, servants, agents, employees, contractors, guests, or invitees on or about the Premises. In the event that any action or proceeding is brought against the Lessor by reason of any of the above, Tenant further agrees to defend the action or proceeding by legal counsel acceptable to Lessor.

Tenant shall, at its own cost and expense, obtain and keep in force a policy or policies of Commercial General Liability insurance, with liability coverage of not less than \$1,000,000.00 for injury or death to any one person, \$2,000,000.00 for injury or death to more than one person, and \$500,000.00 for damage to property. Tenant shall furnish Landlord with certificates or other evidence acceptable to Landlord indicating that the insurance is in effect and providing that Landlord shall be notified in writing at least 10 days before cancellation of, any material change in, or renewal of the policy. (Any disclaimers as to the responsibility for giving 10 days notice of cancellation are unacceptable.) Evidence of all of the foregoing insurance shall be provided to the City prior to execution of this Lease.

Tenant's insurance required under this Lease shall contain a clause or endorsement under which the insurer waives all rights of subrogation against the Landlord, its employees or agents, with respect to losses payable under the policy.

Any personal property kept on the Premises by Tenant shall be kept there at Tenant's sole risk.

10. Environmental Issues.

(a) Landlord responsibilities. If there are environmental hazards associated with the premises at levels or in amounts in excess of those permitted by any governmental authority having jurisdiction over the issue and the environmental hazards were created before this Lease began, Landlord agrees to comply with all federal, state, and local rules, regulations, statutes, and ordinances pertaining to those hazards and to take whatever safety precautions and measures are required or prescribed, at Landlord's expense.

Landlord agrees to defend and indemnify Tenant against obligations, costs, and liabilities relating to the premises arising out of claims for investigation, study, remedial work, monitoring, or other costs or expenses regarding environmental hazards, including groundwater or soil contamination, water pollution, air pollution, personal injury, or property damage that arise from any environmental hazards on the Premises before the date of this Lease. The City's indemnification for environmental hazards shall not extend to responsibility for any environmental hazard created or any injury that may occur as a result of the acts or omissions of the Tenant or any person acting on behalf of the Tenant.

(b) Tenant responsibilities. Tenant warrants that it will comply with all federal, state, and local rules, regulations, statutes, and ordinances pertaining to the protection of the environment in conducting any activities on the premises.

11. Acceptance of Premises. In executing this Lease, Tenant accepts the Premises in its existing condition and acknowledges that the Premises are in good order and repair, subject to Landlord's repair obligations set forth in Section 5.

12. Damage or Destruction. If, during the term of this Lease, the Premises are partially or totally destroyed by fire or other casualty covered by insurance so as to become partially or totally untenantable, the Premises shall be repaired as quickly as possible at Landlord's expense unless this Lease is terminated as provided below. In the event of such damage or destruction, and if this Lease is not terminated, there shall be no abatement or reduction in the rent payments due under this Lease.

If, during the term of this Lease, the Premises or the Building is partially or totally destroyed by fire or other casualty, and the cost of restoring the Premises or the Building to its prior condition equals or exceeds 25 percent of its fair replacement value immediately before the damage, or if the Premises are damaged by any casualty not insured against by Landlord, Landlord shall have the right to terminate this Lease by giving Tenant written notice of its election to do so within 90 days after the date on which the damage occurs. Upon the giving of the notice, this Lease shall terminate as of the date on which the damage occurred, and the rents shall be adjusted to that date. If the notice by Landlord is not given, this Lease shall continue and Landlord shall cause the Premises or the Building to be repaired or restored with due diligence.

13. Condemnation. If the Premises or any part of them are taken for any public or quasipublic purpose pursuant to any power of eminent domain, or by private sale in lieu of eminent domain, this Lease shall terminate at the option of either Landlord or Tenant effective as of the date the public authority takes possession. All damages for the condemnation of the Premises or building that is awarded for the taking shall be payable to and be the sole property of Landlord.
14. Alterations. No improvements, alterations, additions, or physical changes shall be made on the Premises by Tenant without the Landlord's prior written consent; provided, however, Tenant may make nonstructural interior alterations costing less than \$3,000 in each instance without Landlord's consent. Tenant may paint or decorate the interior of the Premises or attach or hang any curtains, blinds, shades, screens, awnings, or other projections to the interior of any window of the Premises (but not on the outside wall of the Building) without the Landlord's prior written consent. All exterior alterations shall require Landlord's prior written consent. Also, Tenant shall not attach or exhibit any sign, display, lettering, or advertising matter of any kind on the exterior walls or corridors of the Building or on any window or door of the Premises without Landlord's prior written consent. All alterations and improvements, but not moveable equipment and trade fixtures, put in at the expense of Tenant shall be the property of Landlord and shall remain on and be surrendered with the Premises at the termination of the Lease. However, Landlord may require that Tenant remove the alterations and improvements and repair any damages to the Premises caused by the removal. Landlord approves all alterations and improvements made by Tenant on or in the Premises as of the date hereof.
15. Signs. Landlord shall provide appropriate signs on the exterior of the Building identifying the building. Tenant shall, at its own expense, be responsible for any of its signs on the exterior of the Premises. Landlord reserves the right to require uniform signs consistent with other City of Ann Arbor owned and operated facilities, and no sign or other advertising or lettering shall be placed on any windows or doors of the Building, on the exterior of the Building or anywhere on the Land without Landlord's prior consent.
16. Remedies and Default. If Tenant does any of the following:

- (a) defaults in paying any sums to Landlord when due, including rent and additional rent, and does not cure the default within 10 days;
- (b) defaults in performing any other covenant or condition of the Lease and does not cure the other default within 30 days after written notice from Landlord specifying the default; or
- (c) is adjudicated a bankrupt or makes any assignment for the benefit of creditors;

then Landlord may:

- (a) Intentionally omitted;
- (b) terminate this Lease; or
- (c) without terminating this Lease, reenter the Premises and dispossess Tenant or any other occupant of the Premises, remove Tenant's effects, and relet the Premises for the account of Tenant for rent and upon terms that are satisfactory to Landlord, crediting the proceeds, after deducting the costs and expense of reentry, alterations, additions, and reletting, to the unpaid rent and the other amounts due under this Lease during the remainder of the term, and Tenant shall remain liable to Landlord for the balance owed.

If suit is brought to recover possession of the Premises, to recover any rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant to be performed by Tenant, and a breach is established, then Tenant shall pay to Landlord all expenses incurred in the action, including reasonable attorney fees, which shall be deemed to have been incurred on the commencement of the action and shall be enforceable whether or not the action is prosecuted to judgment.

- 17. Access to Premises. Landlord shall have the right to enter the Premises at all reasonable hours, provided that the entry does not interfere with the operation and conduct of Tenant's business. Landlord shall have the right to use all or any part of the Premises to install, maintain, use, repair, and replace pipes, ducts, lights, conduits, plants, wires, floor coverings, and all other mechanical equipment serving the Premises in locations within the Premises that will not materially interfere with Tenant's use of the Premises.
- 18. Rules and Regulations. Landlord reserves the right to adopt from time to time rules and regulations for the operation of the Building that are customary for other City of Ann Arbor Parks and Recreation facilities and are not inconsistent with the provisions of this Lease. Tenant and its agents, employees, invitees, and licensees shall comply with all rules and regulations.
- 19. Waiver. Landlord's failure to insist on a strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any

subsequent breach or default in the terms, covenants, and conditions in this Lease. This Lease may not be changed, modified, or discharged orally.

20. Notices. All notices required under this Lease shall be in writing and shall be deemed to be given if either delivered personally or mailed by certified or registered mail to Landlord or to Tenant at their respective addresses set forth in this Lease or to any other address that either party furnishes in writing during the term of this Lease.
21. Quiet Enjoyment. Landlord covenants and agrees with Tenant and its successors and assigns that, upon Tenant's paying the rent and observing and performing all the terms, covenants, and conditions on Tenant's part to be performed and observed, Tenant may peaceably and quietly hold, occupy, possess, and enjoy the Premises for the full term of this Lease.
22. Subordination to Mortgage. Any mortgage now or later placed upon any property of which the Premises are a part shall be deemed to be prior in time and senior to the rights of Tenant under this Lease. Tenant subordinates all of its interest in the leasehold estate created by this Lease to the lien of any mortgage of Landlord. Tenant shall, at Landlord's request, sign any additional documents necessary to indicate this subordination.

Notwithstanding the foregoing, Tenant's possession of the Premises under this Lease shall not be disturbed by any mortgagee, trustee under a trust deed, owner, or holder of a note secured by a mortgage or trust deed now existing or later placed on the Premises, unless Tenant breaches any of the provisions of this Lease and the lease term of Tenant's right to possession is lawfully terminated in accordance with the provisions of this Lease.

23. Landlord Default. In the event Landlord shall fail to perform any obligation, covenant or breach any representative or warranty hereunder which remains uncured after written notice thereof to Landlord and a reasonable time to cure, in addition to any other remedy available hereunder at law or otherwise, Tenant may, but shall not be obligated to, elect to perform such act and/or cure such breach. Any and all sums which Tenant expends in performing such act and/or curing such breach shall be paid to Tenant by Landlord within 30 days of demand following completion of work. If not so paid, Tenant shall be entitled to set off against Tenant's next annual rental obligation for rent or additional rent. Tenant's sole remedy for Landlord's default shall be that any and all capital repairs made by Tenant following Landlord's failure to effect same as provided herein, shall be reimbursed from the Fund referenced in Section 4 above.
24. Changes by Landlord. Landlord reserves the absolute right at any time and from time to time to make changes or revisions in the Building, parking lot, driveways, signs, landscaping, and sidewalks, including additions to, subtractions from, or rearrangements of the improvements, provided that the changes do not materially

alter the use of the Premises. The Tenant will obtain written approval from the Landlord for any capital improvement.

25. Holding Over . If Tenant remains in possession of the Premises after the expiration or termination of the Lease and without signing a new lease, it shall be deemed to be occupying the Premises as a tenant from month to month. Rent will be calculated as a proportion of the agreed upon amounts referenced in section 3 and 4, subject to all the conditions, provisions, and obligations of this Lease insofar as it can be applicable to a month-to-month tenancy, cancelable by either party upon seven days' written notice to the other.
26. Recording . Tenant shall not record this Lease without the written consent of Landlord; however, upon the request of either party, the other party shall join in signing a memorandum or so-called "short form" of this Lease for the purpose of recordation. The memorandum or short form of this Lease shall describe the parties, the Premises, and the term of this Lease, and shall incorporate this Lease by reference.
27. Captions and Headings . The captions and headings used in this Lease are intended only for convenience and are not to be used in construing this Lease.
28. Applicable Law . This Lease shall be construed under the laws of the State of Michigan. If any provision of this Lease or portions of this Lease or their application to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.
29. Successors . This Lease and its covenants and conditions shall inure to the benefit of and be binding on Landlord and its successors and assigns and shall be binding on Tenant and permitted assigns of Tenant.
30. No Third Party Beneficiary . Nothing in this Agreement shall be intended to confer third party beneficiary status or rights, pursuant to MCL 600.1405 or under the common law, to any person or entity that is not a party to this Agreement.
31. No Partnership . Any intention to create a joint venture or partnership between the parties is expressly disclaimed.
32. Recovery by Tenant . Tenant agrees to look solely to the interest of Landlord in the land and improvements on which the Premises are situated and/or the Fund to satisfy any judgment against Landlord as a result of any breach by Landlord of its obligations under this Lease. No other property of Landlord shall be subject to levy or execution as a result of any claim by Tenant against Landlord arising out of the relationship created by this Lease.

33. Entire Agreement. This Lease contains the entire agreement of the parties with respect to its subject matter, and this Lease may not be amended or modified except by a written instrument executed by the parties to this Lease.
34. Effective Date. Landlord and Tenant have signed this Lease and it shall be effective on the date listed at the beginning of this agreement.

**FOR CITY OF ANN ARBOR,
LANDLORD**

By: _____
John Hieftje, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

By: _____
Steven D. Powers, City Administrator

By: _____
Sumedh Bahl, Community Service Area Administrator

Approved as to Form and Content:

By: _____
Stephen K. Postema, City Attorney

**FOR PUBLIC SCHOOLS FOR THE CITY OF ANN ARBOR,
TENANT**

By: _____
Jeanice Kerr Swift, Superintendent

Exhibit A—Diagram of Eberbach Cultural Arts Building

Exhibit B—Legal Description of Premises

Exhibit C—Diagram of Premises

Exhibit D—Inspection and Maintenance Schedule

Exhibit A
 Diagram of Eberbach Cultural Arts Center

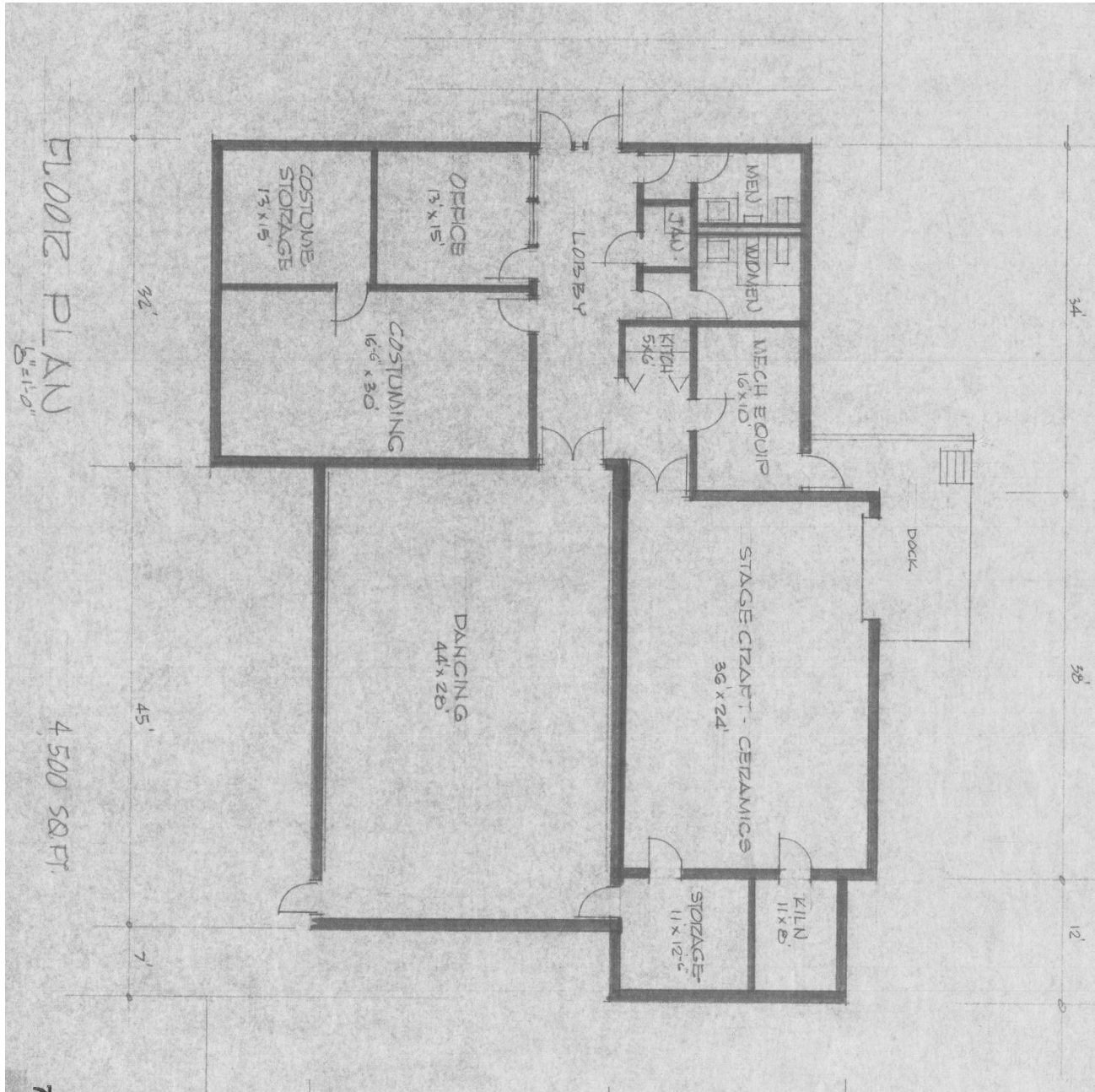


Exhibit B
Legal Description of Premises

Lots 50, 51, 52, 53, 54, 55 and 56, and a triangle in Lot 74 formed by an extension of the line between Lots 57 and 58 to Woodlawn Avenue, all in the Eberbach Addition, excepting and reserving so much and such part of Lot 50 as lies on the Southwesterly side of the said extension of the line between said Lots 57 and 58, according to the recorded plat of said addition.

Subject to all applicable building and use restrictions and easements and restrictions of record.

Exhibit C Diagram of Premises

Eberbach Cultural Arts Bldg



Exhibit D
Inspection and Maintenance Schedule