

OCCUPANCY AGREEMENT

THIS OCCUPANCY AGREEMENT (this "Occupancy Agreement") is made and entered into as of August ___, 2010 by and between **ATLANTA LANDMARKS, INC.**, a Georgia corporation ("Theatre") and **JOE G. PATTEN**, a resident of Fulton County, Georgia ("Resident").

WITNESSETH:

WHEREAS, Theatre and Resident entered into that certain Indenture of Lease dated as of December 28, 1979; and

WHEREAS, Theatre and Resident have terminated said Indenture of Lease effective as of the date hereof (as terminated, the "Terminated Lease"); and

WHEREAS, Theatre and Resident have determined to enter into an agreement with respect to the terms of occupancy of the Apartment Space (as hereinafter defined) by Resident, which Apartment Space is located within (but accessible from outside of) the Fox Theatre (the "Theatre Property"), in Atlanta, Fulton County, Georgia.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by each party hereto to the other, the receipt and sufficiency of which are hereby acknowledged, Theatre and Resident hereby agree as follows:

1. Apartment Space. Theatre leases to Resident, and Resident leases from Theatre, that certain apartment space described in **Exhibit A** attached hereto and made a part hereof (together with all lighting fixtures, all electrical, mechanical, plumbing, air-conditioning, and any other systems or fixtures as are attached thereto, and used only for the use of such apartment space, being hereinafter collectively referred to as the "Apartment Space"), on the terms and conditions herein set forth.

2. Term (Tenancy at Will). There is no stipulated term of this Occupancy Agreement (or, effectively, the term of this Occupancy Agreement is sixty (60) days, as set forth below), as it is the intent of Resident and Theatre to create a "tenancy at will" under the laws of the State of Georgia, terminable by each of Resident and Theatre as set forth below. Accordingly, each of Resident or Theatre may terminate this Occupancy Agreement, and the occupancy rights of Resident hereunder, by written notice to the other, in which event this Occupancy Agreement, and the occupancy rights of Resident hereunder, shall terminate on that date that is (a) in the event of a written notice of termination from Resident to Theatre ("Resident's Termination Right"), thirty (30) days after the date of such written notice of termination from Resident, or (b) in the event of a written notice of termination from Theatre to Resident ("Theatre's Termination Right"), sixty (60) days after the date of such written notice of termination from Theatre. Effectively, Resident therefore, as a "tenant at will", has a sixty (60) day term. Theatre acknowledges and agrees that Resident may exercise Resident's Termination Right to terminate this Occupancy Agreement by such written notice at any time, for any reason

or for no reason; Resident acknowledges and agrees that Theatre may exercise Theatre's Termination Right to terminate this Occupancy Agreement by such written notice at any time, for any reason or for no reason.

3. **Rent.** The rent for the term of this Occupancy Agreement has been paid in advance in full by Resident to Theatre, this Occupancy Agreement having been granted, in accordance with the terms hereof, for good and valid consideration. Such payment of rent is intended to be, and shall be, completely net rent to Theatre, and, except as set forth in Section 5 and Section 7, Theatre during the term of this Occupancy Agreement shall have no cost, obligation, responsibility or liability whatsoever for repairing, maintaining or operating the Apartment Space or payment of taxes or utilities with respect thereto. Except for those utilities to be furnished by Theatre as hereinafter provided, Resident shall, during the term of this Occupancy Agreement, pay all utility bills including, but not limited to, bills for water, sewer, electricity, gas, telephone, cable television and similar services. In case of any default by Resident in the payment of any taxes, or the payment of premiums of insurance, or the payment of any other amounts provided by this Occupancy Agreement to be paid by Resident or in procuring insurance as provided in this Occupancy Agreement, Theatre may, on behalf of Resident, make such payment or payments or procure any such insurance, and Resident covenants thereupon on demand to reimburse and pay Theatre any amount reasonably so paid or expended, which obligation to reimburse and pay shall survive any termination of this Occupancy Agreement. Resident authorizes Theatre to offset any amounts owed to Theatre hereunder from any amount owed by Theatre to Resident under any other agreement. Any amounts payable hereunder by Resident to Theatre and not paid when due shall bear interest at the rate of Nine percent (9%) per annum. If any sums herein stipulated to be paid by Resident are collected by suit or upon demand of any attorney, Resident shall pay reasonable attorney's fees.

4. **Use.** The Apartment Space shall be used by Resident for residential purposes and for no other purposes and shall be occupied only by Resident, and no other person, except only with the prior written consent of Theatre (which shall not be unreasonably withheld with respect to occupancy by a blood relative of Resident over the age of twenty one). The Apartment Space shall not be used in violation of any restrictions on the use of the Apartment Space, whether pursuant to zoning laws or the limitations under any deeds; nor shall the Apartment Space be used in violation of any laws, ordinances or regulations of any governmental body, nor so as to create a nuisance, nor for any disorderly or unlawful purpose whatsoever; nor shall the Apartment Space be used in any manner which will interfere with Theatre's use of adjacent and other areas of the Theatre Property. Resident shall place no signs, placards or other advertisements on any exterior surface of the Apartment Space or on the windows of the Apartment Space. Resident accepts the Apartment Space in its present condition and as suited for his proposed use thereof; Resident also accepts the Apartment Space with knowledge of the activities carried on in adjacent and other areas of the Theatre Property and acknowledges and agrees that he shall have no complaint or claim against Theatre or anyone else on account thereof. In addition:

- (a) Resident will not permit any employee or former employee of Theatre or their immediate family members, nor allow any other person to permit any employee

or former employee of Theatre or their immediate family members, to enter or otherwise use the Apartment Space at any time or for any purpose without Theatre's express prior written consent.

_____ Resident's Initials (Acknowledgement)

- (b) Resident acknowledges that the Apartment Space is accessible only as a "walk up" space, requiring a climb of several dozen steps from street level, and that no mechanical elevator (other than certain existing elevators currently located within the Theatre that are available for Resident's personal use when the Theatre is open and accessible and subject to Theatre's right to regulate the use thereof at any time), escalator or other device exists to provide personal or material access to the Apartment Space, and that Theatre shall not consent to any installation thereof, now, or in the future. Theatre retains the right to regulate the access of Resident, and of any invitees of Resident (including any permitted occupants, if applicable), as Theatre may determine.

_____ Resident's Initials (Acknowledgement)

- (c) Resident acknowledges that employees of the Theatre, on account of their appreciation for the past service of Resident for the benefit of the Theatre Property, have from time to time during the term of the Terminated Lease, contacted Resident by telephone and/or visited the Apartment Space in order to inquire and confirm as to the welfare of Resident, as Resident has suffered from at least one recent medical condition of note (namely, a recent stroke). However, Resident, and counsel to Resident after consultation with Resident and with Resident's friends and family, have advised Theatre that Resident neither expects nor requires any assistance from the Theatre or the staff of the Theatre, not now, and not in the future, and if Resident should require any assistance at any time, Resident hereby advises that Resident can and shall make such arrangements for Resident and neither requests nor desires any assistance from the Theatre or the staff of the Theatre.

_____ Resident's Initials (Acknowledgement)

- (d) Theatre has advised Resident that, (i) in Theatre's opinion, the Apartment Space is not an appropriate venue for medical or personal care assistance of the nature of "assisted living", (ii) in Theatre's opinion, if Resident should require medical or personal care assistance of the nature of "assisted living", such assistance should be provided in a facility that can provide the appropriate level of care, without limiting any other terms of this Occupancy Agreement, and (iii) in Theatre's opinion, Resident's recent medical or personal care assistance away from the Apartment Space appeared to have beneficial effects on the health and welfare of Resident. Accordingly, and while Resident may or may not agree with all of the foregoing opinions of Theatre, Resident does agree with Theatre that if Resident should require medical or personal care assistance of the nature of "assisted living", whether such assistance is to be provided by a family member or other provider, Resident shall make arrangements for Resident to enter an "assisted

living” or other appropriate facility for the care of Resident promptly after Resident determines that such care is necessary, but not later than a maximum of 30 days after such determination. In the event that Resident enters into an “assisted living” or other appropriate facility for the care of Resident, (y) if consistent with the medical or personal care assistance of the nature of “assisted living” being received, Resident shall have the right to return to visit the Apartment Space with appropriate assistance on a temporary basis, but not on an overnight basis unless and until the circumstance in the following clause (z) occurs, and (z) Resident shall have the right to return to overnight occupancy in the Apartment Space in accordance with the terms of this Occupancy Agreement when Resident no longer requires medical or personal care assistance of the nature of “assisted living”. The foregoing shall not limit any other terms of this Occupancy Agreement, including, but not limited to, Resident’s Termination Right or Theatre’s Termination Right.

_____Resident’s Initials (Acknowledgement)

- (e) Resident will not permit any person to have a set of keys to the Apartment Space without Theatre’s express prior written consent. Resident represents and warrants to Theatre that the following individuals have been provided one or more keys to the Apartment Space or to the Theatre Property by or on behalf of Resident, as invitees of Resident as the holder of copies of keys to the Apartment Space (and not otherwise): _____. In order for this Occupancy Agreement to become effective, each of such parties must join in this Occupancy Agreement to acknowledge and agree to the restrictions on use set forth in this Section 4, which are binding on Resident and such invitees of Resident; such reference and such joinder does not authorize any such party to any rights of occupancy of the Apartment Space, as any such consent must be granted by Theatre (and Theatre has granted no such consent). Resident is prohibited from adding locks, changing or in any way altering locks installed on the doors of Apartment Space without prior written permission of Theatre. Resident acknowledges and agrees that Theatre reserves the right to rekey or change the lock and key arrangement of the Apartment Space and/or the Theatre Property to its satisfaction for security, provided that if Theatre rekeys or changes the lock and key arrangement of the Apartment Space, Theatre shall immediately provide Resident with the applicable replacement key or keys.

_____Resident’s Initials (Acknowledgement)

5. Repairs. Resident acknowledges that he has inspected the Apartment Space and accepts the condition as is, where is and with all faults. Resident shall at his expense maintain the Apartment Space in a good state of repair during the term of this Occupancy Agreement except for (a) normal wear and tear, casualty and condemnation; and (b) maintenance and repair of the roof (including domes) of the Theatre Property, the foundations of the Theatre Property, the exterior walls of the Theatre Property and the structural members of the Theatre Property, the maintenance and repair of all of which shall be the sole obligation of Theatre but only to the extent that such maintenance and repair affect the safety and tenantability of the Apartment Space. Should Theatre fail to make those repairs required of it hereunder, Resident may, but

shall not be obligated to, make such repairs at Resident's expense, but only after delivery of written notice to Theatre, and Theatre's failure to commence such repairs within sixty (60) days after such written notice, if such repairs are necessary. If Resident believes that Resident requires the right to enter other parts of the Theatre Property in order to carry out Resident's maintenance and repair obligations hereunder, Resident may request such entry, which entry shall not be unreasonably withheld with respect to necessary repairs.

6. **Utilities.** Theatre shall, during the term of this Occupancy Agreement, provide from Theatre's existing utility systems gas, cold and hot water, steam, electricity and sanitary sewer for the Apartment Space and the residential use thereof through the existing connections to each of said systems; provided, however, that electricity shall be separately metered for the Apartment Space by Georgia Power Company or its successors and Resident shall pay to such supplier the cost of such electricity for the Apartment Space. While Theatre may, if it is in the best interest of Theatre to do so, terminate or discontinue the gas and steam utility systems serving the Apartment Space, Theatre shall not terminate or discontinue any other of said utility systems or the furnishing of any other of said utilities unless an appropriate replacement therefor is provided by Theatre so that there is no unreasonable interruption in such utility services to the Apartment Space.

7. **Certain Personal Property.** At or prior to the termination of this Occupancy Agreement, Resident shall have the right to remove from the Apartment Space (a) all of Resident's personal property and (b) all fixtures, equipment and appliances which were the property of Resident when installed under the Terminated Lease or this Occupancy Agreement and which are not called for by the Plans and Specifications (as such term is defined in the Terminated Lease, which definition is incorporated herein by this reference); Resident's right of removal herein granted shall not be affected by the fact that said personal property, fixtures, equipment and appliances may be connected by wire or pipe to the utility systems of the Apartment Space, except that, as to any such personal property, fixtures, equipment and appliances, any such removal may only be effected by employees of, or contractors engaged by, Theatre. Resident shall, simultaneously with said removal, repair all damage to the Apartment Space caused by such removal.

7. **Insurance.** Resident shall at Resident's expense keep the Apartment Space insured to the full insurable value thereof (full replacement cost), under all-risks coverage insurance against loss or damage by fire or other casualty and extended coverages. Resident shall also maintain general liability insurance against liability occasioned by any accident, injury (including death) or damage suffered or occurring on or about the Apartment Space by reason of Resident's use and occupancy of the Apartment Space, with minimum limits of \$1,000,000.00. All insurance maintained by Resident pursuant to this Section 7 shall provide that (i) no cancellation, material change or reduction thereof shall be effective until at least fifteen (15) days after written notice thereof is given to Theatre, (ii) the rights of the insured(s) to receive and collect the proceeds thereof shall not be diminished because of any additional insurance carried by Resident on its own account, (iii) all losses shall be payable notwithstanding any act or negligence of Theatre or Resident which might, absent such agreement, result in a forfeiture of all or part of such insurance payment and notwithstanding the occupation of the Apartment Space for purposes more hazardous than permitted by the terms of such policy; (iv) be written

with insurance companies authorized to do business in Georgia which have a Best's rating of A- /VIII or better; and (v) be written on an occurrence basis and endorsed to name Theatre and Theatre's mortgagee, if any, as additional insureds. Resident shall also maintain insurance at Resident's expense for Resident's personal property in an amount satisfactory to Resident. Theatre shall not be liable for any damage to Resident's personal property, unless such damage is caused by Theatre's gross negligence or willful misconduct. Resident for himself and his family waives all exemptions or benefits under the homestead laws of Georgia.

8. No Sublet; No Assignment. Resident may not sublet the Apartment Space or assign this Occupancy Agreement or any rights herein. This Occupancy Agreement shall create the relationship of landlord and tenant under a "tenancy at will" between the parties hereto, and no estate shall pass out of Theatre. Resident has only a usufruct under Georgia law not subject to levy and sale.

9. Theatre's Right of Access. Theatre shall have the right to access to the Apartment Space for inspection, repairs and maintenance during reasonable hours. In the case of emergency, notwithstanding any other term hereof to the contrary, Theatre may enter at any time to protect life and prevent damage to the Apartment Space.

10. Default. Without limiting the right of Theatre to terminate this Occupancy Agreement pursuant to Theatre's Termination Right, if Resident defaults under any term, condition or provision of this Occupancy Agreement, including, but not limited to, failure to reimburse Theatre for any damages, repairs or costs when due, then, if any such default continues for ten (10) calendar days after Theatre delivers written notice of said default to Resident, Theatre may, at his option, Theatre shall have the option to terminate this Occupancy Agreement by written notice to the Resident or, without terminating this Occupancy Agreement, to enter upon and take possession of the Apartment Space, removing all persons and Apartment Space therefrom.

11. Attorney's Fees and Costs Of Collection. Whenever any sums due hereunder are collected by law, or by attorney at law to prosecute such an action, then both parties agree that the prevailing party will be entitled to the payment of his reasonable attorney's fees, plus all costs of collection.

12. Indemnification. Resident releases Theatre from Liability for, and agrees to indemnify Theatre against all losses incurred by Theatre as a result of Resident's failure to fulfill any condition of this Occupancy Agreement; any damage or injury happening in or about the Apartment Space to Resident or Resident's invitees or licensees or such persons' property, except where such damage or injury is due to gross negligence or willful misconduct of Theatre; Resident's failure to comply with any requirements imposed by any governmental authority; and any judgment, lien or other encumbrance filed against the Apartment Space as a result of Resident's action.

13. Notice. Any notices or other communications under this Occupancy Agreement must be in writing, and shall be deemed duly given or made at the time and on the date when received by facsimile or by e-mail transmittal of pdf files or similar electronic means or when

personally delivered as shown on a receipt therefor (which shall include delivery by a nationally recognized overnight delivery service) to the address for each party set forth below. Any party, by written notice to the other in the manner herein provided, may designate an address different from that set forth below.

If to Resident:

Attention: _____
Telephone No.: _____
Telecopy No.: _____
Email Address: _____

with a copy to:

Attention: _____
Telephone No.: _____
Telecopy No.: _____
Email Address: _____

If to Theatre:

Atlanta Landmarks, Inc.
c/o Fox Theatre
660 Peachtree Street, N.E.
Atlanta, Georgia 30308
Attention: _____
Telephone No.: _____
Telecopy No.: _____
Email Address: _____

with a copy to:

Attention: _____
Telephone No.: _____
Telecopy No.: _____
Email Address: _____

14. TIME IS OF THE ESSENCE. Time is of the essence of this Occupancy Agreement. All references to any notice required to be given or date for performance of obligations shall be strictly construed.

15. No Waiver. Any failure of Theatre to seek redress for the violation of, or to insist upon, the strict and prompt performance of any covenants or conditions of this Occupancy Agreement shall not operate as a waiver of any such violation or of Theatre's right to insist on

prompt compliance in the future of such covenant or condition, and shall not prevent a subsequent action by Theatre for any such violation. Neither this Occupancy Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

15. Headings. All headings and sub-headings employed within this Occupancy Agreement are inserted only for convenience and ease of reference and are not be considered in the construction or interpretation of any Provision of this Occupancy Agreement.

16. Entire Agreement. This Occupancy Agreement and any attached addenda constitute the entire agreement between the parties and all prior agreements, understandings, representations and statements, oral or written, including, but not limited to, the Terminated Lease, are of no further force or effect; provided, however, that nothing herein shall have the effect of terminating, altering, amending or modifying that certain Separation Agreement dated as of July 23, 2001 by and between Resident and Theatre (the "Separation Agreement"), except only that subsections 4(a) and 4(b) have been incorporated herein and, as set forth in the Separation Agreement, are of no further force or effect (but Section 4(c) and all other terms of the Separation Agreement remain in full force and effect in accordance with their terms).

IN WITNESS WHEREOF, each of Theatre and Resident has executed and delivered this Occupancy Agreement under seal as of the date and year above written.

THEATRE:

ATLANTA LANDMARKS, INC., a Georgia corporation

Reviewed and Approved by:

By: _____
Name: _____
Title: _____

Counsel to Theatre

(Corporate Seal)

RESIDENT:

JOE G. PATTEN, a resident of Fulton County, Georgia

Reviewed and Approved by:

Counsel to Resident

JOINDER

The undersigned executes this Joinder to the within Occupancy Agreement as an individual named in Section 4(e) of the within Occupancy Agreement to acknowledge and agree to the restrictions on use by the Resident as set forth in Section 4 of the within Occupancy Agreement, which are binding on Resident and the undersigned, as invitees of Resident as the holder of copies of keys to the Apartment Space.

IN WITNESS WHEREOF, the undersigned has executed this Joinder under seal as of August ____, 2010.

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

EXHIBIT "A"

DESCRIPTION OF THE "LEASED SPACE"

That portion of the Fox Theatre Building (which Building is hereinafter described) which lies south of, is now entered through and (as to the Main Level of the Leased Space) is on approximately the same level with (although slightly above), the Grand Salon of the Fox Theatre Building, which portion includes: (i) all of the level (the "Main Level") which is identified in attached drawing Exhibit "A-1" as containing the "Shrine Office", the "Recorder's Office" and the "Committee Room", as well as the two bathrooms adjacent thereto; (ii) all of the level (the "Upper Level") which is identified in attached drawing Exhibit "A-2" as containing, on three different levels, three separate "File Rooms" and stairways connecting said three levels together with related areas reached from the Upper Level; (iii) the stairway which connects the Main Level with the Upper Level and the related landings; (iv) the stairway, stairwell, landing, lobby and entrance areas which lie between the south wall of the Grand Salon at its southeast corner on the one hand, and, on the other, Ponce de Leon Avenue; said portion is shown in said Exhibit "A-1" and, as well, in Exhibits "A-3" and "A-4" attached hereto; provided, however, that the Leased Space contains no right of access to the Grand Salon itself; and provided further, that the part of the Leased Space described in this item (iv) is subject to an easement reserved by Theatre (a) for use of said part as an emergency and fire exit for the Grand Salon and other areas of the Fox Theatre Building and (b) for compliance with laws, ordinances and regulations relating to the maintenance of a fire and emergency exit in, over and through said part; and (v) an easement for access, and for ingress and egress between said Upper Level of the Leased Space and Ponce de Leon Avenue in, over, across and through the interior fire escape stairway lying to the west of the Leased Space and extending downward to Ponce de Leon Avenue from approximately the level of the Upper Level; the easement area is designated in blue in Exhibits "A-2" (opposite the arrow and the word "access") as well as "A-1", "A-3" and "A-4".

Said Exhibits "A-1" through "A-4" inclusive are incorporated herein by reference and made a part hereof.

The outer extremities of the Leased Space (other than the easement designated in blue) are marked in red on Exhibits "A-1" through "A-4".

The Theatre Property (as referred to above and in this Occupancy Agreement) is located in Land Lot 49 of the 14th District of Fulton County, Georgia and is more particularly described in Limited Warranty Deed to Theatre dated June 25, 1975, and recorded in Deed Book 6293, at Page 477, Fulton County, Georgia records.