

LICENSE AND ACCESS AGREEMENT

THIS LICENSE AND ACCESS AGREEMENT (this “License”) is made and entered into as of the 1st day of May 2019, by and between the TOWN OF FAIRFIELD, a Connecticut municipality, with a mailing address at 725 Old Post Road, Fairfield, CT 06824 (“Licensor”), and FAIRFIELD COMMUNITY THEATER LLC, a Connecticut limited liability company having an address at 1189 Post Road, Fairfield, CT 06824 (the “Licensee”).

WHEREAS, Licensee is or will be the owner of a certain parcel of land, with the buildings and improvements thereon, known as 1410 Post Road, Fairfield, Connecticut, which building is situated on the corner of The Post Road (U.S. Route 1) and Unquowa Road; and

WHEREAS, Licensor is the owner of a certain parcel of land abutting Licensee’s building along Unquowa Road, which parcel is shown and designated on a certain Map entitled, _____ which map is attached hereto as “Exhibit A” and made a part hereof (the “Property”); and

WHEREAS, Licensee desires to obtain a license from Licensor to utilize the Property for the uses and purposes set forth in this agreement (the “Activities”); and

WHEREAS, Licensor deems it in its best interest to grant said License, and is willing to grant such License, provided the parameters and conditions for performance of the Activities shall be in accordance with the provisions hereof.

NOW, THEREFORE, in consideration of the above-stated premises, the mutual promises and covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Licensor hereby grants to Licensee this License to enter upon the Property for the purpose of performing the Activities on the following terms and conditions:

1. This License shall take effect as of the date Licensee takes title to 1410 Post Road, Fairfield, Connecticut (the “Effective Date”) and shall continue until a date which is fifty (50) years from the Effective Date, (the “Termination Date”), unless sooner terminated in accordance with the provisions contained in this License. At all times Licensee (and its contractors, consultants, agents, employees and authorized representatives) shall have unrestricted access to and across the Property, and Licensee’s use of the Property pursuant to this License shall be allowed twenty-four (24) hours per day each day, so long as this License remains in effect.

The following Activities shall be permitted on the Property:

- a. Creation by Licensee of a garden area.
- b. Installation of sidewalk paving stones inscribed with the names of donors.
- c. Installation of outdoor lighting fixtures.

Prior to performing any work on the Property, Licensee shall obtain, at Licensee’s expense, all permits and approvals required by such governmental bodies having jurisdiction over

the Property and the work to be performed thereon. Licensor shall cooperate with Licensee in filing applications for all required permits. All work performed on the Property, and the use of the Property by Licensee, shall be in compliance with all applicable Federal, State of Connecticut and Town of Fairfield laws, codes, and other requirements.

2. Licensee shall be responsible, at Licensees sole cost and expense for all upkeep and maintenance of the Property, including, but not limited to, snow and ice removal. Licensee agrees that with regard to the Property, it shall comply with the provisions of, and be responsible for, breaches of any and all obligations imposed upon property owners by the provisions of Section 91-2 of the Code of Ordinances of the Town of Fairfield, as the same may be amended from time to time.

3. Except as otherwise provided in this License, Licensee accepts the condition of the Property on an "AS IS" basis without any obligation on the part of Licensor to prepare the Property prior to Licensee's entering and performing the Activities as permitted hereunder. It is expressly understood that no representations have been made by Licensor as to the safety of the Property and that Licensee agrees and, except as otherwise provided herein, hereby does accept all risk of loss, damage, or injury to persons or property which is caused by Licensee's entry and use of the Property pursuant to this License.

4. Licensor represents that it has the full right and authority to grant this License to Licensee in accordance with the terms hereof; all action necessary to authorize the execution of this License has been taken; the individual executing and delivering this License on behalf of the Licensor has been authorized to do so; and such execution and delivery shall bind the Licensor. Licensee shall be responsible to obtain all required approvals and permits in connection with the Activities.

5. Without limiting its liability under this license, Licensee shall provide and maintain in full force and effect at all times during the term of this license, minimum scope and limits of insurance coverage as specified in Exhibit B: Town of Fairfield Insurance Requirements. Licensee shall provide to Licensor such documentation of insurance coverage as Licensor may reasonably require. Notices are to be delivered in accordance to each policy provisions.

6. Licensee acknowledges and agrees that Licensor, its employees and contractors, and members of the public shall have the right to enter upon the Property at all times during the term of this License, provided that such access shall in no event interfere with Licensee's use and enjoyment of the rights and privileges granted herein.

7. Licensee agrees to and does hereby indemnify and hold Licensor harmless from and against any and all third-party claims, demands, suits, losses or liabilities (including

reasonable attorneys' fees and costs of defense) arising from injuries to person or damage to property to the extent the same are proximately caused by the Activities performed by Licensee and/or Licensee's presence upon the Property pursuant to this License.

8. Notices and communications regarding this License shall be addressed and delivered as set forth below. In order to facilitate communications, the Licensor and the Licensee each appoint a representative to be the person to whom all and concerns regarding this License shall be directed. If a party elects to replace its representative, such change shall be communicated and confirmed in writing.

Representative for the Licensor: First Selectman
Town of Fairfield
Sullivan Independence Hall 725 Old Post Road Fairfield, CT 06824
203-256-3030
m.tetreau@fairfieldct.org

Representative for the Licensee:

Fairfield Community Theater LLC
c/o Kleban Properties LLC
1189 Post Road, Suite 3B
Fairfield, CT 06824
Attn: Kenneth M. Kleban
203-247-0732
kenkleban@gmail.com

9. This License shall be governed by and construed in accordance with the internal laws of the State of Connecticut.

10. No terms, conditions, prior courses of dealing, courses of performance, usages of trade, understandings, agreements or other documents purporting to modify, vary, supplement or explain any provision of this License shall be effective and none shall be binding unless in writing, signed by duly authorized representatives of both parties, and specifically stating that such writing is intended to modify this License.

11. In the event Licensor determines that it needs to widen Unquowa Road, and thereby reduce the area of the Property, Licensee hereby relinquishes any and all claims it may have against Licensor for damages resulting from any diminishment in the area of the Property.

12. This License may be executed by each of the parties hereto in separate counterparts, each of which, when taken together, shall constitute one and the same License. Facsimile or scanned transmission of any signed original document, and retransmission of any signed facsimile or scanned transmission, shall be the same as delivery of an original. At the request of any party, the parties shall confirm facsimile or scan transmitted signatures by signing an original document.

13. In the event the Licensee determines in its good faith discretion that this License is no longer necessary or desirable, the Licensee shall have the right to terminate this License upon thirty (30) days' written notice to Licensor. In such event Licensee shall, at the discretion of Licensor, remove all items installed by Licensee and restore the premises to the condition prior to the granting of this license.

14. This License shall be binding upon the parties hereto, and the respective successors, assigns, heirs, and legal representatives of the parties hereto. Prior to any transfer, sale, or lease of the Building abutting the Property by the Licensee to any other party, Licensee shall notify Licensor to ensure that such transferee, buyer or lessee acknowledges and accepts an assignment of this License.

IN WITNESS WHEREOF, the parties hereto have hereunto set their respective hands and seals as of the Effective Date.

LICENSOR:

LICENSEE:

TOWN OF FAIRFIELD

FAIRFIELD COMMUNITY THEATER LLC

By: _____

By: _____

Name:

Name: Kenneth M. Kleban

Title:

Title: President

Hereunto Duly Authorized

Hereunto Duly Authorized

EXHIBIT A

(Map)

Exhibit: Town of Fairfield Insurance Requirements

Without limiting its liability under this License, the Company shall provide and maintain in full force and effect at all times during the term of this License, minimum scope and limits of insurance coverage as follows:

Worker's Compensation Insurance:

- In accordance with the requirements of the laws of the State of Connecticut.
- Five hundred thousand dollars (\$500,000) Employer Liability each accident
- Five hundred thousand dollars (\$500,000) Employer Liability each employee by disease
- Five hundred thousand dollars (\$500,000) Employer Liability policy limit coverage for disease

Commercial General Liability:

- Bodily Injury, Personal Injury, Property Damage, one million dollars (\$1,000,000) each occurrence, two million dollars (\$2,000,000) aggregate.

Automobile Liability:

- A combined single limit of one million dollars (\$1,000,000), including owned, hired and non-owned coverage and rider CA9948 or equivalent.

Excess Liability Insurance

- Five million dollars (\$5,000,000) each occurrence, five million dollars (\$5,000,000) aggregate. Such coverage must be follow form over Worker's Compensation, Commercial General Liability and Automobile Liability.

Pollution Liability:

- One million dollars (\$1,000,000) each occurrence, one million dollars (\$1,000,000) aggregate.

Acceptability of Insurers: The Company's policies shall be written by insurance companies licensed to do business in the State of Connecticut, with a A.M. Best rating of A- VIII or otherwise acceptable by the Licensor's Risk Manager.

Subcontractors: The Company shall require subcontractors to provide the same "minimum scope and limits of insurance" as required herein.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to, and approved by, the Licensor. All deductibles or self-insured retentions are the sole responsibility of the Company to pay and/or to indemnify. Under no circumstances will the Licensor be responsible for paying any deductible or self-insured retentions related to this License.

Notice of Cancellation or Non-renewal: Each insurance policy required shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after 30 days prior written notice by certified mail, return receipt requested, has been given to the Licensor, (provided ten (10) days' prior written notice shall be sufficient in the case of termination for nonpayment).

Waiver of Subrogation: A waiver of subrogation in favor of the Licensor is required on all policies.

Waiver/Estoppel: Neither approval by the Licensor nor failure to disapprove the insurance furnished by the Company shall relieve the Company of the Company's full responsibility to provide insurance as required under this License.

Company's Insurance Additional Remedy: Compliance with the insurance requirements of this License shall not limit the liability of the Company or its Sub-Contractors/Firms, employees or agents to the Licensor or others. Any remedy provided to the Licensor shall be in addition to, and not in lieu of, any other remedy available under this License or otherwise.

Certificate of Insurance: As evidence of the insurance coverage required by this License, the Company shall furnish Certificate(s) of Insurance to the Licensor's Risk Manager prior to the Company's use or access granted under this License. The Certificate(s) will specify all parties who are endorsed on the policy as Additional Insured (or Loss Payees). The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. Renewals of expiring certificates shall be filed thirty (30) days prior to expiration.

All insurance documents required should be mailed to Town of Fairfield, Chief Financial Officer, 725 Old Post Road, Fairfield, CT 06824 and Town of Fairfield, Risk Manager, 725 Old Post Road, Fairfield, CT 06824.

LEASE

This Agreement made as of the _____ day of June, 2019, by and between THE TOWN OF FAIRFIELD, care of Accounting Department, Independence Hall, Fairfield, Connecticut 06824 (hereinafter called "Lessor"), and FAIRFIELD COMMUNITY THEATER LLC, a Connecticut limited liability company with an office at 1418 Post Road, Fairfield, CT 06824 (hereinafter called "Lessee").

WITNESSETH:

1. Grant and Term, Rent.

(a) Grant. Lessor, for and in consideration of the covenants and agreements hereinafter set forth and the rent hereinafter reserved, has, and does hereby lease, unto the Lessee, the space located in the northwest corner of the Post Road and Unquowa Road owned by the Town of Fairfield comprising approximately 560 square feet and abutting the property known as 1418 Post Road, Fairfield, Connecticut, as shown on Exhibit "A" attached hereto and made a part hereof (hereinafter the "Demised Premises").

(b) Term. Options to Renew.

(i) The Initial Term of this lease shall commence July 1, 2019 and shall end June 30, 2039. all commencement and ending dates inclusive.

(ii) At the end of the initial term of this lease, and at the end of each succeeding Option Term, provided that Lessee is not in material default of any of the terms contained herein, this Lease shall automatically be renewed for three (3) successive ten (10) year terms. Said renewals shall be upon the same terms and conditions contained herein, and shall be upon the rent as hereinbelow provided. In the event Lessee does not wish to exercise any option term, Lessee shall give written notice of intent not to extend to Lessor at the address herein provided, not later than six (6) months prior to the expiration of a given term. In the event Lessee declines to extend for a particular term, the lease shall expire at the end of the then current term, Lessee shall vacate the Demised Premises as provided herein, and Lessee shall have no further rights to this Lease, or to the Demised Premises.

(c) Rent. The rent for said Demised Premises shall be, for the months May through October, 2019 ("Summer Term"), One Thousand Nine Hundred Fifty (\$1,950.00) Dollars per month and for the months November, 2019 through April, 2020 ("Winter Term"), Two Hundred Fifty (\$250.00) Dollars per month, without demand, setoff or deductions of any kind payable in advance on the first day of each month during the Term,

to and at the office of the Accounting Department, Independence Hall, Fairfield, Connecticut 06824 or at such other place or to such other person, firm or corporation as Lessor may from time to time designate in writing. Any rent payment that is not received within 10 days of the date it is due shall incur a late fee of \$25 per month for each month it remains unpaid in whole or in part.

(d) Escalations. Notwithstanding anything to the contrary contained in this lease, the rent for each year after the first year, including the rent for all option terms, shall be increase by Three (3%) percent over the rent for the preceeding years.

2. Purpose.

Lessee shall occupy the Demised Premises during the Summer Term for seasonal outdoor dining during regular business hours in connection with a restaurant which the Demised Premises abuts from time to time (the "Restaurant"). During the Winter Term there shall be no tables, chairs, heaters, or any other amenities, except that ashtrays may be provided. In addition, no food or drink may be consumed on the Demised Premises during the Winter Term. The foregoing notwithstanding, in the event Lessee obtains all necessary approvals from the Town of Fairfield, including but not limited to Zoning, Building Department and Health Department permits, Lessee may enclose the Demised Premises during the Winter Term for use as additional dining area.

3. Care of the Demised Premises.

(a) Lessee has examined the Demised Premises, and accepts them in their present condition and without any representations on the part of the Lessor or its agents as to the present or future condition of the Demised Premises. Lessee shall keep the Demised Premises in good condition and repair.

(b) Lessee shall quit and surrender the Demised Premises at the end of the Term in as good condition as the reasonable use thereof will permit. Lessee further agrees to keep the Demised Premises, as well as the sidewalks surrounding the Demised Premises, in a clean and sanitary condition and free from trash, inflammable material and other objectionable matter.

4. Negative Covenants.

(a) Lessee shall not make any alterations, installations, changes, replacements, additions, or improvements, structural or otherwise, in or to the Demised Premises or any part thereof, except as otherwise provided herein, without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Any alterations, installations, changes, replacements, additions, or improvements, structural or otherwise shall be in conformance with all statutes, rules and regulations of any Federal, State and

municipal government or authority and any permits, licenses or other approvals required in connection therewith shall be obtained at the sole cost and expense of Lessee.

(b) Lessee shall not install or operate on the Demised Premises any electrically operated equipment or other machinery, in violation of any applicable building code, fire code or other applicable law, if any.

5. Mechanic's Liens. In the event that any mechanics' lien for materials or labor is filed against the Demised Premises as a result of any alterations, installations, changes, replacements, additions or improvements made by Lessee, Lessee shall within thirty (30) days after notice from Lessor discharge or bond said lien. If Lessee fails to discharge or bond said lien within said thirty (30) day period, Lessor, at its option, may terminate this Lease and/or pay the said lien, without inquiring into the validity thereof, and Lessee shall forthwith reimburse Lessor the total expense incurred by Lessor in discharging the lien.

6. Right of Inspection and Repair. Lessee shall allow Lessor, upon twenty-four (24) hours notice, except in the case of emergency, to examine or inspect the Demised Premises or to protect the same or prevent damage or injury to the same.

7. Liability. All personal property of Lessee on the Demised Premises shall be at the sole risk of Lessee. Lessor shall not be responsible for the loss of or damage to property, or injury to persons, occurring on the Demised Premises, by reason of any existing or future condition, defect, matter or thing on the Demised Premises, or for the acts, omissions or negligence of other persons on the Demised Premises. Lessee shall indemnify and save Lessor harmless from all claims and liability for losses or damage to property, or injuries to persons occurring on the Demised Premises including reasonable attorney's fees.

8. Remedies. Except as otherwise provided herein, if Lessee shall fail to pay the Rent or any installment thereof as aforesaid at the time the same shall become due and payable, and if the same shall remain in default for ten (10) business days after written notice from Lessor to Lessee of such failure; or if Lessee shall violate or fail or neglect to keep and perform any of the covenants, conditions, and agreements contained in this Lease on the part of Lessee to be kept and performed, and if the same shall remain in default for ten (10) business days after written notice from Lessor to Lessee of such failure, then, and upon each and every such event and at all times thereafter, at option of Lessor, Lessee's right of possession shall thereupon cease and terminate and Lessor shall be entitled to possession of Demised Premises and to reenter the same without notice to quit or demand of rent or demand of possession, and Lessor or its agents shall have the right to and may enter the Demised Premises as the agent of Lessee, either by force or otherwise, without being liable for any prosecution or damages therefor, and all rights of Lessee to repossess the Demised Premises under this Lease shall be forfeited. Such reentry by Lessor shall not

operate to release Lessee from any rent to be paid or covenant to be performed hereunder during the Term of the Lease. Lessee agrees to pay, as additional rent, reasonable attorneys' fees and other reasonable expenses incurred by Lessor in enforcing any of the obligations under this Lease. No provision of this Lease shall be deemed to have been waived by Lessor unless such waiver shall be in writing signed by Lessor. No payment by Lessee or receipt by Lessor of a lesser amount than the monthly installments of Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such Rent or pursue any other remedy in this Lease provided.

9. Damage or Destruction.

(a) In the event of the destruction of the Demised Premises or the Restaurant by fire, explosion, the elements or otherwise during the Term, or previous thereto, or such partial destruction of the Demised Premises or the Restaurant as to render the Demised Premises or the Restaurant wholly untenable or unfit for occupancy, or should the Demised Premises or the Restaurant be so badly injured that the same cannot be repaired within ninety (90) days from the happening of such injury, then, in any such case, at Lessee's election, the Term hereby created shall cease and become null and void from the date of such damage and destruction, and the Lessee shall immediately surrender the Demised Premises and all Lessee's interest therein to Lessor, and shall pay Rent only to the time of such surrender, in which event Lessor may reenter and repossess the Demised Premises thus discharged from this Lease.

(b) If the Demised Premises or the are rendered untenable and unfit for occupancy but are repairable within ninety (90) days from the happening of said injury, or if Lessee shall elect not to terminate this Lease pursuant to Paragraph 9(a), above, Lessee may elect to repair the same with reasonable speed, and the Rent shall not accrue after said injury or while repairs are being made, but shall recommence immediately after said repairs shall be completed. In the event Lessee does not elect to repair the Demised Premises or the pursuant to this Paragraph 9(b), this Lease shall terminate pursuant to Paragraph 9(a) above.

(c) Lessee shall immediately notify Lessor in case of fire or other damage to the Demised Premises or the Restaurant . No compensation, or claim, or diminution of Rent (except as set forth above) will be allowed or paid by Lessee by reason of inconvenience, annoyance or injury to business arising from the necessity of repairing the Demised Premises or the Restaurant.

10. Condemnation.

(a) Lessee agrees that if the whole Demised Premises, or any substantial portion thereof which renders the Demised Premises untenable shall be taken or condemned for public or quasi public use or purpose by any competent authority, then at the option of either party, this Lease shall terminate from date of such taking or condemnation, and Lessee shall have no claim against Lessor for the value of any unexpired term of this Lease. In the event of a taking, Lessee shall not have any claim or rights to any portion of the amount that may be awarded as damages or paid as a result of any condemnation of the Demised Premises other than Lessee's right to recover moving expenses and an award for Lessee's business fixtures from the condemning authority (or Lessor if same be awarded Lessor) and all other rights of Lessee to damages, if any, are hereby assigned by Lessee to Lessor.

(b) If only a portion of the Demised Premises is taken by condemnation, and neither party has given notice that this Lease is terminated, then this Lease shall remain in full force and effect except that on the date such condemnation or taking is effected the Rent set forth in Paragraph 1 above shall be reduced by an amount that is in the same ratio to the Rent as the total number of square feet in the Demised Premises taken bears to the total number of square feet in the Demised Premises immediately prior to the Taking.

11. Notices. Any notice which under the terms of this Lease or under any statute must or may be given shall be in writing and shall be deemed to have been given when deposited in the United States mails and sent by overnight courier, registered mail, return receipt requested, postage prepaid, addressed to the respective addresses of the parties hereinafter given. Either party may designate by notice in writing a new or other address to which such notice or demand shall be given. Said notices shall be addressed as follows until otherwise designated in writing:

As to Lessor:

Accounting Department
Independence Hall
Fairfield, Connecticut 06824

With a copy to:

Stanton H. Lesser, Esq.
Town Attorney
One Eliot Place
Fairfield, CT 06824

As to Lessee:

Fairfield Community Theater LLC
c/o Kleban Properties LLC

1189 Post Road
Fairfield, CT 06824

With a copy to:

Stephan Grozinger, Esq.
249 Lyons Plain Road
Weston, CT 06883

12. Quiet Enjoyment. Upon Lessee paying the rent and observing and performing all the terms, covenants and conditions on Lessee's part to be observed and performed, Lessee may peaceably and quietly enjoy the Demised Premises free from any interference, molestation or acts of Lessor, or of anyone claiming by, through or under Lessor, subject, nevertheless, to the terms and conditions of this Lease and to any ground lease, underlying lease and mortgages.

13. Force Majeure. Neither party shall be liable or in default hereunder if such party is unable or fails to fulfill or is delayed in fulfilling any of its obligations hereunder, including, without limitation, any obligations hereunder, but excluding Lessee's obligations to pay Rent, by reason of fire or other casualty, strikes or labor troubles, governmental pre-emption in connection with a national emergency, shortage of supplies or materials, or by reason of any rule, order or regulation of any governmental authority, or by reason of the condition of supply and demand affected by war or other emergency, or any other cause beyond its control. Such inability or delay by either party in fulfilling any of its obligations hereunder shall not affect, impair or excuse the other party hereto from the performance of any of the terms, covenants, conditions, limitations, provisions or agreements hereunder on its part to be performed, nor result in any abatement of rents payable hereunder.

14. Indemnity and Insurance.

(a) Disclaimer of Liability: Lessor shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Lessee's construction, maintenance, repair, use, operation, condition or dismantling of the Demised Premises.

(b) Indemnification: Lessee shall, at its sole cost and expense, indemnify and hold harmless Lessor and all associated, affiliated, allied and subsidiary entities of Lessor, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of Lessee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Demised Premises or the Lessee's failure to comply with any federal, state or local statute, ordinance or regulation.

ii. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to Lessee, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Demised Premises, and, upon the written request of Lessor, Lessee shall cause such claim or lien covering Lessor's property to be discharged or bonded within thirty (30) days following such request.

iii. Lessee's obligation to indemnify Indemnitees under this Lease shall extend to claims, losses, and other matters covered hereunder that are caused or contributed to by the negligence of one or more Indemnitees.

(c) Assumption of Risk: Lessee undertakes and assumes for its officers, agents, affiliates, contractors and subcontractors and employees (collectively "Lessee" for the purpose of this section), all risk of dangerous conditions, if any, on or about the Demised Premises, and Lessee hereby agrees to indemnify and hold harmless the Indemnitees against and from any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any person (other than from Indemnitee's, gross negligence) arising out of the Lessee's installation, operation, maintenance, condition or use of the Demised Premises or Lessee's failure to comply with any federal, state or local statute, ordinance or regulation.

(d) Defense of Indemnitees: In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Lessee shall, upon notice from any of the Indemnitees, at Lessee's sole cost and expense, resist and defend the same with legal counsel mutually selected by Lessee and Lessor; provided however, that Lessee shall not admit liability in any such matter on behalf of the Indemnitees without the written consent of Lessor and provided

further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Lessee.

(e) Notice, Cooperation and Expenses: Lessor shall give Lessee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph. Nothing herein shall be deemed to prevent Lessor from cooperating with Lessee and participating in the defense of any litigation by Lessor's own counsel. Lessee shall pay all expenses incurred by Lessor in response to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by the Lessor's attorney, and the actual expenses of Lessor's agents, employees or expert witnesses, and disbursements and liabilities assumed by Lessor in connection with such suits, actions or proceedings but shall not include attorneys' fees for services that are unnecessarily duplicative of services provided Lessor by Lessee.

If Lessee requests Lessor to assist it in such defense then Lessee shall pay all expenses incurred by Lessor in response thereto, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the costs of any services rendered by the Lessor's attorney, and the actual expenses of Lessor's agents, employees or expert witnesses, and disbursements and liabilities assumed by Lessor in connection with such suits, actions or proceedings.

(f) Insurance: During the term of the Lease, Lessee shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

i. Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000) for each accident.

ii. Comprehensive commercial general liability insurance with minimum limits of One Million Dollars (\$1,000,000) as the combined single limit for each occurrence of bodily injury, personal injury and property damage and Two Million Dollars (\$2,000,000) in the aggregate.

iii. All policies other than those for Worker's Compensation shall be written on an occurrence and not on a claims made basis.

iv. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

(g) Named Insureds: All policies, except for worker's compensation policies, shall name Lessor and all associated, affiliated, allied and subsidiary entities of Lessor, now existing or hereafter created, and their respective officers, boards, commissions, employees, agents and contractors, as their respective interests may appear as additional insureds (herein referred to as the "Additional Insureds"). Each policy which is to be endorsed to add Additional Insureds hereunder, shall contain cross-liability wording, as follows:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

(h) Evidence of Insurance: Certificates of insurance for each insurance policy required to be obtained by Lessee in compliance with this paragraph, along with written evidence of payment of required premiums shall be filed and maintained with Lessor annually during the term of the Lease. Lessee shall immediately advise Lessor of any claim or litigation that may result in liability to Lessor.

(i) Cancellation of Policies of Insurance: All insurance policies maintained pursuant to this Lease shall contain the following endorsement:

"At least sixty (60) days prior written notice shall be given to Lessor by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the parties named in this paragraph of the Lease."

(j) Insurance Companies: All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Connecticut or surplus line carriers on the State of Connecticut Insurance Commissioner's approved list of companies qualified to do business in State of Connecticut. All insurance carriers and surplus line carriers shall be rated A+ or better by A.M. Best Company.

(k) Deductibles: All insurance policies may be written with deductibles, not to exceed \$50,000 unless approved in advance by Lessor. Lessee agrees to indemnify and save harmless Lessor, the Indemnitees and Additional Insureds from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Lease.

15. Assignment and Subletting. Lessee shall not voluntarily, involuntarily or by operation of law, assign, transfer, mortgage or otherwise encumber all or any part of Lessee's interest in this Lease or in the Demised Premises or sublet the whole or any part

of the Demised Premises without first obtaining in each and every instance the prior written consent of Lessor, and provided that in the event of any assignment or subletting, the assignee or sublettee shall also succeed to the possession and occupancy of the and provided said assignment or subletting is not in violation of any permit or approval required by federal, state or municipal law for the operation of the Demised Premises for the purpose set forth in Paragraph 3 above. The consent by Lessor to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. Payment of rentals due hereunder by any party other than the Lessee named herein shall not be deemed to act as a consent to the assignment of this Lease or the subletting of the whole or any part of the Demised Premises to such party nor relieve Lessee of its obligations to pay the rent provided for in this Lease. In the event Lessor consents to an assignment of the Lease, Lessee agrees to continue at all times to be bound by the provisions and responsible for the faithful performance of all terms contained in this Lease. Notwithstanding anything to the contrary contained herein, Lessor reserves the right, in Lessor's absolute discretion, to withhold consent to an assignment where the assignee intends to use the Demised Premises for any purpose other than dining area in conjunction with the Restaurant.

16. Successors and Assigns. All rights, obligations and liabilities herein given to or imposed upon the respective parties hereto shall extend to and bind the several and respective heirs, executors, administrators, successors and assigns of said parties.

17. Miscellaneous Provisions.

(a) The captions of the paragraphs of this Lease are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

(b) Printed parts of this Lease shall be as binding upon the parties hereto as the other parts hereof. Parts of this Lease which are written or typewritten shall have no greater force or effect than and shall control parts which are printed, but all parts shall be given equal effect.

(c) Any provision or provisions of this Lease which shall prove to be invalid, void or illegal shall in no way effect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

(d) This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same instrument. Facsimile or scanned transmission of any signed original document, and retransmission of any signed facsimile or scanned transmission, shall be the same as

delivery of an original. At the request of any party, the parties shall confirm facsimile or scan transmitted signatures by signing an original document.

(e) In the event Lessee determines in its good faith discretion that this Lease is no longer necessary or desirable, Lessee shall have the right to terminate this Lease upon thirty (30) days' written notice to Lessor. In such event Lessee shall, at the discretion of Lessor, remove all items installed by Lessee and restore the Demised Premises to the condition prior to the granting of this Lease.

(f) This Lease shall not be effective nor binding upon Lessor until it has been approved by the Fairfield Board of Selectmen and Representative Town Meeting.

[The balance of this page has been left intentionally blank.]

IN WITNESS WHEREOF, the parties have herunto set their hands and seals, as of the date first written above.

LESSOR:

THE TOWN OF FAIRFIELD

By: _____
Its First Selectman

FAIRFIELD COMMUNITY THEATER LLC

By: _____

Name: Kenneth M. Kleban
Its: President