

**CONSTRUCTION PROJECT MANAGEMENT,
FACILITY USE AND MANAGEMENT AGREEMENT**

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THIS CONSTRUCTION PROJECT MANAGEMENT, FACILITY USE AND MANAGEMENT AGREEMENT (hereinafter the "Agreement") is made as of this ____ day of April, 2009, by and between CINEMA DESIGNS GROUP, INC. (the "CDG"), a Massachusetts corporation having an address of 7 Central Street, South Easton, Massachusetts 02375, ("CDG") and AMERICAN SHAKESPEARE THEATRE, LLC, a Massachusetts limited liability company having an address of 7 Central Street, South Easton, Massachusetts 02375, ("AS,T") and the Town of Stratford, a municipality of the State of Connecticut with offices at 2725 Main Street in, Stratford, CT 06615 (the "Town"), acting herein by the Stratford Town Council, or any representative (hereinafter the "Town's Representative") designated by it.

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WITNESSETH:

WHEREAS, the Town is the owner of the property known as the Stratford Shakespeare Festival Theater (the "Theater") with a street address of 1880 Elm Street and 31 Shore Road in, Stratford, CT (the "Property"), by virtue of a deed from the State of Connecticut dated January 18, 2005 (the "Deed");

WHEREAS, the Deed contains certain restrictions on the use of the Property (the "Restrictions") related to 1) the reservation in perpetuity of not less than 20% of the Property as open space and 2) allowing access to the general public;

WHEREAS, the use and management of the Property under this Agreement shall be and are intended to be consistent with the Restrictions; and

WHEREAS, the Town desires to retain CDG to renovate the Theater and to retain AS,T to operate, maintain and manage the Theater and to stage live theatrical Productions, as defined herein, and Performances, as defined herein; and CDG and AS,T desire to provide such services upon the terms and subject to the conditions set forth in this Agreement.

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NOW THEREFORE, in consideration of the above-recitals which are incorporated by reference into this Agreement, for the mutual promises and covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties intending to be legally bound, agree as follows:

1. Facility Description. For the purposes of this Agreement, the term Facility shall be deemed to include any and all buildings located on the site, including but not limited to, the Theater, its stairs and balcony, the storage building a/k/a the garage building, and the administrative building known as the "White House" located at the Property, collectively the "Facility". Attached hereto as Exhibit "A" is a map of the Facility and the land surrounding or adjacent to the Facility owned by the Town and the parking lot. Said land and parking lot

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are hereinafter collectively referred to as the "Theater Grounds"). Both CDG and AST acknowledge that they have inspected the Facility and the Theater Grounds and agree to accept the Facility and the Theater Grounds in "AS IS" physical condition, without representations or warranties of any kind. The Town acknowledges that AST has indicated to it that it intends to use the White House, and possibly the storage building as residence facilities for Theater or artistic staff and/or that it may seek regulatory permission for use of the White House or another new structure to be constructed on the site as a restaurant facility (with full liquor privileges in any restaurant, in the Theater or on the grounds) at some point during the Term, and the Town hereby agrees to such use, subject to appropriate state and local regulatory approvals.

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2. Scope of Engagement.

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2.1 Relationship of the Parties. Both CDG and AST accept the relationship of trust and confidence established with the Town by this Agreement, and covenant with the Town to furnish reasonable skill and judgment and to cooperate with the Town in furthering the interests of the Town. AST shall furnish administration and management services and use AST's best efforts to operate and maintain the Facility and the Theater Grounds in a professional and economical manner consistent with the highest industry standards and practices and with the interests of the Town as stated in the Agreement. The Town shall endeavor to promote harmony and cooperation among the Town, and the various departments of the Town, including police, fire, health and building, and AST, and other persons or entities employed by AST, at the Facility.

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Both CDG and AST hereby acknowledge and agree that this Agreement does not confer upon them, their agents, servants and/or employees, any property interest, leasehold interest, or any ownership interest in the Facility or the Theater Grounds. This Agreement shall not run with the land and both CDG and AST acknowledge that they do not and shall not claim at any time any interest or estate of any kind whatsoever in the Facility or the Theater Grounds owned by the Town by virtue of the rights granted under this Agreement.

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2.2 Exclusive Agency and Uses. Subject to the terms and conditions of this Agreement, the Town hereby engages CDG as its exclusive agent for renovating the Facility and CDG hereby accepts such engagement and agrees to fulfill its duties hereunder. Subject to the terms and conditions of this Agreement, the Town hereby engages AST as its exclusive agent for operating, maintaining and managing the facility during the Term (as defined herein) and AST hereby accepts such engagement and agrees to fulfill its duties hereunder. Both CDG and AST shall have access to and the right to use the Facility, and the Theater Grounds twenty four (24) hours a day, seven (7) days a week, except as otherwise provided herein. AST's rights with respect to the Facility shall be exclusive and no other entities, persons or parties except the Town and Town related entities such as the Town of Stratford Board of Education and the Stratford Arts Commission (hereinafter, the "Related Town Entities"), shall have the right to use the Facility for Performances as may be set forth herein.

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Neither CDG nor AST shall have any interest in, or right to remove, relocate or otherwise use any of the Town's personal property currently located in the White House, including but

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not limited to any and all paintings, portraits or other such artwork. However, the Town may loan any of such paintings, portraits or artwork to AST for displaying within the Theater from time to time.

Commencing on the Execution Date, the Town its agents and employees shall have a period of one hundred twenty (120) days to conduct an inventory of the personal property located in the Facility (the "Inventory"). Upon completion of the Inventory, this Agreement shall be amended to include a schedule of this personal property as Exhibit "B" attached hereto.

Both CDG and AST's use of the Facility and Theater Grounds shall be in compliance with all applicable local, state and federal rules, regulations and statutes.

2.3 Town Use of Facility and Theater Grounds. Notwithstanding the foregoing, during the Term, the Town and Related Town Entities shall have the right to utilize all or any part of the Facility and Theater Grounds for community and municipal purposes provided, however, that such use shall not unreasonably interfere with AST Performances. The Town shall reimburse AST for any cost incurred by AST during any such Town use of the facility or grounds and shall provide a Certificate of Insurance to AST covering the Town's use of the facility for any such period and for the use of the grounds by the Stratford Arts Commission. AST shall cooperate with the Town to accommodate the Town's use of the Facility and Theater Grounds for other municipal and community purposes. Additionally, the Theatre Grounds shall be available for use by the Town of Stratford Art's Commission, or other such Related Town Entities, for an annual arts and theatre festival (the "Stratford Arts Festival") for a period of three (3) weeks on a non-consecutive basis (hereinafter, the "Stratford Arts Festival Period"). The Stratford Arts Festival Period shall include three weekends, i.e., three (3) Saturdays and Sundays, and unless otherwise specifically agreed to by the Town in writing, the Stratford Arts Festival Period shall be scheduled on a non-consecutive basis during the months of June, July, August and September of each calendar year of the Term. AST shall, at its option, have the right to use the interior of the facility and such area of the exterior as the related Town entity is not using, including the parking lots, which shall be shared during the Stratford Arts Festival period.

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The Town shall be responsible for its costs and expenses directly arising out of the Town's use of the Facility and Theater Grounds as aforesaid and the Town shall promptly pay for such costs and expenses. Additionally, during the Term, the Town shall have the right to access and utilize the Theater Grounds at any and all times for community and municipal purposes, provided however, that access and use of the parking area and Theater Grounds shall not unreasonably interfere with scheduled AST Performances. In conjunction with the Town's access to and use of the Facility and/or the Theater Grounds as provided herein, the Town shall have the option to charge and collect admission, parking and/or other such fees from the public which the Town may retain for its sole use and benefit. The Town shall identify to the public that such events are the Town's use of the Facility and Theater Grounds, and not AST's. The Town shall also reimburse AST for any of its cost associated with the Town and Related Town Entities use of the facility or grounds.

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Additionally, public access to the Theater Grounds in accordance with the terms of the Restrictions shall be allowed throughout the Term; and the Town agrees to provide police and fire protection to the facility and its grounds throughout the Term. The Town and AST shall work towards an appropriate curfew to be put into effect for the Theater grounds.

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3.0 CDG Construction and Renovation Responsibilities. Commencing on the date set forth above, (the "Execution Date"), CDG, its Contractors (as defined herein), agents and its employees shall for a period of ninety (90) days from the Execution Date (the "Inspection Period") have the right to inspect and conduct any necessary tests to determine the repairs and renovations required in order to operate the Facility and as a public theater in compliance with all applicable, rules, regulations and statutes. CDG, in consultation with the Town, shall determine the work and repairs necessary to make the Facility operable as a public theater for the staging of live theatrical performances. On or before the expiration of the Inspection Period, CDG shall submit to the Town a plan (the "Plan") setting forth the scope of the proposed work and the proposed budget to repair, refurbish and restore the Facility (the "Work") and to prepare it for operation as a public theater, including the installation of all security systems, fire detection and sprinkler systems and CO2 monitoring systems as may be required by the applicable building and fire codes (the "Project"). The Plan shall contain good faith estimates of the costs to complete the Work. No Plan and Work shall be commenced by CDG without the approval of the Town (the "Approved Plan and Work").

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CDG is responsible for the preparation and review of any design and construction documents (the "Construction Documents") as may be developed at CDG's option, in accordance with the Approved Plan and the Work, and the scope of the Work set forth therein, in accordance with good construction principles and consistent with the Approved Plan and Work.

3.1 Project Schedule

CDG shall prepare a complete project schedule for the renovation phases of the Work (the "Renovation Phase"), and provide the Town with a copy thereof. Said schedule for the Renovation Phase of the Project (the "Project Schedule") shall be updated monthly and provided to the Town for the Town's approval.

CDG shall have twelve (12) months from the expiration of the Inspection Period (the "Renovation Period") to Complete Substantially (as defined herein) the Approved Plan and Work, subject to delay due to causes beyond CDG's control, such as fire, catastrophe, earthquake, flood, hostilities, invasion, failure of transportation, inability to procure or general shortage of labor equipment, materials or supplies in the open market, civil commotion, war, acts of God, labor unrest or strikes, terrorist acts or, natural disasters. For the purposes of this section, the Approved Plan and Work shall be deemed Substantially Complete when CDG has completed the Approved Plan and Work, even through minor details or adjustments ("Punch List Items") which do not materially interfere with the operation of the Facility may not have been completed ("Substantially Complete"). CDG shall use commercially reasonable efforts to expeditiously complete the Punch List Items.

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3.3 Bidding, Subcontractors and Suppliers

Although CDG shall not be required to solicit any bids for the performance of the Work, CDG shall be responsible for planning and administering the bidding process if it undertakes to solicit bids for the Work. Planning activities performed by CDG should include recommendations to the Town on the phasing of the work and breakdown of the bid documents into specific bid packages if bids are solicited for a given area of work. It shall be the responsibility of CDG to assemble and prepare any such bid packages utilizing the completed Construction Documents in accordance with prevailing wages in accordance with Connecticut General Statutes Section 31-52, et seq.

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During the Renovation Phase, CDG is responsible for the sequencing, management and duration of all construction activities and shall, among other things provide a competent field staff and necessary home office support to supervise the activities of the Subcontractors.

CDG is responsible for issuance of subcontracts to Subcontractors and suppliers in order to provide compliance with the Approved Plan and Work. CDG may bid or perform any building construction with its own personnel with written approval of the Town. By execution of this Agreement, the Town shall waive the competitive bid requirements contained ordinances adopted by the Town of Stratford.

3.4 Extent of Responsibility.

CDG shall:

(a) Organize the Work into logical groups of relevant trades in sequences to minimize the effects of multiple tier mark-ups and maximize coordination efficiencies, unless otherwise authorized in advance by the Town at its sole discretion. CDG shall be solely responsible for the performance of each of the Subcontractors and ensure that each of the Subcontractors perform in accordance with its applicable subcontract.

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(b) Request, award, and administer subcontracts in accordance with this Agreement, schedule and conduct pre-construction meetings, construction progress meetings, and pre-installation conferences as necessary to discuss procedures, progress, quality control, safety, scheduling, and changes in the Work.

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(c) Make recommendations for changes it deems necessary or desirable, to the Town. When a change is initiated by a Subcontractor, CDG shall evaluate the Subcontractor's Proposal, and shall submit to the Town only those changes it deems necessary and equitable, or desirable to the Town.

(d) Coordinate the services of special consultants, construction materials testing, and inspection laboratories retained by the Town or CDG.

(e) Provide all record keeping and reporting services necessary to fully and accurately

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document all of the administrative and financial aspects of the Work.

(f) Monitor and report on a monthly basis the status of expenditures to date and anticipated future costs.

(g) Establish a cost and change order control system and shall review requests for changes and claims ("Change Orders"), negotiate Subcontractor proposals, submit recommendations to the Town, and, if they are accepted, prepare Change Orders that incorporate the recommendations approved by the Town.

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(h) Provide services required by the Agreement to close-out the Project, including the warranty compliance inspection and any related corrections.

(i) Incur a responsibility to the Town for the quality of the Work to be built, ensuring that is right the first time and every time and in conformance with the requirements and intent of any Construction Documents. CDG is responsible for ensuring that the Subcontractors' work is in conformance with, either meeting or surpassing, all requirements of the Project, approved changes, written directives from the Town Council and/or the Town Representative agents as well as generally recognize industry standards. This includes ensuring that all work is free from defects in workmanship or material.

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(j) Schedule and conduct monthly meetings at which the Town, CDG and appropriate Subcontractors shall discuss the status of the Work.

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(l) Incur responsibility for collecting and verifying insurance information from all subcontractors on site. Copies of current insurance certificates shall be kept on file in CDG's offices.

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(m) Incur responsibility for implementing, managing and otherwise accountable for the safe execution of all aspects of the construction of the project.

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(n) Develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress, approved subcontractor change orders and estimates for uncompleted tasks and proposed changes. CDG shall identify variances between actual and estimated costs and report the variances to the Town at the monthly meeting.

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(o) Incur responsibility for the issuance of Change Order forms as necessary.

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3.5 Supervision and Renovation Procedures

CDG shall supervise and direct the Work, using CDG's best skill and attention. CDG shall be responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. CDG shall exercise reasonable skill and judgment and cooperate with the Town in furthering the interests of the Town. CDG shall furnish administration and management

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services and use CDG's best efforts to perform the Work in a professional and economical manner consistent with the highest industry standards and practices and in the best interests of the Town.

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CDG shall be responsible to the Town for acts and omissions of the CDG's subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with CDG.

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CDG shall enforce strict discipline and good order among CDG's employees and other persons carrying out the Agreement. CDG shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

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3.6. Cost of the Work

3.6.1 Costs to be Reimbursed by the Town

3.6.1.1 The term "Cost of the Work" shall mean only the direct costs incurred by CDG in the proper performance of the Work in accordance with the Approved Plan and Work and any additions or changes thereto. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Town. The Cost of the Work shall include only the items set forth in this Article 3.6.

3.6.1.2 Construction Management Costs

3.6.1.2.1 CDG's onsite and home office support services including all burdened wages and salaries of CDG's supervisory and administrative personnel and support. Cost items listed in Sections 3.6.1.5.1, 3.6.1.5.2, 3.6.1.5.3, 3.6.1.5.4, and 3.6.1.5.5. CDG will be required to provide the Town with a detailed description and itemized costs of the various components that are to be included in CDG's monthly invoices. At the option of the Town, the costs for the items in this Section may be converted to a lump sum payable in equal monthly installments.

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3.6.1.2.2 CDG shall be entitled to reimbursement from the Guaranteed Maximum Price for wages and salaries of CDG's supervisory or administrative or clerical personnel engaged at CDG's principal offices, factories, workshops or on the road, in expediting the production or transportation of materials, equipment or documentation required for the Work, but only for that portion of their time required for the Work and only with prior approval of the Town. Such wages and salaries shall be billed at hourly rates agreed upon by the Town in advance plus reimbursement for any travel or out of pocket expenses at cost.

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3.6.1.3 Subcontract Costs

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Payments made by CDG to Subcontractors in accordance with the requirements of the Subcontracts,

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3.6.1.4 Costs of Materials and Equipment Incorporated in the Completed Construction

3.6.1.4.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated into the completed construction.

3.6.1.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

3.6.1.5.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, and supplies for temporary field office facilities.

3.6.1.5.2 Rental charges for temporary field office facilities, whether rented from the CDG or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Town's prior approval.

3.6.1.5.3 Cost of removal of left over Town debris from the site.

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3.6.1.5.4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone service at the site and reasonable petty cash expenses of the site and home offices.

3.6.1.5.5 That portion of the reasonable travel expenses of the CDG's jobsite personnel incurred while traveling in excess of 60 miles from the jobsite in discharge of duties connected with the Work. Subsistence expenses will only be considered for overnight or out of state travel or with previous approval of the Town, or the Town Representative,

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3.6.1.5.6 Accounting fees and other professional fees incurred by CDG in order to comply with prevailing wage statute, C.G.S. Section 31-52, et seq., as well as comply with reporting requirements and other responsibilities of CDG as required herein.

3.6.1.6 Miscellaneous Costs

3.6.1.6.1 That portion directly attributable to this Agreement of premiums for CDG's insurance as required hereunder.

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3.6.1.6.2 Sales, use or similar taxes imposed by a governmental authority, which are related to the Work and for which CDG is liable.

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3.6.1.6.3 Fees and assessments for the building permit and for other permits,

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licenses and inspections for which CDG is required to pay.

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3.6.1.6.4 Fees of testing laboratories for tests required hereunder, except those related to nonconforming Work.

3.6.1.6.5 Royalties and license fees paid for the use of a particular design, process or product with prior written approval by the Town.

3.6.2 Costs not to be Reimbursed by the Town

3.6.2.1 The Cost of the Work shall not include:

3.6.2.1.1 Salaries and other compensation of CDG's personnel stationed at the CDG's principal office or offices other than the site office, except as specifically provided in Paragraph 3.6.1.

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3.6.2.1.2 Expenses of CDG's principal office and offices other than the site office except as specifically provided in Paragraph 3.6.1.

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3.6.2.1.3 Overhead and general expenses, except as may be expressly included in Paragraph 3.6.1.

3.6.2.1.4 CDG's capital expenses, including interest on CDG's capital employed for the Work.

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3.6.2.1.6 Costs due to the negligence of CDG or to the failure of CDG to fulfill a specific responsibility to the Town set forth in this Agreement.

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3.6.2.1.5 Rental costs of machinery and equipment, exceeding \$500, without written approval of the Town, except as specifically provided in Subparagraph 3.6.1.5.2.¶

3.6.2.1.7 Costs which would cause the Guaranteed Maximum Price to be exceeded.

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3.6.3 Discounts, Rebates and Refunds

3.6.3.1 Cash discounts obtained on payments made by CDG shall accrue to the Town if (1) before making the payment, CDG included them in an Application for Payment and received payment there for from the Town, or (2) the Town has deposited funds with CDG with which to make payments; otherwise, cash discounts shall accrue to CDG. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Town, and CDG shall make provisions so that they can be secured.

3.6.3.2 Amounts which accrue to the Town in accordance with the provisions of Subparagraph 3.6.3.1 shall be credited to the Town as a deduction from the Cost of the Work.

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3.6.4 Accounting Records

3.6.4.1 CDG shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. The Town and the Town's accountants shall be afforded access to CDG's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and CDG shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

3.7 RENOVIATION PHASE

3.7.1 Progress Payments

3.7.1.1 Based upon Applications for Payment submitted to the Town by CDG and Certificates for Payment issued by the Town's Representative, the Town shall make progress payments on account of the Guaranteed Maximum Price to CDG as provided below.

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3.7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. In the event that CDG has paid a vendor or subcontractor an advance deposit toward the completion of any work, the appropriate application for payment shall include a request for reimbursement for any such deposit.

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3.7.1.3 Provided an Application for payment is submitted to the Town in accordance with the Approved Plan and Work and for Work completed or deposit paid through the end of that month, the Town shall make payment in accordance with said payment schedule.

3.7.1.4 With each Application for Payment, CDG shall submit appropriate signed and certified Subcontractor requisitions supporting the payment requested, a partial waiver of liens for payments received through the prior Application for Payment and evidence to demonstrate that cash disbursements have been made by CDG on account of the Cost of the Work for progress payments already received by CDG.

3.7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by CDG. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as Town's Representative may require. This schedule, unless objected to by the Town's Representative, shall be used as a basis for reviewing CDG's Applications for Payment.

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3.7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the percentage of that portion of the Work, which has actually been completed.

3.7.1.7 The amount of each progress payment shall be computed as follows:

3.7.1.7.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. CDG shall be entitled to include in the Application for Payment the value of Work completed and for which payment is due.

3.7.1.7.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work and, if approved in advance by the Town, suitably stored off the site at a location agreed upon in writing.

3.7.1.7.3 Subtract the aggregate of previous payments made by the Town.

3.7.1.7.5 Subtract the shortfall, if any, resulting from errors subsequently discovered by the Town's accountants in such documentation.

3.7.1.7.6 Subtract amounts, if any, for which the Town's Representative has withheld or nullified a Certificate for Payment.

3.7.1.8 Payments to Subcontractors shall be subject to retention of five percent (5%). Upon substantial completion by a Subcontractor, CDG may submit a payment request that allows for a reduction in the amount of retention based on satisfactory performance. Such requests shall be specifically noted and approved by Town prior to payment. If applicable, a "Consent for Reduction in Retainage" and a "Consent for Release of Retainage" issued by CDG must accompany any request for retention reduction.

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3.7.1.9 All funds paid by the Town to CDG shall be trust funds placed in the custody of CDG solely for the payment of those Project-related obligations set forth in the Application for Payment submitted by CDG, including but not limited to the payment of subcontractors, laborers, material-men, and suppliers. CDG shall not use such funds paid by the Town for any other purpose whatsoever, with the exception of CDG's Costs under Section 6. This section is intended to confer third party beneficiary rights upon any subcontractor.

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3.7.1.10 In taking action on CDG's Applications for Payment, the Town's Representative shall be entitled to rely on the accuracy and completeness of the information furnished by CDG and shall not be deemed to represent that the Town's

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Representative has made a detailed examination, audit or arithmetic verification of the documentation submitted by CDG or other supporting data; that the Town's Representative has made exhaustive or continuous on-site inspections or that the Town's Representative has made examinations to ascertain how or for what purposes CDG has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Town, will be performed by the Town's accountants and other professionals acting in the sole interest of the Town.

3.7.1.11 The Town shall make payment on any applications for payment approved by the Town Representative within ten (10) business days from CDG's submittal of an application for payment. The Town Representative shall act on any application for payment submitted to him within five (5) business days of submittal by CDG.

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3.7.2 FINAL PAYMENT

3.7.2.1 Final payment for the Approved Plan and Work shall be made by the Town to CDG when to the extent applicable:

1) The Agreement has been fully performed by CDG except for CDG's responsibility to correct nonconforming Work, and to satisfy other requirements, if any, which necessarily survive final payment and as follows:

- a) Field work is complete;
- b) Areas are clean and all materials and tools have been removed;
- c) Operation and maintenance manuals have been submitted and approved by the Town Engineer;
- d) As-built drawings, if any, have been submitted and approved;
- e) Environmental deliverables, if any, from CDG are received;
- f) Any special guarantees have been submitted, including equipment manufacturers' warranties;
- g) All subcontractor change orders are settled, amended if necessary and signed including all documentation for a final state change order;
- h) All shop drawings previously returned, if any, with follow-up requirements have been updated to approved status;
- i) All certificates have been submitted (i.e. Certificate of Occupancy, Certificate of Completion, etc.);
- j) All keys / special tools have been submitted to the operator;
- k) Testing of systems is complete;
- l) Building commissioning has been completed.

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All such documentation shall be stored at the Facility at a location to be secured and maintained by CDG or AST, as the case may be, and disclosed to the Town for its inspection at any reasonable time upon prior notice to CDG or AST, as the case may be.

2) A final Application for Payment and a final accounting for the Cost of the Work have been submitted by CDG and reviewed by the Town's accountants and other

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professionals including the submission of the following documents:

- a) General Release and Waiver of Lien
- b) Final Contractor's Sworn Statement
- c) Subcontractor's Final Waiver of Lien (for all subs listed on the Final Contractor's Sworn Statement)
- d) Supplier's Final Waiver of Lien (for all suppliers listed on the Final Contractor's Sworn Statement)

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3) A final Certificate for Payment has then been issued by the Town's Representative; such final payment shall be made by the Town not more than 15 days after the issuance of the Town's Representative's final Certificate for payment.

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3.7.2.2 The amount of the final payment shall be calculated as follows:

3.7.2.2.1 Take the sum of the Cost of the Work substantiated by CDG's final accounting; but not more than the Guaranteed Maximum Price.

3.7.2.2.2 Subtract amounts, if any, for which the Town's Representative withholds, in whole or in part, a final Certificate for Payment as provided herein.

3.7.2.2.3 Subtract the aggregate of previous payments made by the Town. If the aggregate of previous payments made by the Town exceeds the amount due CDG for the actual cost of the Work and/or the Guaranteed Maximum Price, CDG shall reimburse the difference to the Town.

In no event shall the total payments made by the Town exceed the Guaranteed Maximum Price.

3.7.2.3 The Town's accountants and other professionals will review and report in writing on CDG's final accounting within fifteen (15) days after delivery of the final accounting to the Town's Representative by CDG. Based upon such Cost of the Work as the Town's accountants or other professionals report to be substantiated by CDG's final accounting, and provided the other conditions of Subparagraph 3.7.2.1 have been met, the Town's Representative will, within seven days after receipt of the written report of the Town, its accountants or other professionals, either issue to the Town a final Certificate for Payment with a copy to CDG, or notify CDG and Town in writing of the Town's Representative's reasons for withholding a certificate.

3.7.2.4 If the Town reports the Cost of the Work as substantiated by CDG's final accounting to be less than claimed by CDG, a demand for mediation of the disputed amount shall be made by CDG within sixty (60) days after CDG's receipt of a copy of the Town's Representative's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Town becoming binding on CDG. Pending a final resolution of the disputed amount, the Town shall pay CDG the amount certified in the final Certificate for

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CDG's tools, construction equipment, machinery and surplus materials. The cost of same shall be included as part of the Guaranteed Maximum Price.

If the CDG fails to clean up as provided herein, the Town may do so and the cost thereof shall be charged against CDG.

3.12 Access to Work

CDG shall provide the Town and its consultants access to all aspects of the Work in preparation and progress, wherever located.

3.13 Indemnification

To the fullest extent permitted by law, CDG shall indemnify, defend and hold harmless the Town, or anyone acting for or on its behalf (all of the said parties are herein sometimes individually referred to as the "Indemnitee" and collectively referred to as the "Indemnitees") from and against all liability, damage, loss, and expense (including but not limited to attorneys' fees) of any nature (collectively, "Claims") whatsoever which arise out of, or are connected with the negligent performance of Work under the contract or any negligent act or omission by CDG or its agents, consultants, subcontractors or employees hereunder. CDG expressly acknowledges and agrees that it fully and clearly understands its indemnity obligations. In accordance with Section 52-572k(a) of the Connecticut General Statutes, nothing contained in this indemnification agreement shall oblige the CDG to indemnify the Indemnitees for damage or injury resulting from the sole negligence of the Indemnitees. This indemnification obligation shall survive the completion of the Work or termination of the Agreement. CDG shall also defend the Town, the Town's agents and employees from any and all subcontractors' claims for payment that arise out of any failure of CDG to make payment when due to such subcontractors except where the subcontractor's claim is based upon an allegation that the Town, without the involvement of the CDG, has dealings with the subcontractor. In addition, CDG agrees to obtain, maintain and pay for such general liability insurance coverage as will ensure its indemnification obligations set forth hereunder.

In claims against any person or entity indemnified hereunder by an employee of CDG, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation hereunder shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for CDG or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

3.14 CDG's and AST's Liability Insurance –

CDG and AST, as the case may be, shall purchase from and maintain in a company or companies with an A- or greater A.M. Best & Co. rating, lawfully authorized to do business in the jurisdiction in which the Project is located, such insurance as will protect the Town from claims set forth below which may arise out of or result from their

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(a) The Town will provide information in its control or custody regarding the Project which is reasonably necessary to enable CDG and AST, as the case may be, to satisfy their obligations under this Agreement and will provide reasonable cooperation with CDG and AST during the term of this Agreement.

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(b) If the Town observes or otherwise becomes aware of any fault or defect in the Work or non-conformance with the Approved Plan and Work, written notice of same shall be given by the Town to CDG. If the Town observes or otherwise becomes aware of any fault or defect in the performance of its obligations under this Agreement, written notice of same shall be given by the Town to AST.

3.16 Improvements and Work Products. All improvements, installations and fixtures, installed at or on the Facility and/or the Theatre Grounds at any time during the Term, except for theatrical equipment, lighting, sound systems, box office computers or equipment purchased or leased by AST, together with all of the Work, shall be and become the property of the Town. AST agrees promptly to repair any damage done to the facility as a result of the removal of any such AST purchased equipment.

Deleted: (c) . The Town reserves the right to perform work related to the Project with the Town's own forces and award contracts in connection with the Project which are not part of the CDG's responsibilities under this Agreement which work shall not be paid from the Guaranteed Maximum Price. Such work by the Town will be identified by the Town and coordinated by the CDG with other Project activities. The CDG shall notify the Town promptly if any work by the Town will delay CDG or prevent it from performing the responsibilities stipulated in this Agreement.¶
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The drawings, specifications and other documents prepared in conjunction with the Project shall be and become the exclusive property of the Town. They are not to be used by CDG, Subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Town.

All Work Products are confidential and shall be used for no purposes other than their expressed purpose in this Project. "Work Product" shall be defined as all project-specific documents, correspondence, reports, models, literature, methods, processes, photographs, plans, sketches, specifications or drawings that are prepared, conceived, developed, created or obtained by CDG in connection with the performance of the Work, but excluding CDG's general business practices. All Work Products are the exclusive property of the Town. CDG may retain one copy of all Work Product for record purposes.

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4. Term. The term of AST's use and management of the Facility and Theater Grounds in accordance with this Agreement shall commence upon a date that the Work is Substantially Complete, final payment has been made and Certificate of Occupancy has been issued for the facility (the "Commencement Date") and terminate ten (10) years thereafter (the "Initial Term"), unless earlier terminated or renewed as provided herein. Provided that AST is not in default of any of the terms, conditions and covenants of this Agreement, AST shall have the option to extend the Initial Term for an additional period of ten (10) years (the "First Renewal Term"), upon all of the same terms, covenants, conditions and provisions herein. Thereafter, provided that AST is not in default of any of the terms, conditions and covenants of this Agreement, AST shall have the option to extend the Term for an additional period of ten (10) years (the "Second Renewal Term"), upon all of the same terms, covenants, conditions and provisions herein. Thereafter, provided that AST is not in default of any of the terms, conditions and covenants of this Agreement, AST shall have the

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option to extend the Term for an additional period of ten (10) years (the "Third Renewal Term"), upon all of the same terms, covenants, conditions and provisions herein. The First Renewal Term, the Second Renewal Term and the Third Renewal Term hereafter, each individually and together collectively, referred to as a "Renewal Term". The Initial Term and each Renewal Term shall be collectively referred to herein as the "Term".

AST shall advise the Town in writing, at least ninety (90) days prior to the expiration of the Initial Term or the Renewal Term, as the case may be, of its desire to extend the term of this Agreement.

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5. Fees. During years three (3) through ten (10) of the the Initial Term, AST shall pay the sum of FIFTY THOUSAND AND 00/100'S DOLLARS (\$50,000.00) per year (the "Initial Term Annual Fee") to the Town in arrears beginning on the fourth anniversary of the Commencement Date. During the First Renewal Term, AST shall pay the sum of SIXTY THOUSAND AND 00/100'S DOLLARS (\$60,000.00) per year (the "First Renewal Term Annual Fee") to the Town in arrears on the annual anniversary of the Commencement Date. During the Second Renewal Term, AST shall pay the sum of SEVENTY THOUSAND AND 00/100'S DOLLARS (\$70,000.00) per year (the "Second Renewal Term Annual Fee") to the Town in arrears on the annual anniversary of the Commencement Date. During the Third Renewal Term, CDG shall pay the sum of EIGHTY THOUSAND AND 00/100'S DOLLARS (\$80,000.00) per year (the "Third Renewal Term Annual Fee") to the Town in arrears on the annual anniversary of the Commencement Date. The Initial Term Annual Fee, the First Renewal Term Annual Fee, the Second Renewal Term Annual Fee and the Third Renewal Term Annual Fee hereafter, each individually and together collectively, referred to as an "Annual Fee".

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AST shall be entitled to a credit against the Annual Fee for the actual costs and expenses incurred and paid by AST to "repair and maintain" the Facility and the Theater Grounds during that year of the Term. To "repair and maintain" the facility shall include the following: (a) utilities; (b) repairs; (c) maintenance, including snow removal, garbage and trash removal expenses; (d) on site management expenses; (e) on site security expenses; (f) liability insurance expense, and; (g) costs for capital improvements. To the extent that any such expenses exceed rental obligations for a given year, the excess of such cost shall be carried over to subsequent years until absorbed completely as a set off against rent. AST shall be responsible for all such costs.

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Additionally, all costs, expenses and charges relating to the Facility and/or the Theatre Grounds, of whatsoever kind or character which may arise during the Term, shall be paid solely by AST, as if AST were the absolute owner in fee of the Premises, including all costs associated with its condition, use, operation, maintenance, management and the making of any and all repairs, restorations, alterations and improvements which may be required to maintain the Facility and the Theatre Grounds in good repair and condition. Any such costs, expenses and charges related to the Facility and by the Theater shall be included in the credit due AST against rent as set forth in the previous paragraph.

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Except as otherwise set forth herein, including but not limited to, those revenues derived from community events conducted by the Town or Related Town Entities as permitted

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under Section 2.2 of this Agreement, AST shall retain all revenue and sums earned by it through the operation of the Facility, including but not limited to the sale of tickets, admissions, fees, income from television, film sales, licensing of products to and goodwill associated with the name "American Shakespeare Theatre", productions or outreach programs, merchandise, concessions, food, clothing and other monies collected

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7. Theater Operations. For purposes of this Agreement, the term "Production" shall mean a live event separate and distinct from the number of times a production is performed; and the term "Performance" shall mean a single staging of a production before a live audience, including rehearsals, or technical rehearsals. Commencing on the Commencement Date and continuing throughout the Term, AST shall operate the Facility as a theater exhibiting a minimum of thirty (30) live Performances each year for years two through ten, and a minimum of fifty (50) performances each year during the first renewal term of this Agreement, a minimum of seventy five (75) performances per year during the second renewal term of this Agreement and a minimum of one hundred (100) Performances during the final renewal terms of this Agreement. Without limiting or restricting the foregoing, AST shall include during each year of the Term at least one production of the works of William Shakespeare with the number of performances of a production or the number of productions to be determined by the demand for tickets for such performances. AST also agrees to make the Facility available for and to provide any such Shakespearian productions available to students attending schools in the Town of Stratford and other scholastic jurisdictions at discounted ticket prices. Additionally, AST agrees to make the facility available for education, community outreach and student workshops for those persons, students and/or teachers interested in live theatrical productions. Except as otherwise provided herein, AST shall have the responsibility and authority to make decisions with respect to the day-to day operations of the Facility. Without limiting the foregoing, AST shall have the following rights and authority:

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a. The theater Productions and Performances shall be scheduled by AST. AST shall in its reasonable discretion determine and put into effect reasonable policies with respect to Performances at the Facility, including without limitation, show times, hours of operation, ticket prices and "goodwill" tickets; except for Productions and Performances produced by the Town, the Stratford Arts Commission or other the Town Related Entities as a community or municipal event.

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b. AST shall have the exclusive right to market, sell and distribute merchandise and other concessions, at the Facility, the Theater Grounds or through any other medium, including but not limited to internet sales in connection AST Productions and Performances. All of the revenue earned by AST through the sale of such items at AST Productions shall be retained by AST. The Town and Town Related Entities, however, shall have the right to permit the sale of merchandise, except food, beverage or other consumable concession; and AST shall not have the right to any revenues derived by the Town and/or Town Related Entities from such

sales.

- c. AST shall manage the operations of the Facility in substantial compliance with all applicable, laws, regulations and other requirements of governmental and regulatory entities having jurisdiction over theatres and/or municipal property (collectively "Regulatory Requirements"). The Town shall cooperate to its fullest extent with AST in complying with the Regulatory Requirements, including but not limited to the execution of all reasonable documentation and furnishing of information.
- d. AST shall have the right to enter into co-production agreements for Productions and Performances which occur at the Facility and the Theater Grounds.
- e. There shall be no maximum limit on the number of Productions or Performances which occur at the Facility and the Theater Grounds.

Any persons hired by AST to operate the Facility shall be the employees of AST and shall not be employees of the Town.

8. Theater Use. AST and the Town acknowledge that the Theater is a municipally owned facility. AST shall not at any time use or occupy the Theater, or suffer or permit the Theater to be used, in violation of any certificate of occupancy issued for the Theater or any applicable zoning ordinances or any other applicable laws or regulations. AST shall not offer, display, or sell (i) any productions, goods or services which are lewd, graphically violent, pornographic, or prurient in nature, or (ii) any paraphernalia used in the preparation or consumption of illegal controlled substances.

AST shall exercise reasonable skill and judgment in the use and operation of the Facility and the Theater Grounds and shall cooperate with the Town in furthering the interests of the Town. AST shall furnish administration and management services, as contemplated by paragraph 5, supra. and use AST's best efforts to operate the Theater in a professional and economical manner consistent with the highest industry standards and practices and with the interests of the Town.

AST covenants to operate the Facility and the Theatre Grounds in accordance with the laws of the United States, the State of Connecticut, and the by-laws, rules, regulations, and ordinance and other laws of the Town of Stratford, relating to environment, health, nuisance, fire, highways and sidewalks, so far as the same relate to the conduct of AST's business; and AST further covenants and agrees to comply with all rules and regulations of the Insurance Services Office (ISO) on any fire, public liability, or other insurance policies upon the Facility, and any property contained in the Facility. AST shall save and hold the Town harmless from and against all fines, penalties and costs incurred because of AST's violation of or non-compliance with the terms of this paragraph, including the cost of defending against any such fines, penalties or costs. In

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the event of such non-compliance by AST in any particularity, and if AST has not taken legal steps in good faith to determine if it has failed to comply, the Town may, but shall not be obliged to, take the necessary steps to correct such non-compliance, including the expenditure of funds, and in such event AST will reimburse the Town on demand for all such sums expended and for all other costs, including reasonable legal fees, incurred by the Town in correcting such non-compliance. AST shall not be required to assume the burden of any capital improvement cost necessitated by any code compliance resulting from a casualty loss which shall be the burden of the Town.

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9.1 Annual Performance Schedule. The Stratford Arts Commission shall provide to AST for review and approval its annual performance schedule setting forth dates, times and the title of any proposed performance no earlier than April 1 of the current year.

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9.2 Annual Capital Improvement and Maintenance Plan. AST shall provide to the Town for review the costs for the capital improvements and maintenance to be performed at the Facility and the Theater Grounds thirty (30) days after the end of each year of this Agreement.

10. Obligations and Duties of the Town. The Town shall provide AST, its Subcontractors, invitees and employees with reasonable access to the Facility and the Theater Grounds, including but not limited to all access streets and roads which lead to the Facility and the Theater Grounds. The Town shall have the following obligations: (i) maintain and ensure that the Facility and the Theater Grounds are serviced by all town services, including but not limited to police and fire protection;(ii) maintain and repair the municipal infrastructure which support the Facility and the Theater Grounds, including but not limited to connections from all buildings to local utilities, and the drainage, sewer, water and gas lines servicing the Facility and the Theater Grounds; (iii) maintain in good condition and repair the access roads to the Facility and the Theater Grounds, specifically excluding landscaping, snow removal, garbage and trash removal at the Facility and the Theater Grounds, except snow removal, garbage and trash removal expenses for the Town or Arts Commission shows or productions for which the Town shall be responsible. Notwithstanding the foregoing, AST shall not have the right or the ability to direct the Town to perform any maintenance, repairs or capital improvements to the municipal infrastructure, the Facility or the Theater Grounds nor shall the Town be under any obligation or duty to provide any police or fire personnel that may be desired by AST in conjunction with the operation of the Facility, except as may be necessary to protect the public's safety, or as may be required by law.

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11. Sponsorship of the Theater. AST and the Town desire to obtain a corporate sponsor for the Theater and agree to consult with each other with respect to this matter. AST intends to name the theater the "American Shakespeare Theater". The granting of any corporate sponsorship, or the right to change any such name thereafter, shall be exercised solely by the Town and AST, jointly. Approval for same shall not be unreasonably withheld by either party. Any and all payments or other benefits received in exchange for the right to name or sponsor the Theater shall be retained by AST and may

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be used for any purposes.. In the event that the Town is the recipient of a grant for the operation of the Facility, or for any educational or community outreach programs to occur at the Facility, the Town shall apply such payments or benefits to the Facility or the Theater Grounds as allowed by the provisions of such grant and all applicable law.

12. Taxes and Surcharges. Except for real estate property taxes which shall be waived by the Town, AST shall pay all taxes, if any imposed as a result AST's use and operation of the Theater or the business conducted by AST at the Facility and Theater Grounds. Additionally, beginning at the First Renewal Term and continuing through the end of any Renewal Term, AST shall pay to the Town the sum of \$100,000 per year, payable monthly in arrears. All such revenues derived from such surcharge may be deposited into a Town fund to be utilized a) to pay the bonds issues by the Town to renovate the facility; b) to pay for economic development and other activities to promote and maintain the facility and theater grounds; and e) use the surplus of such funds in the Town's sole and absolute discretion.

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13.1 Maintenance and Repair. During the Term and except as otherwise provided herein, AST shall take good care of the Theatre Grounds and the Facility and the fixtures and appurtenances therein, and at its sole cost and expenses make all repairs and replacements (whether structural or nonstructural) to the Facility and any electrical, plumbing, mechanical, heating, ventilation and air conditioning systems servicing the Facility (hereinafter, the "Systems"), when needed to preserve them in good working order and condition. Additionally, during the Term the AST shall, at its sole cost and expense, maintain the Property, the Facility and the Theater Grounds and all improvements and the Building thereon, in good condition and repair, and all fixtures, equipment and appurtenances therein and thereon and shall perform all maintenance and make any and all repairs, restorations, and replacements to the Premises, including the Theater and other improvements, as may be required to maintain the same in good condition and repair, as if AST were the absolute owner thereof. AST's obligations in this regard shall include all necessary maintenance, replacement, restoration and repair to (1) windows, window frames and window frame seals, as well as all mechanical, electrical, heating, air-conditioning and ventilation systems, structural elements and all security, life-safety, sprinkler, parking, plumbing, sewer, water, drain, sanitary and other systems located on, in, or about the Facility and the Property and all elevators and boilers; (2) broken or damaged glass; (3) damage by vandals; (4) the interior walls, ceilings, floors and floor coverings (including carpets and tiles) of the Facility; (5) all trees, shrubbery, lawn areas, other plantings, landscaping, fencing and exterior lighting, (6) electrical transformers and substations, and (7) all sidewalks and walkway located on the Theater Grounds.

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Notwithstanding the foregoing, AST shall not be responsible for the repair of the municipal infrastructure which services the Facility and which are located outside the Theater Grounds. AST may at its sole cost and expense enter into service, maintenance or other contracts or otherwise obtain or provide service or maintenance as may be necessary or appropriate for the operation and maintenance for the Facility, including without limitation, the equipment and Systems located in or servicing the Facility, contracts for utilities, telephone service, interior cleaning, window cleaning, garbage and trash removal, fuel,

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heating and air conditioning maintenance, security, vermin and insect extermination and replace all damaged and broken glass in or about the Facility. AST shall pay any and all such costs and expenses promptly when due and shall ensure that they do not become a lien upon the property. Notwithstanding the foregoing, the Town shall: (i) maintain and repair all sidewalks and curbs adjacent to the Theatre Grounds; (ii) arrange for all snow removal on the roads providing access to the Theatre Grounds; and (iii) during its use of the Facility, be responsible for the maintenance and any repairs to the Facility which are required as a result of the Town's or Art's Commission's use of the Facility

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AST further agrees to keep said Facility and the Theatre Grounds and all parts thereof in a clean and sanitary condition and free from trash, improperly contained inflammable material and other objectionable matter. AST, at AST's sole cost, shall be responsible for the provision of janitorial and other services made necessary by AST's use of the Facility and/or are required for the proper maintenance of the Facility.

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The Town shall be responsible for all damage or injury to the Facility, Theater Grounds, the Systems and equipment thereof, whether requiring structural or nonstructural repairs caused by or resulting from the negligence, carelessness, omission, improper conduct or other cause of Town, its servants, employees, visitors or licensees. Any damaged property, shall be restored or replaced promptly by the Town at its sole cost and expense.

AST shall be responsible for all damage or injury to the Facility, the Systems and Theater Grounds, and equipment thereof, whether requiring structural or nonstructural repairs caused by or resulting from the negligence, carelessness, omission, improper conduct or other cause of AST, its servants, employees, visitors or licensees. Any damaged property, shall be restored or replaced promptly by AST at its sole cost and expense. If AST fails to make such repairs, restorations or replacements, same may be made by the Town at the expense of AST and all sums spent and expenses incurred by the Town shall be promptly paid by AST within ten (10) days after rendition of a bill or statement thereof.

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CDG and AST covenant and agree that CDG and AST, as the case may be, shall not make or erect any such improvements, alterations or accessions in any manner whatsoever to the Building, the Facility or the Theatre Grounds without the prior written consent of the Town, which consent shall not be unreasonably withheld. Both CDG and AST covenant and agree that either shall construct any such improvements at the Property only with the written consent of the Town and any regulatory agencies of the Town of Stratford from which consent is required which consent shall not be unreasonably withheld. CDG and AST covenant and agree that any such improvements (to which Town's consent shall be given), shall be performed at CDG's or AST's full cost and expense, shall comply with all applicable governmental regulations, shall be done only by contractors, subcontractors and mechanics with respect to whom Town has consented, and shall be done in a manner which will assure harmony at the Property. Both CDG and AST agree to provide Town copies of all plans and specifications for such improvements, alterations, replacements or accessions and with the name of the general contractor and, if known, names of any subcontractors and mechanics who are to perform such work at least ninety (90) days in advance of the commencement of any such work. All work shall be done in accordance with the approved plans and shall be completed with reasonable speed and without interruption. Upon completion of any such improvements, either CDG or AST will provide Town with as-built plans. Both CDG and AST covenant and agree to indemnify Town and hold Town harmless of and from any and all claims, costs, suits, damages and liability whatsoever arising out of or as a result of any such work done by them or their contractors, subcontractors, agents or employees, including reasonable attorney's fees for the defense thereof. Town shall not be liable for any failure of any building facilities or services caused by alterations, installations and/or additions by CDG or AST, and CDG or AST shall promptly correct any such failure. In the event CDG or AST shall not correct same within thirty (30) days after written notice thereof is provided by Town to them, Town may make such correction and charge CDG or AST for the cost thereof plus a five (5%) percent surcharge.

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Prior to commencing any such work, CDG or AST shall additionally furnish to Town: (i) copies of all governmental permits and authorizations which may be required in connection with such work; (ii) a certificate evidencing that CDG or AST (or their agents or contractors) has (have) procured workers compensation insurance covering all persons employed in connection with the work who might assert claims for death or bodily injury against Town, CDG, AST or the Property; and (iii) such additional personal injury and property damage insurance as Town may reasonably require because of the nature of the work to be done by CDG or AST.

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All improvements and alterations upon the Property, and any replacements therefor, made by either party, including all paneling, decorations, partitions, railings affixed to the realty, except furniture or movable trade fixtures or other movable items installed at the expense of CDG or AST, unless Town elects otherwise (by giving written notice to CDG or AST) shall become the property of Town and shall remain upon, and be surrendered with the Property as a part thereof at the termination of this Agreement, without compensation to CDG or AST.

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CDG and AST covenant and agree that the installation of signs, graphics or other advertisements shall be consistent with the laws of the Town of Stratford.

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14. Insurance. AST shall obtain and maintain through out the Term of this Agreement, insurance coverage in an aggregate amount not less than Five Million Dollars (\$5,000,000.00), insuring against losses, customarily covered with respect liability only as to the operation of a theater, and insurance as it deems necessary for its equipment, supplies, machinery and personal property (the "Insurance Coverage"). AST may satisfy the Insurance Coverage requirement through any combination of general liability and umbrella coverage as AST shall determine in its sole discretion. The Town shall obtain and maintain throughout the term of this Agreement, insurance coverage in the aggregate amount equal to the replacement cost of the theater for fire and casualty loss to the theater. All such policies shall be issued by companies licensed to conduct business in the state where the Facility is located, acceptable to the Town and AST and name the Town and AST and such other parties as the Town and AST deem appropriate as an additional insured. Each policy shall provide that the same may not be cancelled or materially modified without at least thirty (30) days prior written notice to the other. Each shall deliver certificates evidencing that such insurance as required under this section is in full force and effect on an annual basis and/or upon request by the other.

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15. Fire and Casualty Damage. If the Facility or any part thereof shall be damaged by fire, natural disaster, invasion or other casualty, AST shall give immediate notice thereof to the Town. If the casualty loss cannot be repaired within twelve (12) months, either the Town or CDG may at its option terminate this Agreement. If the casualty loss can be repaired within twelve (12) months, or if both the Town and AST choose not to terminate this Agreement, the Town shall repair, restore, replace, or rebuild the damaged or destroyed Facility as nearly as possible to its prior condition. The Town shall provide AST with written notification of its intention to either terminate the Agreement, or repair the Facility within thirty (30) days from the date of damage or destruction. If the facility cannot be repaired within twelve (12) months, and either AST or the Town elects to terminate this Agreement, this Agreement shall be considered terminated as of the date of such damage and destruction and shall be of no further force and effect. AST shall cooperate fully and assist the Town in recovering all such insurance proceeds.

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In the event the Town repairs or restores the Facility, the Town shall restore, repair, replace, or rebuild the Facility as nearly as possible to its prior condition. All insurance proceeds received by the Town, less the cost of recovery shall be held in escrow by the Town or its agents and applied by the Town to the payment of such restoration as it progresses.

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The Town shall promptly commence the restoration work in substantial conformance with the prior Facility, upon receipt of the insurance proceeds from its insurance carrier. The Town shall continue the restoration work with reasonable diligence until its completion. The Term of this Agreement shall be extended for a period equal to the period of time measured from the date of damage until the restoration work is complete and the Facility is

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operating.

In the event that either the Town or AST, sustains a loss by fire or other casualty and such loss is caused in whole, or in part by the acts or omissions of the other party, or the other party's Contractors, employees or servants, then the party sustaining the loss agrees, to the extent that the party sustaining such loss is compensated for such loss by insurance, that it shall waive all rights of recovery against the other party, or the Contractors, employees or servants of the other party; and no third party shall have any right of recovery, by way of subrogation or assignment or otherwise. The parties hereto shall each procure and maintain in force and effect an appropriate clause in, or endorsement on, any fire or extended coverage insurance covering the Facility and the personal property, fixtures and equipment located therein or thereon, pursuant to which, the insurance companies waive subrogation, provided such waiver is procurable without additional premium and having obtained such clause or endorsement or waiver of subrogation, each party hereby agrees that it will not make any claim against or seek to recover from the other for any loss or damage to its property or the property of the other, covered by such fire and extended coverage insurance; provided however, that the release, discharge, exoneration and covenant not to sue herein contained shall be limited by the terms and provisions of the waiver of subrogation clause and/or endorsement.

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16. Assignment and Transfer. Both CDG and AST agree that the privileges and rights herein granted are personal to CDG and AST. Neither party shall have the right to assign, pledge, encumber or otherwise transfer this Agreement or its rights hereunder without the prior written consent of the Town, which consent will not be unreasonably withheld. Additionally, William Hanney hereby represents that is the sole member of both CDG and AST and that he shall not sell or assign 50% or more of his membership interest in either entity while its obligations under this agreement remain operative, without the prior written consent of the Town, which consent will not be unreasonably withheld. Mr. Hanney is signing this agreement personally solely to affirm the representation as to the ownership of CDG and AST set forth in this paragraph, and for no other reason. Any and all potential assignees of this Agreement must demonstrate to the Town sufficient financial resources, prior professional experience in operating a theater and staging Productions and Performances and otherwise establish the capability to perform the obligations and meet the requirements of this Agreement. Any such assignment, pledge, encumbrance or transfer without the Town's express written consent and approval shall give the Town the right to terminate this Agreement. Furthermore, the ownership of either CDG or AST shall not change nor be merged into another entity without such consent which shall not be unreasonably withheld.

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17. Mechanics Lien. If a mechanics lien is currently filed against the Facility or the Property for work claimed to have been done or materials furnished to the Town prior to the Execution Date, the same shall be discharged by the Town within thirty (30) days thereafter, at the Town's expense by payment or filing of the bond required by law. CDG and AST shall keep the Facility and the Property free and clear of all mechanics' liens and other liens in connection with the Work or any work performed at the Facility at the direction of CDG or AST. In the event a mechanic's lien is filed against the Facility or the

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Property arising out of such work, CDG or AST shall cause such lien to be discharged within thirty (30) days thereafter, at CDG's or AST's expense by payment or filing the bond required by law.

Neither the Town, nor CDG or AST, shall directly or indirectly create or permit to be created any mortgage, lien, security interest, pledge, conditional sale or other encumbrance on the Facility, the Property or any part thereof, or any equipment, fixtures or materials therein or, the other's interest under this Agreement.

18. Hazardous Materials. The Town represents that: (i) there are no Hazardous Substances (as defined herein) on, in or under emanating from the Facility or the Theater Grounds, whether contained in barrels, tanks, equipment (moveable or fixed) or other containers, deposited or located in land, waters, sumps or in any other part of the Facility or the Theater Grounds, incorporated in any structure on the Facility or on the Theater Grounds, or otherwise existing thereon; (ii) there are no underground tanks in the Facility or the Theater Grounds; (iii) the Facility and the Theater Grounds are in compliance with all applicable environmental laws; and (iv) there has been no action initiated pursuant to environmental laws with regard to Hazardous Substances to remediate the Facility or the Theater Grounds. The term "Hazardous Materials", shall for the purposes hereof, mean any flammable, explosive or radioactive materials, hazardous wastes, hazardous and toxic substances or related materials or any other such substance or material; as defined by any federal, state or local law, ordinance, rule or regulation, including without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1987, as amended, the Hazardous Materials, Transportation Act, as amended, the Resource Conservation and Recovery Act, as amended, and in the regulations adopted and publications promulgated pursuant to each of the foregoing. In the event of the breach of the Town's representations and warranties set forth in this Section 18, the Town shall be required at its sole cost and expense to remove any such Hazardous Materials from the Facility or the Theater Grounds in the manner prescribed for such removal by all requirements of law.

Neither CDG or AST shall not cause or permit the introduction, placement, use, storage, manufacture, transportation, release or disposition of any Hazardous Materials, without the prior written consent of the Town. CDG and AST shall only be responsible for that portion of the cost of compliance with environmental laws which are attributable to spills or discharges of Hazardous Materials at, on, in, under or emanating from the Facility or the Theater Grounds which were caused by CDG or AST.

Notwithstanding the foregoing CDG or AST may store at the Facility materials which are commonly used in connection with the operation of a Theater and common cleaning materials to the extent that such materials are stored and used in compliance with all applicable environmental laws.

19. Access to the Facility. Except as otherwise provided herein the Town, its agents, servants, contractors, licenses, representatives and employees shall have the right to enter the Property, the Theater Grounds and the Facility at all reasonable times. Notwithstanding the foregoing, in the event of an emergency, the Town shall have the absolute right to enter the Theater and Facility at any time. Additionally, public access to

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297 at Page 29 of the Stratford Land Records;

iii. Easement from American Shakespeare Festival Theater and Academy to the Town of Stratford dated December 17, 1969 and recorded in Volume 454 at Page 284 of the Stratford Land Records;

iv. Drainage Easement as set forth in a deed from Thomas J. Rosati, Trustee to Robert Maricondo, Inc. dated January 30, 1978 and recorded in Volume 526 at Page 445 of the Stratford Land Records;

v. Terms, covenants and restrictions as set forth in a deed from the State of Connecticut to Town of Stratford dated January 18, 2005 and recorded February 8, 2005 Volume 2581 at Page 58 of the Stratford Land Records.

g. The Facility is serviced by water from the Aquarion water company and town sewer systems.

21. Representations and Warranties of CDG and AST. CDG and AST represent and warrant to the Town that:

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a. This Agreement does not cause a violation of, or conflict with: (i) their articles of incorporation or bylaws or other governing documents; (ii) any written or oral contract to which CDG or AST is a party; or (iii) any laws, judgments, orders, injunctions, stays, regulations or rulings applicable to CDG or AST or to the principals of CDG or AST.

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b. There are no lawsuits, or any other legal, administrative, judicial or other proceeding, pending or threatened, against CDG or AST or to which CDG or AST is or may be a party which could adversely affect CDG's or AST's ability to perform this Agreement.

22. Indemnification. The Town shall indemnify and save CDG and AST harmless from and against any claim, liability, obligations, damages, penalties, costs, charges and expenses, including reasonable attorneys' fees ("Losses") which may be imposed upon or incurred or asserted against CDG or AST and their employees arising from or in connection with any of the following: (i) any breach or default on the part of the Town in the performance of any covenant, or agreement, on the part of the Town to be performed pursuant to the terms of this Agreement; (ii) arising from any act of negligence or other wrongful act or omission on the part of the Town, its contractors, employees, or invitees; (iii) from the operation of the Theater prior to the execution of this Agreement; and (iv) breach of any representation or warranty of the Town contained in this Agreement.

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CDG or AST shall indemnify and save the Town harmless from and against any Losses which may be imposed upon or incurred or asserted against the Town and its

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26.1.2 When any of the above reasons exist, AST shall have the right to step into the shoes of CDG and complete its obligations under this agreement. Should it fail to do so within a reasonable time, the Town may without prejudice to any other rights or remedies of the Town and after giving CDG seven days written notice, terminate CDG and may;

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26.1.2.1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon;

26.1.2.2 accept assignment of subcontracts; and

26.1.2.3 finish the Work by whatever reasonable method the Town may deem expedient.

26.1.3 When the Town terminates the Agreement for one of the reasons stated in Subparagraph 26.1.1, CDG shall not be entitled to receive further payment.

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26.2.1 . During the Renovation Phase, the Town may, without cause, order CDG in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Town may determine, or to terminate the Agreement for the Town's convenience for any reason, at the Town's sole discretion, upon not less than seven (7) days written notice to CDG. Upon receipt of written notice from the Town of such suspension or termination for the Owner's convenience, CDG shall cease operations as directed by the Town in the notice, and take actions necessary, or which the Owner may direct, for the protection and preservation of the Work. Further, upon receipt of written notice from the Town of termination for the Town's convenience, CDG shall terminate all existing subcontracts and purchase orders, unless assignment is requested by the Town.¶
¶

26.2 Termination by Either Party at Any Time

26.2.1 In addition to the remedies set forth in Paragraph 25 and 26.1, any party may terminate this Agreement for default (an "Event of Default") by the other party in the event of the occurrence of any event described below:

26.2.1.1 the dissolution or liquidation of a party, or cessation of doing business for thirty (30) days or more;

26.2.1.2 a party makes an assignment for the benefit of creditors;

26.2.1.3 a party either commences, or has commenced against it, bankruptcy proceedings under the Federal Bankruptcy Code or under any other insolvency law;

26.2.1.4 a trustee, receiver, custodian, or liquidator is named for the purpose of general administration of such party's property;

26.2.1.5 the failure by a party to observe or perform any covenant, condition, agreement or undertaking hereunder on its part to be observed or performed for a period of fifteen (15) days after notice specifying such failure and requesting that it be remedied is given to such party, unless the other party shall agree, in writing, to an extension of such time prior to its extension.

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27. Remedies Cumulative.

None of the rights, powers or remedies conferred upon the parties hereto shall be mutually exclusive and each such right, power or remedy shall be cumulative,

in addition to every other right, power or remedy, whether conferred hereby or hereafter available at law, in equity, by statute or otherwise.

28. End of Term.

Upon the expiration or other termination of the Term of this Agreement, AST shall quit and surrender to the Town, the Facility broom clean in good order and condition, ordinary wear and damages which AST shall not be required to repair and AST shall remove its property.

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29. Town Logo

During the Term, neither CDG or AST shall be permitted to use the Town logo or any other Town symbol without the Town's prior written consent.

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30. Notice.

Whenever under this Agreement provision is made for any demand, notice, requests or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any notice, demand, request or declaration to the other party, it shall be in writing and served personally or by overnight courier, return receipt requested, addressed at the addresses set forth herein below or such other address as a party may designate by written notice given in the manner aforesaid:

To CDG and AST:

William Hanney
7 Central Street
South Easton, MA 02375

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With a copy to:

Barry C. Knott, Esq.
1656 Main Street
Stratford, CT 06615

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To the Town:

Town of Stratford
ATTN: Mayor's Office
Town Hall
2725 Main Street
Stratford, Connecticut 06615

With a copy to:
Richard J. Buturla, Esq.
Berchem, Moses, And Devlin PC
75 Broad Street
Milford, CT 06460

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31. **Amendments.** Neither this Agreement nor any term or provision hereof, may be changed, waived or discharged or terminated orally, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought.

32. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon, the parties hereto and their respective next of kin, legatees, administrators, executors, legal representatives, nominees, successors and permitted assigns.

33. **Captions.** The captions to the sections of this Agreement are for the convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or any party thereof, no in any other way affect this Agreement or any part thereof.

34. **No Waiver.** No Failure by the Town or either CDG or AST to insist upon strict performance of any covenant, agreement, terms or conditions of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

35. **Partial Invalidity.** If any term or provision of this Agreement, or the application thereof, to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, as the case may be, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

36. **Integration: Terminology.** This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. All of the terms and provisions used in this Agreement shall be deemed and construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, as the context or sense of this Agreement may require, unless specifically stated otherwise.

37. **Governing Law.** This Agreement and the rights of all parties hereunder shall be construed in accordance with the laws of the State of Connecticut.

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