

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

**THIS CONSTRUCTION PROJECT MANAGEMENT, FACILITY USE AND MANAGEMENT AGREEMENT** (hereinafter the "Agreement") is made as of this \_\_\_\_ day of January, 2009, by and between CINEMA DESIGNS GROUP, INC. (the "CDG"), a Connecticut corporation having an address of \_\_\_\_\_ ("CDG") and AMERICAN SHAKESPEARE FESTIVAL THEATRE, LLC, a Connecticut limited liability company having an address of \_\_\_\_\_ ("ASFT") and the Town of Stratford, a municipality of the State of Connecticut with offices at 2725 Main Street in, Stratford, CT 06615 (the "Town").

**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 professionally renovate, operate, maintain and manage the Theater and to retain ASFT to stage live theatrical Productions, as defined herein, and Performances, as defined herein and CDG and ASFT 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 the Theater, its stairs and balcony, the storage 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 are hereinafter collectively referred to as the "Theater Grounds"). CDG acknowledges that it has inspected the Facility and the Theater Grounds and agrees to accept the Facility and the Theater Grounds in "AS IS" physical condition, without representations or warranties of

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any kind.

**2. Scope of Engagement .**

**2.1 Relationship of the Parties.** CDG accepts the relationship of trust and confidence established with the Town by this Agreement, and covenants with the Town to furnish the CDG's reasonable skill and judgment and to cooperate with the Town in furthering the interests of the Town. CDG shall furnish administration and management services and use CDG'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 CDG and other persons or entities employed by CDG at the Facility.

CDG hereby acknowledges and agrees that this Agreement does not confer upon CDG, its 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 CDG acknowledges that it does 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.

**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, operating, maintaining and managing the Facility during the Term (as defined herein) and CDG hereby accepts such engagement and agrees to fulfill its duties hereunder. CDG 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. CDG'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 and except as may otherwise be set forth herein.

Notwithstanding any provision herein to the contrary, the Town and Related Town Entities shall have absolute and exclusive access to and use of the White Building at any and all times. Additionally, CDG shall have no interest in, or right to remove, relocate or otherwise use any of the Town's personal property located in the White Building, including but not limited to any and all paintings, portraits or other such artwork.

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

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shall be amended to include a schedule of this personal property as Exhibit "B" attached hereto.

CDG'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 absolute 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 scheduled CDG Performances. CDG 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 (hereinafter, the "Stratford Arts Festival Period"). The Stratford Arts Festival Period shall include three weekends, i.e., three (3) Saturdays and Sundays, commencing on 12:01 am on Monday through 11:59 pm on the Sunday three (3) weeks subsequent and unless otherwise specifically agreed to by the Town in writing, the Stratford Arts Festival Period shall be scheduled during the months of June, July, August and September of each calendar year of the Term

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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 absolute 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 CDG 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 as the Town's use of the Facility and Theater 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.

**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

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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 CBG without the approval of the Town (the "Approved Plan and Work"). The Town shall have the right, to reject any Plan, any Work and/or any Contractor and to terminate this Agreement.

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CDG is responsible for the preparation and review of the design and construction documents (the "Construction Documents") as they are being developed 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 Substantially Complete (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. In the event that CDG fails to Substantially Complete the Approved Plan and Work on or before the expiration of the Renovation Period, the Town shall provide CDG with written notice of such failure and CDG shall have an additional twenty (20) days to Substantially Complete the Approved Plan and Work. In the event that CDG fails to Substantially Complete the Approved Plan and Work within said period, the Town shall have the right to terminate this Agreement. Upon the termination of the Agreement, CDG and the Town shall unless otherwise stated herein, have no further obligations with respect to this Agreement which shall be considered void and invalid.

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### 3.2 Cost Estimates; Guaranteed Maximum Price

During the preparation of the Construction Documents, CDG shall prepare a detailed cost estimate of the Approved Plan and Work with supporting information. CDG shall reconcile this estimate with any previous estimates prepared by either CDG, the Town, or others.

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A Guaranteed Maximum Price, as defined below, to be paid by the Town for the cost of completion of the Approved Plan and Work shall be established prior to the start of construction, but in no event shall the sum of the cost of the Work, defined below, exceed the amount of THREE MILLION AND 00/100'S DOLLARS (\$3,000,000.00). Such maximum sum of THREE MILLION AND 00/100'S DOLLARS (\$3,000,000.00) is referred to herein as the "Guaranteed Maximum Price".

**Costs for the Approved Plan and Work over and above the Guaranteed Maximum Price or which would cause the Guaranteed Maximum Price to be exceeded, shall be paid by CDG and shall be the sole responsibility of CDG without reimbursement by the Town.**

If any estimate submitted to the Town exceeds previously approved estimates or the Town's budget, CDG shall, as part of its estimate submittal to the Town, provide specific recommendations for changes to the Project design so as to ensure that the Project remains within the approved budget.

CDG shall be solely responsible for the performance of each of the Subcontractors. Subcontractor shall mean any trade contractor, person or other entity contracted by CDG to perform, provide or supply any services, labor, materials, or equipments in conjunction with performance of the Work for the Project. **CDG shall indemnify and hold harmless the Town from and against any and all additional costs and liability in excess of the Guaranteed Maximum Price incurred as a result of the failure of any Subcontractor to perform in accordance with its applicable subcontract, or by the performance of its subcontract in a negligent manner.**

### **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. It shall be the responsibility of CDG to assemble and prepare the bid packages utilizing the completed Construction Documents in accordance with municipal, state and federal regulations and laws regarding public construction projects on municipally owned property, including the payment of prevailing wages in accordance with Connecticut General Statutes Section 31-52, *et seq.* **CDG shall provide a list of potential bid packages for the Town's review and approval prior to bidding. Additionally, the Town shall have the absolute right and discretion to reject any bid.**

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

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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.

(a) CDG shall 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.

(b) CDG shall 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.

(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 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) CDG shall 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.

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

(i) CDG has 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

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requirements and intent of the 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 and/or its consultants as well as generally recognize industry standards. This includes ensuring that all work is defect free and error free.

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(j) CDG shall 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) CDG is responsible 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) CDG is responsible for implementing, managing and otherwise accountable for the safe execution of all aspects of the construction of the project.

(n) CDG shall 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.

(o) CDG is responsible for the issuance of Change Order forms as necessary.

**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 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 with the interests of the Town.

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

CDG shall enforce strict discipline and good order among the 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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3.6.1.5.2 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 One time cost of removal of left over Town debris from the site.

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's representative.

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 the CDG's insurance and bonds as required hereunder.

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

3.6.1.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the CDG is required to pay.

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

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 the CDG's capital employed for the Work.

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.

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

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

**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.

**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.

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### 3.7 RENOVATION 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 agent appointed and paid for by the Town as its Project representative (hereinafter, the "Town's Representative"), the Town shall make progress payments on account of the Guaranteed Maximum Price to CDG as provided below.

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. The first application for payment shall include a request for the Town to pay CDG a deposit of \$300,000.00 (10% of the Guaranteed Maximum Price) towards the performance of this Agreement, which deposit shall be used by CDG for such costs as deposits on contracts or goods to be purchase for the Project. It shall not be used to reimburse CDG for any of its out-of-pocket or administrative expenses to be reimbursed as provided for herein."

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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 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.

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

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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 the CDG's Surety must accompany any request for retention reduction.

3.7.1.9 Except with the Town's prior approval, CDG shall not invoice for, or make advance payments to, suppliers for materials or equipment, which have not been delivered and stored at the site, except for deposits required by vendors necessary to supply materials or equipment and deliver same to the site.

3.7.1.10 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.

3.7.1.11 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 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

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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.

### 3.7.2 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 have been submitted and approved;
  - e) Environmental deliverables 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 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 attic stock has been submitted and catalogued;
  - k) All keys / special tools have been submitted;
  - l) Testing of systems is complete;
  - m) Building commissioning has been completed.

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

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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 professionals including the submission of the following documents:

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

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g) Final Signed Amendment

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 30 days after the issuance of the Town's Representative's final Certificate for payment.

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.

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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.

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3.8.1. Insurance Required of CDG

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3.8.2. Performance and Payment Bonds

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In compliance with Section 49-41 (a) of the Connecticut General Statutes ("CGS"), CDG shall provide a labor and material payment bond in the entire amount of the Guaranteed Maximum Price. In addition, a performance bond must also be provided in the entire amount of the Guaranteed Maximum Price. Such bonds must conform to the Town of Stratford's current requirements and be approved by the Town as to the form and correctness. The cost of these bonds shall be included in the Cost of the Work.

¶ CDG may require the Subcontractors to furnish the above referenced bonds covering labor and materials, as well as performance of the contract. The bonds shall be in the amount of 100% of the subcontract value and shall be in a form acceptable to the Town. The cost of the Subcontractor bonds or their equivalent may be included in the Cost of the Work. Subcontractor bonds shall be issued in the name of CDG and the Town of Stratford as dual obligees.

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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 Payment, provided said payment shall not exceed the Guaranteed Maximum Price.

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

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### 3.9 Warranty

CDG warrants to the Town that materials and equipment and work in place furnished under this Agreement will be of good quality unless otherwise required or permitted by the Construction Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Approved Plan and Work. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Town, CDG shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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CDG shall procure and assign to the Town at the time of completion of the Work any and all Subcontractor, manufacturer or supplier warranties relating to any materials and labor used in the Work. CDG shall be responsible for any additional costs and expenses incurred to correct defective Work during the one-year period commencing on the date of Substantial Completion. For Subcontractor, manufacturer and supplier warranties and guaranties beyond one year, CDG shall cooperate with and assist the Town in pursuit of its rights against the relevant Subcontractor, manufacturer or supplier pursuant to said warranty or guaranty

### 3.10 Permits, Fees and Notices

Unless otherwise provided in the Approved Plan and Work, CDG shall secure the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured for the Work and which are legally required when bids are received or negotiations concluded.

CDG shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work. If CDG performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without notice to the Town, CDG shall assume full responsibility for such Work.

### 3.11 Cleaning Up

CDG shall keep the Facility and the Theatre Grounds free from accumulation of waste materials or rubbish caused by operations under this Agreement. At completion of the Work the CDG shall remove from and about the Project all waste materials, rubbish, CDG's tools, construction equipment, machinery and surplus materials.

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

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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.

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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 Liability Insurance –

CDG 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 the CDG's operations under this Agreement and for which CDG may be legally liable, whether such operations be by the CDG or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under Workers' Compensation and Employer's Liability, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the CDG's employees;

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- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the CDG's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of Products/Completed Operations; and

The insurance required by this section shall be written for not less than limits of liability specified under this section (a) through (f) or required by law, whichever coverage is greater.

- a. Commercial General Liability – with a combined Bodily Injury and Property Damage Limit of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. The aggregate must be applicable on a per project basis.  
 General Aggregate (Other than Products/Completed Operations) \$2,000,000  
 Products/Completed Operations Limit \$1,000,000  
 Personal & Advertising Liability \$1,000,000  
 Each Occurrence Limit \$1,000,000 (on a per project basis)  
 Fire Damage Legal Liability \$50,000  
 Medical Payments \$5,000

Certificates of Insurance acceptable to the Town shall be filed with the Town prior to commencement of the Work. These Certificates and the insurance policies required by this Paragraph shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to the Town. Information concerning reduction of coverage shall be furnished by CDG with reasonable promptness in accordance with the CDG's information and belief.

**3.14 Town's Responsibilities**

(a) The Town will provide information in its control or custody regarding the Project which is reasonably necessary to enable the CDG to satisfy the CDG's obligations under this Agreement and will provide reasonable cooperation with CDG.

(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 shall be given by the Town to CDG.

(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

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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.

**3.15 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 CDG, together with all of the Work, shall be and become the property of the Town.

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 the CDG in connection with the performance of the Work, but excluding the 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.

**4. Term.** The term of CDG'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 (the "Commencement Date") and terminate ten (10) years thereafter (the "Initial Term"), unless earlier terminated or renewed as provided herein. Provided that CDG is not in default of any of the terms, conditions and covenants of this Agreement, CDG 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 CDG is not in default of any of the terms, conditions and covenants of this Agreement, CDG 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 CDG is not in default of any of the terms, conditions and covenants of this Agreement, CDG shall have the 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".

CDG 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

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term of this Agreement and such notice shall be accompanied by the Renewal Payment.

5. **Fees.** During the Initial Term, CDG 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 on the annual anniversary of the Commencement Date. During the First Renewal Term, CDG 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 Term, CDG 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". CDG shall be entitled to a credit against the Annual Fee for the actual costs and expenses incurred and paid by CDG to repair and maintain the Facility and the Theater Grounds during that year of the Term. CDG shall be responsible for all such costs.

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 CDG, as if CDG 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.

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 under Section 2.2 of this Agreement, CDG 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" or "American Festival Theatre" or "American Shakespeare Festival Theatre", productions or outreach programs, merchandise, concessions, food, clothing and other monies collected

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 a production is performed; and the term "Performance" shall mean a single staging of a production before a live audience, not including rehearsals, technical rehearsals. Commencing on the Commencement Date and continuing throughout the Term, CDG 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

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Deleted: 6. **Summer Season.** During the Term, CDG shall be obligated to stage Productions, defined below, at the Facility during the Summer Season, which for the purposes of this Agreement shall mean May 1<sup>st</sup> through September 30<sup>th</sup> (the "Summer Season") as follows: (i) during the first two (2) years of the Term two (2) Productions, consisting of no fewer than ten (10) Performances each during each Summer Season; (ii) during the third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) years of the Term, three (3) Productions consisting of no fewer than fifteen (15) Performances each during each ... [1]

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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, CDG shall include during each year of the Term the works of William Shakespeare among the works presented at the Theater, including a minimum of one (1) Production. CDG also agrees to make the Facility available for and to provide the Shakespearian production available to students attending schools in the Town of Stratford and other scholastic jurisdictions. Except as otherwise provided herein, CDG shall have the responsibility and authority to make decisions with respect to the day-to day operations of the Facility. Without limiting the foregoing, CDG shall have the following rights and authority:

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a. The theater Productions and Performances shall be scheduled by CDG. CDG 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.

b. Except for the Town and other Town Related Entities and as otherwise set forth herein, CDG shall have the exclusive right to market, sell and distribute merchandise, and other concessions, except food and beverages, at the Facility, the Theater Grounds or through any other medium, including but not limited to internet sales in connection CDG Productions and Performances. All of the revenue earned by CDG through the sale of such items at CDG Productions shall be retained by CDG. The Town and Town Related Entities, however, shall have the right to permit the sale of merchandise, food and other concession items at any community or municipal event and retain the right to market and sell merchandise with regard to the Facility and the Theater Grounds; and CDG shall not have the right to any revenues derived by the Town and/or Town Related Entities from such sales.

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c. CDG 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 CDG in complying with the Regulatory Requirements, including but not limited to the execution of all reasonable documentation and furnishing of information.

d. CDG 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

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Performances which occur at the Facility and the Theater Grounds.

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

**8. Theater Use.** CDG and the Town acknowledge that the Theater is a municipally owned facility. CDG 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. CDG 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.

CDG 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. CDG shall furnish administration and management services, as contemplated by paragraph 5, supra. and use CDG'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.

CDG 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 CDG's business; and CDG further covenants and agrees to comply with all rules and regulations of the New England Board of Fire Underwriters on any fire, public liability, or other insurance policies upon the Facility, and any property contained in the Facility. CDG shall save and hold the Town harmless from and against all fines, penalties and costs incurred because of CDG'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 the event of such non-compliance by CDG in any particularity, and if CDG 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 CDG 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.

**9.1 Annual Performance Schedule.** The Town shall provide to the CDG for review and approval an annual performance schedule setting forth dates, times and the title of any proposed performance no later than November 1 of the preceding year, which such schedule shall be subject to change due to artist unavailability or other conflict. Said Annual Performance Schedule shall include the annual Stratford Arts Festival which date shall be during the Stratford Annual Arts Festival Period and shall

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be established in consultation with the Stratford Arts Commission. As bookings become finalized, CDG shall provide to the Town for review a performance schedule setting forth dates, times and title of any proposed performance as bookings become finalized. Upon reasonable notice, CDG may add other performance dates to the calendar as the year progresses; provided, however, that such date does not conflict with the annual Stratford Arts Festival or a community use by the Town that has been scheduled for the Facility after the presentation of the Annual Performance Schedule to the Town and prior to the consideration of the additional event.

**9.2 Annual Capital Improvement and Maintenance Plan.** CDG 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.

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**10. Obligations and Duties of the Town.** The Town shall provide CDG, 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 city 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 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 on the Facility and the Theater Grounds, except for the Town or Arts Commission shows or productions for which the Town shall be responsible. Notwithstanding the foregoing, CDG shall not have the right or the ability to direct the Town to perform any maintenance, repairs or capital improvements to 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 CDG in conjunction with the operation of the Facility.

**11. Sponsorship of the Theater.** CDG and the Town desire to obtain a corporate sponsor for the Theater and agree to consult with each other with respect to this matter. The granting of any corporate sponsorship, or the right to name the Theater and the Facility and to change any such name thereafter, shall be exercised solely by the CDG. Any and all payments or other benefits received in exchange for the right to name or sponsor the Theater shall be retained by CDG and may 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.

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**12. Taxes and Surcharges.** Except for real estate property taxes which shall be waived by the Town, CDG shall pay all taxes, if any imposed as a result CDG's use and operation of the Theater or the business conducted by CDG at the Facility and Theater

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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.

CDG 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 CDG, its servants, employees, visitors or licensees. Any damaged property, shall be restored or replaced promptly by CDG at its sole cost and expense. If CDG fails to make such repairs, restorations or replacements, same may be made by the Town at the expense of CDG and all sums spent and expenses incurred by the Town shall be promptly paid by CDG within ten (10) days after rendition of a bill or statement thereof.

CDG agrees that CDG shall further be responsible, at CDG's sole expense, for all maintenance, repairs and replacements resulting from damage to any part of the Facility, or Theater Grounds, or of the Property, including any fixtures or improvements thereupon, regardless of whether such improvements were made by Town or CDG, in all cases where such damage is either (i) covered in whole or in part by CDG's insurance or (ii) results from the negligent act of CDG, or CDG's breach of it's obligations hereunder or from such act of the agents, employees, licensees or business invitees of CDG conducted within the Property. Such maintenance, repair and/or replacement shall be made with due diligence taking into account the nature of such repair or replacement by CDG or its contractors, subcontractors or agents, as Town shall direct in its sole discretion. In the event that Town shall elect to make such repairs, all insurance proceeds related to the Property, or the Facility, shall be paid or assigned to Town.

CDG shall at its sole cost and expense keep the walkways and entrances on the Theatre Grounds free from snow, ice and other debris.

Upon prior notice to CDG, The Town shall have the absolute right, but not the obligation, to access and inspect the Facility and the Theatre Grounds at any and all times to ensure that the Facility and the Theater Grounds are being maintained and repaired in accordance with this Agreement. In the event CDG fails to maintain and repair the Facility and/or the Theatre Grounds as required by this Agreement, Town may, upon thirty (30) days prior notice of said failure, enter upon the Property, do the necessary maintenance work, or make the necessary repairs, and charge CDG the amount therefor, together with an additional five percent (5%) percent surcharge which shall be immediately due and payable on the completion of such repairs or maintenance. If any such repairs are covered by CDG's insurance policy or policies,

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Town shall receive, by assignment or otherwise, all proceeds of such insurance, but not in excess of the amount due under the preceding sentence. Additionally, CDG's failure to maintain and repair the Facility and/or the Theatre Grounds as required by this Agreement shall be considered an event of default.

### **13.2 SERVICES**

Town shall not be liable to CDG or anyone claiming under CDG for the cessation of any service rendered to the Property or the Facility due to any accident, the making of repairs, alterations or improvements, labor difficulties, difficulties in obtaining fuel, water, electrical service or supplies, or for any cause.

### **13.3 UTILITY CHARGES**

During the Term, Town shall not be required to provide any utilities or services to CDG, or do or perform any act in connection with utilities or services to the Facility or the Property, or any part thereof. CDG shall be responsible for and shall promptly secure access to and pay, as and when due, all charges incurred for the installation, use and consumption of all utility services to the Facility or the Theater Grounds, including but not limited to, to the extent applicable, gas, electricity, water, telephone service, sanitary and storm sewer, light, power, heat, steam, communication services, and garbage collection. CDG shall also pay for all maintenance upon such utilities and to have such utilities separately metered

**13.4 Improvements.** During the Term, CDG may determine that it is necessary and/or desirable to construct certain improvements at the Property, including but not limited to a restaurant/banquet facility and/or a multi-unit residential dwelling building for employees and/or actors at the Facility. Any such facilities, buildings or other improvements shall be subject to any and all real property and other taxes which may be assessed by and payable to the Town.

CDG may renovate the existing garage to the right of the driveway as you enter the premises to a residential apartment to be occupied by one or more of the employees of CDG and the Town hereby grants permission for that modification as part consideration hereof, subject to municipal regulatory approval.

CDG covenants and agrees that CDG 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 may be withheld in Town's ~~which consent shall not be unreasonably withheld~~. CDG covenants and agrees that CDG 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. CDG covenants and agrees that any such improvements (to which Town's consent shall be given), shall be performed at CDG'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

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Property. CDG agrees 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, CDG will provide Town with as-built plans. CDG covenants and agrees 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 CDG or CDG's 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, and CDG shall promptly correct any such failure. In the event CDG shall not correct same within thirty (30) days after written notice thereof is provided by Town to CDG, Town may make such correction and charge CDG for the cost thereof plus a five (5%) percent surcharge.

Prior to commencing any such work, CDG 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 CDG's 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 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.

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, unless Town elects otherwise (by giving written notice to CDG) 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.

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

**14. Insurance.** CDG 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 to the operation of a theater, and insurance as it deems necessary for its equipment, supplies, machinery and personal property (the "Insurance Coverage"). CDG may satisfy the Insurance Coverage requirement through any combination of general liability and umbrella coverage as CDG shall determine in its sole discretion. All such policies shall be issued by companies licensed to conduct business in the state where the Facility is located,

**Deleted:** be made only upon consent of Town, which consent may be withheld at Town's sole discretion

**Deleted:** Further, CDG covenants that any such signs, graphics or other advertisements to which Town may consent shall be consistent with the laws of the Town of Stratford and State of Connecticut and the rules and regulations established by the Town for the Facility and shall be at the sole cost of CDG.

**Deleted:** including fire and casualty insurance on the Facility

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acceptable to the Town and name the Town and such other parties as the Town deems 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 Town. CDG 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 Town.

**15. Fire and Casualty Damage.** If the Facility or any part thereof shall be damaged by fire, natural disaster, invasion or other casualty, CDG shall give immediate notice thereof to the Town. Either the Town or CDG may at its option terminate this Agreement. Unless terminated, CDG shall repair, restore, replace, or rebuild the damaged or destroyed Facility as nearly as possible to its prior condition. CDG shall provide the Town 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 either CDG 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; however, in such event all fire insurance proceeds shall be turned over to the Town. CDG shall cooperate fully and assist the Town in recovering all such insurance proceeds.

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

CDG shall promptly commence the restoration work in substantial conformance with the prior Facility, upon receipt of the insurance proceeds from its insurance carrier. CDG 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 operating.

In the event that either the Town or CDG, 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

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by the terms and provisions of the waiver of subrogation clause and/or endorsement.

**16. Assignment and Transfer.** CDG agrees that the privileges and rights herein granted are personal to CDG. CDG shall have no 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. 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 CDG shall not change nor CDG shall be merged into another entity without such consent.

**17. Mechanics Lien.** If a mechanics lien is currently filed against the Facility or the Property will be filed 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 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. In the event a mechanic's lien is filed against the Facility or the Property arising out of such work, CDG shall cause such lien to be discharged within thirty (30) days thereafter, at CDG's expense by payment or filing of the bond required by law.

Neither the Town nor CDG 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

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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.

CDG 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 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.

Notwithstanding the foregoing CDG 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 the Theater Grounds in accordance with the terms of the Restrictions shall be allowed throughout the Term.

The Town shall use its best efforts to minimize interference with the operation of the Theater and CDG, its Contractors, employees and representatives use of the Facility and acknowledges that rehearsals are considered closed to the Town and private.

**20. Representations and Warranties of the Town.** The Town represents and warrants to CDG that:

- a. The Town has full power and authority to enter into this Agreement and the person executing this Agreement on behalf of the Town is authorized to do so.
- b. The Town is the sole owner of the Property, the Facility and the Theater Grounds. There are no ground leases and/or mortgages which in any way prohibit or interfere with the use of the Facility or the Theater Grounds by CDG for the purposes permitted under this Agreement and the Town shall not permit or suffer any such ground lease or mortgage to be placed against the Facility or the Theater Grounds, which would prohibit or interfere with such permitted uses or the term of this Agreement.
- c. The Facility and the Theater Grounds are free from all occupancies or tenancies whatsoever.

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- d. This Agreement does not violate the provisions of any instrument heretofore executed and binding on the Town.
- e. The Town has obtained any and all required consents and approvals in order to enter into this Agreement and the execution of this Agreement does not violate any applicable charters, statutes, rules or regulations.
- f. The Town has good and marketable fee simple title to the Facility and the Theater Grounds, free and clear of all easements, restrictions, liens, encumbrances and leases, except for the following restrictions:
  - i. Covenants and restrictions contained in a deed from Housatonic Properties, Incorporated to Housatonic Boat Club, Incorporated dated May 14, 1954 as amended by an Amendment of Covenants and Restrictions dated August 23, 1954 and recorded in Volume 297 at Page 26 of the Stratford Land Records;
  - ii. Rights and Rights of Way as set forth in a deed from Housatonic Properties, Incorporated to The American Shakespeare Theater and Academy of Connecticut dated August 25, 1954 and recorded in Volume 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.** CDG represents and warrants to the Town that:

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

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

**22. Indemnification.** The Town shall indemnify and save CDG 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 and its 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.

CDG 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 employees arising from or in connection with any of the following: (i) any breach or default on the part of CDG in the performance of any covenant, or agreement, on the part of CDG 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 CDG or its employees; (iii) from the operation of the Theater after the Commencement Date; and (iv) breach of any representation or warranty of CDG contained in this Agreement.

The obligations of the parties under this Section 22 shall survive the expiration or earlier termination of the Agreement.

**23. Event of Default by CDG.** The following events shall be deemed an event of default by CDG under this Agreement, ("CDG Event of Default"):

- a. CDG shall fail to pay when or before due any sum of money due to be paid to the Town hereunder, and shall not cure such failure within thirty (30) days after receipt of notice of such failure from the Town; or
- b. CDG shall fail to comply with any term, provision or covenant of this Agreement applicable to CDG, and shall not cure such failure within thirty (30) days after receipt of notice of such failure from the Town, or in the case of a default which cannot be cured with due diligence within said thirty (30) days, CDG shall fail after the receipt of such notice to promptly and diligently proceed to cure such default; or
- c. If a transfer or assignment by CDG has occurred which violates this Agreement.

**24. Event of Default by the Town.** The following events shall be deemed an event

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of default by the Town under this Agreement ("Town Event of Default"):

- a. The Town shall fail to pay when or before due any sum of money due to be paid to CDG hereunder, and shall not cure such failure within thirty (30) days after receipt of notice of such failure from the CDG; or
- b. The Town shall fail to comply with any term, provision or covenant of this Agreement applicable to the Town, other than by failing to pay when or before due any sum of money becoming due to be paid to the CDG hereunder, and shall not cure such failure within forty five (45) days after receipt of notice of such failure from CDG, or in the case of default which cannot be cured with due diligence within said forty five (45) days, the Town shall fail after the receipt of such notice to promptly and diligently proceed to cure such default.

**25. Remedies.**

- a. Upon the occurrence of a CDG Event of Default, beyond any applicable notice and cure periods, the Town shall have the option to: (i) terminate this Agreement; (ii) pursue any and all remedies that may be available at law or equity; and (iii) seek specific performance of the agreements and obligations of CDG hereunder and or other equitable relief as may be granted by a court of competent jurisdiction. In the event that Town terminates this Agreement, CDG shall surrender and vacate the Facility and the Theater Grounds, and deliver possession to the Town in accordance with the terms and conditions of this Agreement. The indemnification obligations set forth in Section 22 and the Town's rights to pursue all legal remedies shall survive the termination of this Agreement.
- b. Upon the occurrence of a Town Event of Default, beyond any applicable notice and cure periods, CDG shall have the option to: (i) terminate this Agreement (ii) pursue any and all remedies that may be available at law or equity; and (iii) seek specific performance of the agreements and obligations of the Town hereunder or other equitable relief as may be granted by a court of competent jurisdiction. In the event that CDG terminates this Agreement, CDG shall surrender and vacate the Facility and the Theater Grounds and deliver possession to the Town in accordance with the terms and conditions of this Agreement. The indemnification obligations set forth in Section 22 shall survive the termination of this Agreement and CDG's right to pursue all legal remedies shall survive the termination of this Agreement.

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26. Termination or Suspension of the Agreement

26.1 Termination by the Town for Cause During the Renovation Phase

26.1.1 During the Renovation Phase, the Town may terminate the Agreement if the CDG:

- 26.1.1.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- 26.1.1.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the CDG and the Subcontractors;
- 26.1.1.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- 26.1.1.4 fails to properly furnish administration and management services or to use best efforts to perform the Work in a professional and economical manner consistent with the highest industry standards and practices and with the interests of the Town
- 26.1.1.5 otherwise is in breach of a provision of the Agreement.

26.1.2 When any of the above reasons exist, the Town may without prejudice to any other rights or remedies of the Town and after giving CDG and its surety, if any, seven days written notice, terminate CDG and may, subject to any prior rights of the surety:

- 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.

26.2 Suspension or Termination by the Town for Convenience During the Renovation Phase

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,

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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.

### 26.3 Termination by Either Party at Any Time

26.3.1 In addition to the remedies set forth in Paragraph 25 and 26.1, either 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:

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

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

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

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

26.3.1.5 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.

26.3.1.6 the failure to properly furnish administration and management services or to use 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; or

### 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, CDG shall quit and surrender to the Town, the Facility broom clean in good order and condition, ordinary wear and damages which CDG shall not be required to repair and CDG shall

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remove its property.

**29. Town Logo**

During the Term, CDG shall not be permitted to use the Town logo or any other Town symbol without the Town's prior written consent.

**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:

CDG

With a copy to:

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  
Berchem, Moses, And Devlin PC  
75 Broad Street  
Milford, CT 06460

**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,

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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 CDG 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.

**38. Counterparts.** This Agreement may be executed in several counterparts, each of which when so executed and delivered shall be considered an original and all of which, when taken together, shall constitute one and the same Agreement.

**IN WITNESS WHEREOF,** each party has executed this Agreement or a counterpart hereof as of the day first written above.

**THE TOWN OF STRATFORD**

**CINEMA DESIGNS GROUP, INC.**

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(00236572).DOC

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By: James Miron  
Title: Mayor

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By: William Hanney  
Title: President

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6. **Summer Season.** During the Term, CDG shall be obligated to stage Productions, defined below, at the Facility during the Summer Season, which for the purposes of this Agreement shall mean May 1<sup>st</sup> through September 30<sup>th</sup> (the "Summer Season") as follows: (i) during the first two (2) years of the Term two (2) Productions, consisting of no fewer than ten (10) Performances each during each Summer Season; (ii) during the third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) years of the Term, three (3) Productions consisting of no fewer than fifteen (15) Performances each during each Summer Season; and (iii) during the remainder of the Term, three (3) Productions consisting of no fewer than twenty (20) Performances each during each Summer Season.

per year during each of the first two (2) years; a minimum of four (4) Productions consisting of no fewer than fifteen (15) live Performances each per year during each of the third and fourth years of this Agreement;