

**AMENDED AND RESTATED
ETHEL KWESKIN THEATER
OPERATION AGREEMENT**

THIS AGREEMENT, made on this _____ day of _____, 2020, by and between the **CITY OF STAMFORD**, a municipal corporation organized and existing under the laws of the State of Connecticut (hereinafter the "City"), acting herein by David R. Martin, its duly-authorized Mayor, and **CURTAIN CALL, INC.**, a Section 501(c)(3) corporation organized and existing under the laws of the State of Connecticut (hereinafter the "Operator"), acting herein by Ted Yudain, its duly-authorized Chairman.

WHEREAS, the City is the owner of a certain Premises known as the "Sterling Farm Golf Course"; and

WHEREAS, a portion of said Premises contains a theatre known as the "Kweskin Theater"; and

WHEREAS, it has been determined that the City does not wish to operate said theater at this time; and

WHEREAS, the Operator is a not-for-profit corporation that operates for the primary purpose of promoting theater arts, producing theatrical plays, improvisation and related performance arts, conducting workshops and classes in theater and related performance arts; and

WHEREAS, the City desires that the properties hereinafter designated to be utilized for purposes consistent with those of the Operator for the benefit of the general public; and

WHEREAS, the Operator desires to provide such services;
and

NOW THEREFORE, the parties hereto agree as follow:

1. PREMISES

The City hereby gives the Operator permission to use the following portions of the Premises known as the "Sterling Farm Golf Course":

- a. The Kveskin Theater;
- b. Administration Building;
- c. The Dressing Room Theater;
- d. Storage Barn;

hereinafter collectively referred to as "Premises".

2. PURPOSE

The City permits the Operator to use the Premises pursuant to the terms and conditions herein contained. The Premises shall be used for the following purpose only: Promoting theater arts, producing theatrical plays, improvisations and related performances arts and conducting workshops and classes in theater and related performance arts and other related activities for the benefit of the general public.

The subject Premises shall not be used for any other purpose without the prior written consent of the City's Director of Operations.

3. TERM

The term of this Agreement shall commence on July 1, 2020 and shall terminate on June 30, 2030 ("Term").

4. COVENANTS OF THE CITY

- a. The City agrees that it has the authority to license the use of said Premises in the manner aforesaid.
- b. The City shall provide the Operator with an annual stipend, which shall be used exclusively to defray the cost of utility, maintenance and security bills servicing the Premises. The Operator must provide the City with an annual audit of said expenditures no later than December 31st of each calendar year. The annual stipend, in accordance with the schedule set forth below, shall be paid by October 1st of every year beginning on the first year of this Agreement and on each anniversary thereafter as follows:

1. JULY 1, 2020 through JUNE 30, 2021
Eighty thousand dollars (\$80,000.00)
2. JULY 1, 2021 through JUNE 30, 2022
Eighty thousand dollars (\$80,000.00)
3. JULY 1, 2022 through JUNE 30, 2023
Eighty five thousand dollars (\$85,000.00)
4. JULY 1, 2023 through JUNE 30, 2024
Eighty five thousand dollars (\$85,000.00)
5. JULY 1, 2024 through JUNE 30, 2025
Ninety thousand dollars (\$90,000.00)
6. JULY 1, 2025 through JUNE 30, 2026
Ninety thousand dollars (\$90,000.00)
7. JULY 1, 2026 through JUNE 30, 2027
Ninety five thousand dollars (\$95,000.00)
8. JULY 1, 2027 through JUNE 30, 2028
Ninety five thousand dollars (\$95,000.00)
9. JULY 1, 2028 through JUNE 30, 2029
One hundred thousand dollars (\$100,000.00)
10. July 1, 2029 through June 30, 2030
One hundred thousand dollars (\$100,000.00)

- c. The City shall be responsible for ice and snow removal from driveways and parking areas at the Premises.
- d. The Operator shall have the right to install and maintain signs on the exterior and interior of the Premises and shall have the right to install and maintain signs relating to theatrical productions on the City's property that is located near the roadway on Newfield Avenue that is adjacent to the Premises' driveway. The City retains the right to require the Operator to follow reasonable time, place and manner restrictions and, therefore, no sign shall be placed pursuant to this Section until after the Operator has notified the City in writing of its desire to put up signage, and the City's Director or Operations has given written approval in advance of the placing of said signage.
- e. The City shall give the Operator, its employees, agents, independent contractors, invitees, licensees, clients, patrons, students and attendees, access in and to the Premises from available access ways and shall also give access to parking in designated

areas at the Sterling Farms Golf Course as may be available.

- f. The City agrees to retain responsibility for all major structural repairs to the Premises as determined by the Director of Operations, once it has been given written notice by the Operator of the need for the repair to be made.
- g. The Operator acknowledges that the City is a municipal corporation and that the City's obligation to make payments under this Agreement is contingent upon approval and appropriation in accordance with the Stamford Charter and Code of Ordinances. If sufficient funds are not so approved and appropriated during any term of this Agreement, the City or the Operator has the right to terminate this Agreement without penalty or cost to either party as of the first day of any month in which sufficient funds are not available. The City shall use its best efforts to request the necessary funding in accordance with the Stamford Charter and Code of Ordinances.

5. COVENANTS OF THE OPERATOR

- a. The Operator covenants with the City to manage the Premises and, in exchange for the use of the Premises, agrees that it shall provide the

services cited in Section 2 above. The Operator shall commit no waste upon the Premises nor suffer the same to be committed thereon, nor injure nor misuse the same. The Operator shall not assign this Agreement nor sublicense the use of the Premises or any part thereof, nor make alterations therein, or use the same for any purpose but that hereinbefore authorize, without prior written approval from the City's Director of Operations, but will deliver up the same at the expiration or sooner termination of this Agreement in as good a condition as it is now, ordinary wear and tear excepted.

- b. The Operator agrees to immediately notify the City's Director of Operations in writing of any major structural repairs that must be performed on the Premises during the Term of this Agreement. Major structural repairs shall include, but not be limited to: Boiler repair and/or replacement; HVAC repair and/or replacement; structural repairs to the buildings (including roof repair). The Operator agrees to obtain written permission from the City's Director of Operations before changing or altering the Premises or any part thereof. This shall include, but not be

limited to painting of interior or exterior surfaces. The Operator may make capital improvements to the Kweskin Theater and the Dressing Room Theater at its sole cost and expense. The City's Director of Operations shall approve the design of such improvements in writing prior to the construction thereof.

- c. The Operator shall pay for and provide for custodial services and maintenance services at the Premises, including, but is not limited to sweeping and cleaning outside abutting areas as well as the interior of the Premises.
- d. If the Operator violates any of the major covenants of this Agreement, and said violation is not cured by the Operator after 30 days written notice from the City, this Agreement shall thereupon expire and terminate at the option of the City, and the City may, at any time thereafter, re-enter the Premises, and have and possess same as the City's former estate and/or pursue any other legal remedy allowed by law.
- e. Should the Operator at any time hold over the Premises beyond the period specified herein as the termination date of this Agreement, then it shall hold the Premises upon the same terms and conditions that are contained in this

Agreement, except as to Term and Sec. 4.b. Stipends. Holding over by the Operator shall not be deemed a renewal this Agreement without the written consent of the City.

- f. The Operator shall pay all utility bills for the Premises.
- g. The Premises shall at all times be open to inspection of the City, its employees, officers, agents and duly-authorized contractors. The Premises shall be open and available to the City to show for purchase, mortgage or Agreement.
- h. The Operator shall not allow any refuse or garbage to accumulate or remain in or upon the Premises.
- i. The failure of the City to insist upon a strict adherence to the terms and conditions contained in this Agreement shall not be deemed a waiver of any subsequent breach or default in the terms and conditions herein contained.
- j. Any improvements or alterations to the Premises shall be considered a fixture when attached to the Premises and shall become the property of the City upon the termination of this Agreement unless City requires the Operator to remove any fixture. All

improvements or alterations, including but not limited to directional and advertising signs, must be approved by City's Director of Operations in advance and in writing.

- k. The Operator shall charge \$35.00 for a theatrical production per ticket during the first year of this Agreement and may increase the maximum price by ten percent (10%) per year during the Term of this Agreement, except that the Operator may add an additional charge for tickets sold "on-line" and/or purchased by credit card to offset any service charges. The foregoing shall not apply to Special Event Productions, including one-night concerts, short-term ventures of one weekend or less, parties or fund-raising events. Discounted rates for performances shall be provided to senior citizens and students. The charges for fund-raising performances by non-profit organizations may be at rates decided between any such organization and the Operator. Price changes other than herein provided shall become effective only after prior written approval by the City's Director of Operations.
- l. The Operator shall charge fees for workshops competitive with the local market. The City recognizes that fees are dependent upon

outside contractors' charges for services to the Operator and the Operator's policies of discounts to early subscribers and subscribers unable to pay full fees.

- m. The Operator shall maintain bank account(s) at bank(s) with offices in the City of Stamford. The City shall have the right to audit such account(s) at its own expense through its Director of Administration or any City auditor, upon ten (10) working days' notice to the Operator.
- n. The Operator shall install and maintain, at its own expense, a bookkeeping and accounting system covering the theater facilities, which books and accounts shall be open to inspection at the Premises by City on an annual basis at City's expense and by City's auditors upon ten (10) business days' notice to the Operator. Records of receipts and disbursements shall be contained in such books.
 - 1. The Operator shall also maintain a record of accounts payable, payroll, social security and withholding tax returns, and Workers' Compensation reports for its employees.
 - 2. The Operator shall maintain a permanent file of customer complaint and the disposition of same. The file shall be open to inspection by City's auditors upon reasonable notice to the Operator.

- o. The Operator shall note the City's support of community-based theater by using the phrase "in cooperation with the City of Stamford" in all of its advertising and notices concerning activities, workshops and other functions at the Premises.
- p. The Operator shall give reasonable advance written notice to the City's Director of Operations of all productions, shows and other functions occurring at the Premises.
- q. The Operator shall give written reports on presented workshops, productions, classes, etc., to the City's Director of Operations, annually, or more frequently upon request.
- r. In the event that the Operator does not have a scheduled activity and a school or an eleemosynary organization or group wants to use the Premises, then the Operator may charge a preapproved rate allowing use of the Premises or a part thereof.

6. INSURANCE

The Operator shall affect and maintain for the life of this Agreement, commercial general liability and automobile liability insurance as shall protect the Operator and the City from claims for damages arising out of personal injury, including death, and claims for property damage, which may be suffered as a result of operations/completed operations

under this Agreement, whether such operations/completed operations are performed by the Operator or any employee or agent thereof. The Operator shall also affect and maintain for the term of this Agreement workers' compensation insurance covering injuries or disease suffered by Operator's employees. The workers' compensation insurance shall comply with all workers' compensation statutes and regulations in the State of Connecticut. The Operator shall also maintain all risk property insurance valued on a full replacement cost basis, which insures all real and personal property of the Operator.

The City's Risk Manager also reserves the right to require the Operator to affect and maintain other insurance coverage under the Operator that is deemed reasonably appropriate or necessary.

The Operator shall provide, at its own cost and expense, documentary proof of the following insurances to the Risk Manager of the City of Stamford:

- A. Workers' compensation - Statutory, which complies with the Workers' compensation regulations and laws of the State of Connecticut.
- B. Employer's liability, with minimum limits of liability of \$100,000 for each accident, disease each employee and policy limit for disease.
- C. The Operator shall maintain its own comprehensive general liability insurance during the term of this Agreement in amounts determined to be sufficient by the City's Risk Manager. This policy shall have a minimum of 1,000,000/\$3,000,000 in limits of liability and shall name the City of Stamford, its officers,

agents, and employees as additional insureds. A copy of said policy shall be given to the City's Risk Manager upon the signing of this agreement.

This insurance shall include, but not be limited to, bodily injury and property damage and the following coverages:

1. Premises and operations liability.
2. Products liability and completed operations, to be maintained for a period of not less than three years following termination or cancellation of the Agreement.

3. Broad form contractual liability covering any indemnities contained in the Agreement.

4. Personal injury and advertising liability.

D. Automobile liability insurance, with a minimum limit of liability of \$1,000,000 combined single limit for bodily injury and property damage. This insurance shall include, but not be limited to, bodily injury and property damage for the following:

1. Owned vehicles
2. Hired and Agreement vehicles
3. Non-owned vehicles

E. All-risk property insurance, which covers all real and personal property owned by the Operator. The limits under the all-risk property insurance shall be on a full replacement cost basis and shall be sufficient to prevent the Operator from incurring a co-insurance penalty because of inadequate limits. The all-risk property insurance shall designate the City an insured. Any damages or losses beneath the applicable deductible(s) shall be repaired by the Operator to the full satisfaction of the

City.

The Operator shall be responsible for repair and/or replacement of all damage and losses to the Premises, whether insured or not insured, due to the Operator's operations. All repairs and/or replacement of damage and losses will be completed as soon as practicable after discovery of the damage and losses by the Operator and the City. All repairs and/or replacement of damage and/or losses to the Premises must be approved by and be satisfactory to the City.

All certificates of insurance shall contain the following clause:

"Thirty (30) days written notice of cancellation or changes shall be given to the City of Stamford, Attention: Risk Manager, Stamford Government Center, 888 Washington Boulevard, P.O. Box 10152, Stamford, Connecticut 06904-2152 before any cancellation or reduction in coverage of this policy shall be effective."

If any insurance required herein is to be issued or renewed on a "claims made" form as opposed to an "occurrence" form, the retroactive date for coverage shall be no later than the commencement date of the Agreement and shall provide that in the event of cancellation or non-renewal, the discovery period for insurance claims (Tail Coverage) shall be available for at least sixty (60) months.

The insurance requirements of the Agreement are an integral part of the Agreement. Any defect in the insurance program required in the Agreement may result

in termination of the Agreement, as stipulated in the Agreement. No employee or the entity can modify the terms of the Agreement without the prior approval of the City's Corporation Counsel and its Chief Administrative Officer or his/her designee.

The Operator agrees to waive any right of recovery against the City and its employees, agents and officers for any claim, loss or damage of any kind or description whatsoever, which may or may not be covered under insurance required under this Agreement. All such insurance required under the Agreement shall contain waivers of subrogation endorsements in favor of the City and its employees, agents and officers.

In addition, all such insurance required hereunder shall be primary insurance, not excess or concurrent, without any right of contribution from any insurance maintained by or on behalf of the City and its employees, agents and officers.

The failure of the City to insist upon strict performance of any of the terms, conditions or covenants herein shall not be deemed a waiver of any rights or remedies that the City may have; and shall not be deemed a waiver of any subsequent breach or default of the terms, conditions or covenants herein contained, the City reserving the right to require strict compliance therewith at any time, with or without notice except as may be otherwise required herein.

7. INDEMNIFICATION

- a. The Operator agrees to indemnify, hold harmless and defend the City, its employees, officers and agents from any and all liability, negligent or otherwise, for all activities occurring at or on the Premises, including, but not limited: personal injury, property damage, theft, vandalism, destruction and mischief to any person or property at or on the Premises under the control of the Operator during the Term of this Agreement. The Operator agrees to indemnify, hold harmless and defend the City, its employees, officers and agents from any and all lawsuits, judgments, claims, of any nature or any kind, against the City, its employees, officers and agents arising from the Operator's operations pursuant to the terms of this Agreement during the Term of this Agreement.
- b. The Operator shall be liable for all court costs and reasonable attorney's fees and expenses incurred by the City in connection with the enforcement of this Agreement or any clause, term or condition contained herein in a proceeding where the City prevails and such court costs, expenses and attorneys' fees have

been awarded by a court of competent jurisdiction.

8. MISCELLANEOUS PROVISIONS

- a. The Operator acknowledges that no representations have been made by the City as to the condition of the Premises upon which the Operator has relied in entering into this Agreement. The Operator agrees to accept the Premises "As-Is" in its present and existing condition.
- b. During the Term of this Agreement, the Operator shall use no area other than the Premises to operate its services without the prior written approval of the City's Director of Operations.
- c. In the event that the whole or any part of the Premises shall at any time during the term of said Agreement be taken by any public authority for any public use, the entire damages which may be awarded for such taking shall be awarded to the City.
- d. The Operator shall pay all outstanding taxes and debts, if applicable, to the City, including, but not limited to, real and personal property taxes owed to the City of Stamford before the execution of this Agreement.

- e. The Operator shall bear sole responsibility for providing security for the Premises.
- f. This Agreement contains all of the terms and conditions for the use of the Premises and may be amended only by a subsequent written contract executed by the parties.

9. GOVERNING LAW

This Agreement shall be construed according to the laws of the State of Connecticut and the parties hereto hereby waive any choice of law provisions contained therein.

10. ENTIRE AGREEMENT AND MODIFICATION

This Agreement constitutes the entire agreement between the parties and may not be modified, altered, changed or extended unless made in writing and signed by all parties. Any and all prior agreements executed by the parties, inclusive of a certain Management Agreement executed by the parties on April 11, 2011, are replaced and superseded by this Agreement.

11. SUCCESSORS

This Agreement shall be a binding obligation upon and inure to the benefit of the respective parties, their successors and assigns, trustees and legal representatives.

12. COMPLIANCE WITH LAWS

The Operator shall comply with all applicable federal, state and local laws, rules, regulations, codes, orders, ordinances, charters, statutes, policies and procedures.

IN WITNESS WHEREOF, the parties hereto have hereunto
set their signatures and corporate seals this _____
day of _____, 2020.

In the presence of:

Witnesses

CITY OF STAMFORD

Print: _____

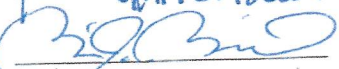
By _____
David R. Martin, Mayor

Print: _____

CURTAIN CALL, INC.


Print: Gail L. Yodain


By 
Ted Yudain, Chairman


Print: Brian J. Bianco

Approved as to Form:

Approved as to Insurance:

 4/14/2020
Chris Dellaselva
Deputy Corporation Counsel

 5/7/2020
David Villalva
Risk Manager