

# AGREEMENT

This is a Lease/Operation Agreement (“Agreement”) made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the TOWN OF ASHLAND, VIRGINIA (the “Town”), a municipal corporation whose address is whose address is 101 Thompson Street, P.O. Box 1600, Ashland, Virginia 23005, and The Ashland Theater Foundation (the “Lessee”), whose address is 205 England Street, Ashland, VA 23005.

## RECITALS:

The Town and the Lessee agree as follows:

1. **Consideration.** Consideration consists of the mutual promises and covenants contained in this Agreement, receipt of which is hereby acknowledged.
2. **Premises to be Leased.** The Lessee seeks to lease from the Town the use of the property known as the Ashland Theatre (the “Theatre”) located at 205 England Street, Ashland, Virginia 23005.
3. **Lease Term.** This Agreement shall take effect on \_\_\_\_\_, 2016 at 12:01AM and shall last for a period of ten (10) years, expiring on \_\_\_\_\_, 2026 at midnight. This Lease Agreement may be extended by mutual agreement of the Town and the Lessee for up to an additional ten years.
4. **Rental Amount.** Lessee shall pay to the Town the sum of one dollar per year, due and payable on January 1<sup>st</sup> of every year.
5. **Default.** In the event that the Lessee defaults under this Agreement, for any reason, the Town shall notify the Lessee, in writing, of the default. Within sixty days of having received notice of the default from the Town, if the Lessee has not corrected the default, the Town shall have the right to reenter and take possession of the Theatre and recover any and all resulting damages, including all costs and attorney’s fees.
6. **Improvements/Performance Agreement.** Lessee agrees to timely perform all such improvements to the Theatre and to operate the Theatre in accordance with the grant application (the “Application”) submitted to the Virginia Department of Housing and Community Development (“DHCD”) on April 1, 2016, which is hereby incorporated by reference and included as Appendix A to this Lease Agreement. Lessee also agrees to obtain the written approval of the Ashland Town Council for interior design drawings prior to implementing any interior renovation of the Theatre. Lessee further agrees to adhere to the Timeline, which is hereby incorporated by reference and included as Appendix B. Lessee specifically agrees not to take any action that is contrary to the terms of the Industrial Revenue Fund Grant between

summaries, reviews and/or audits as may be requested by the Town.

- G. **Courtesy to Neighbors.** The Lessee agrees to notify all neighbors who could potentially be affected by the renovation work/improvements being performed on the Theatre. The Lessee agrees to minimize inconvenience to neighbors as much as possible, and to utilize options for work on the Theatre that least disrupts neighboring businesses.

Any other improvements that the Lessee should wish to make must be approved in writing by the Ashland Town Council in advance.

7. **Improvements Property of Town.** Any and all improvements made to the Theatre shall become the property of the Town. Any items not affixed to the Theatre shall remain the property of the Lessee provided that the items are not purchased by the Lessee with any funding that comes from DHCD directly or indirectly. The projection system and the screen are the property of the Town. If the Town pays for the cost of an improvement to, or item for, the Theatre, the improvement or item shall belong to the Town. If the Lessee purchases an improvement or item for the Theatre, and it is not affixed, then it shall remain the property of the Lessee.

Lessee shall ensure that all contractors who perform work at the Theatre will provide at least a one-year warranty on all work, which includes but is not limited to structural work, electrical work, plumbing work, mechanical systems work and the like. The Lessee shall notify the Town of the date that a warranty expires when work is done. The Town's engineer shall be entitled to inspect any and all improvements prior to the expiration of any and all warranties.

8. **Rules.** The Lessee agrees to abide by the Theatre Rules and Regulations as approved and as may be amended in the future, by the Ashland Town Council, a copy of which is hereby incorporated by reference and attached as Appendix C.
9. **Amendment.** No amendment to this Agreement shall be effective unless it is in writing and signed by both parties.
10. **Ex-Officio Member.** One member of the Ashland Town Council shall serve as a voting ex-officio member of the Lessee board.
11. **Miscellaneous Provisions.**
- A. **Utilities.** The Lessee shall keep all utilities in operation at all times, shall be responsible for the payment of all utilities in a timely manner, and shall ensure that the utilities are

maintained in such a manner so as to prevent any damage to the Theatre.

- B. **Insurance.** The Town shall maintain insurance on the Theatre during such time as the Theatre is not open to the public during renovation. Lessee shall require and maintain accurate records of all insurance certificates from all contractors and subcontractors performing work at the Theatre. Upon request by the Town, Lessee shall provide copies of any and all insurance certificates to the Town. Following the completion of all renovations as required by this Agreement and the opening of the Theatre to the public, the Lessee shall maintain in full force and effect such casualty and liability insurance on or with respect to the Property, any personal property of the Lessee located in the Theatre, and with respect to the operation of the Property and shall name the Town as an additional insured.
- C. **Adhere to Laws.** The Lessee agrees to abide by all federal, state and local laws and to use the Theatre in accordance with all federal, state and local laws.
- D. **Repairs.** The Town will make necessary repairs to the Theatre with reasonable promptness after receipt of written notice from the Lessee for major repairs to the original building; major repairs shall include significant repairs to the electrical, plumbing, heating, cooling system(s), and/or structural defects. Major repairs do not include minor plumbing or electrical issues, audio visual or lighting systems or the sound system. The Lessee shall make, or cause to be made, all incidental repairs including fixtures (electrical, plumbing, etc.). All improvements made by the Lessee shall be the full responsibility of the Lessee to maintain and repair.
- E. **Access to Theatre.** The Town, or its agent, may enter the Theatre during reasonable hours to make inspections, repairs, additions, or alterations as may be deemed reasonably necessary. The Town, or its agent, may enter the Theatre at any time for emergency repairs that may be necessary.
- F. **Severability.** If any provision of this Agreement shall be declared invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement shall remain in full force and effect.
- G. **Marquis and Poster Box.** The Lessee agrees to maintain the Theatre marquis and the poster box outside of the Theatre with current information as to upcoming events. All

external lighting, including marquis shall be kept in operating order by the Lessee at all times.

- H. **Theatre Use.** The Town shall be permitted to use the Theatre for public meetings on a space available, or reservation, basis. The Lessee agrees to use best efforts to accommodate requests by the Town to use the Theatre for public meetings. The Town will pay for any and all actual costs associated with use of the Theatre space by the Town.
- I. **Amendment.** This Agreement may be amended in writing by mutual agreement of both parties.
- J. **Trash.** The Town will be responsible for trash pickup during the renovation of the Theatre. Lessee shall keep any trash, garbage, waste or other refuse in sanitary containers. Once the Theatre renovation is complete and the Theatre is open to the public, Lessee shall keep any trash, garbage, waste or other refuse generated by the Theatre in sanitary containers and shall dispose of the trash, garbage, waste or other refuse in accordance with the Ashland Town Code.

TOWN OF ASHLAND

By:  (SEAL)  
Charles Hartgrove, Ashland Town Manager

By:  (SEAL)  
Clark Mercer, President, Ashland Theater Foundation

## Appendix B

Lease Signed – October 21, 2016  
Construction Document ready – November 1, 2016  
Final Pricing and scope review – December 1, 2016  
All construction permits in place – January 1, 2017  
Roof and façade work – January 15, 2017  
Framing and major interior uplift – February 15, 2017  
Rough in all trades – March 1, 2017  
Interior Walls, plaster and close up – April 1, 2017  
Interior Finishes – May 1, 2017  
Equipment and furnishings delivered – July 1, 2017  
Punch list – August 1, 2017  
CO – September 1, 2017  
Grand re-opening – November 1, 2017

\*Assumptions – This schedule will adjust based on lease approval, building permit issuance, and final construction approvals of Town of Ashland.

## APPENDIX C

### ASHLAND THEATRE RULES & REGULATIONS

1. The Lessee shall provide quarterly cost/action reports to the Ashland Town Council.
2. The Town Manager or his or her designee shall be the point of contact for the Town and shall be responsible for addressing day to day issues as well as implementing the Lease Agreement between the Town and the Lessee.
3. The Lessee shall promptly be provided with a copy of any updates to these Rules & Regulations.