

REDLINE 5/14/19

LICENSE AGREEMENT

By and Between

The Township of West Orange, a New Jersey Municipal Corporation whose address is 66 Main Street, West Orange, New Jersey ("Township"),

and

Pleasant Valley Productions, Inc., a New Jersey Not for Profit Corporation whose address is c/o Camille Vecchio-DiLorenzo, President, 95 Warren Road, West Orange, New Jersey ("Licensee").

The above Parties hereby agree to the following terms and conditions of this license agreement.

1. **License Date and Effective Date of Agreement.** This License is made with an effective date of **May 1, 2019** ("Effective Date"). This Agreement shall not be effective until the Township receives a copy of this Agreement executed by the President of the Board of Trustees of Licensee along with a Resolution evidencing approval by the Licensee's Board of Trustees.

2. **Description of Agreement Premises.** The premises licensed by Township to Licensee includes all the premises, grounds and building now known as the Oskar Schindler Performing Arts Center on Boland Drive in the Township of West Orange, New Jersey ("Premises").

3. **Term.** The term of this License shall be for 3 years effective date of **May 1, 2019** ending **April 30, 2022**. If the license is not terminated on or before **April 30, 2022**, it shall continue on a month-to-month basis and may be terminated by either party on thirty (30) days written notice.

4. **Licensee's Use.** Licensee shall use the Premises for a performing arts facility with all rights to indoor usage of the building in furtherance of OSPAC's mission and not for any private use.

5. **Fee and Insurance.** A fee shall be payable annually for the term of the license in the amount of one dollar (\$1.00). In addition to the nominal fee, Licensee agrees to maintain public liability insurance naming itself and Township as named insured in an amount not less than one million dollars per occurrence and two million dollars in the aggregate. Licensee shall provide Township with a copy of same and renewals thereof not less than thirty (30) days before the date on which the insurance expires.

6. **Usage.** Licensee shall have the ~~license for exclusive~~ use of the Premises during the term of the Agreement subject to the following conditions:-

(i) Licensee shall provide at least eight (8) programs annual at the Premises.

(ii) The Township shall have the right to utilize the facilities for West Orange Township events with appropriate notice at least thirty (30) days in advance, subject to OSPAC's schedule, inclusive of

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preproduction purposes, such as rehearsal and stage setup in building. All other such outside community users, which shall be limited to ~~must be non-profit organizations, and~~ will be subject to the attached rules and regulations, incorporated herein by reference, and will sign a license or sublease agreement with Licensee covering such usage on reasonable terms and conditions of Licensee and agrees to pay any out of pocket expenses of Licensee. Licensee shall be permitted to license the Premises for events or ongoing community related services which agree to license or sublease the Premises and which do not interfere with OSPAC's obligation to provide at least eight (8) programs annually at the Premises. All licensees of the Premises shall be subject to the terms and conditions of this License Agreement, which will be indicated in such Sublicense Agreement ("Sublicense Agreement"). These sublicenses shall be mutually agreed upon by the Township and the Licensee.

(iii) Programming content shall be family oriented ~~according to the prurient interests of the community as determined and subject to the prior approval of the Township Business Administrator until such time as the Township established a board by Ordinance to review and approve programming at the Premise (the "Board"). After the Township establish the Board, all programing shall be subject to the prior approval of the Board, and OSPAC. No later than thirty (30) days prior to any program or event, Licensee shall provide a fully summary and description of any event or program for which the Licensee intends to hold at the Premises.~~

(iv) No later than thirty (30) days from the execution of this License Agreement, Licensee shall provide a proposed schedule to the Township Business Administrator and the Township Director of Recreation a schedule of proposed programs until April 30, 2020, which shall include a schedule of all days and times the Licensee shall be utilizing the Premises for programs or events (the "Proposed Schedule"). Any additions or revisions to the Proposed Schedule ~~All licensees of the Premises through OSPAC shall be subject to this master Agreement, which will be indicated in such sSublicensing aAgreement ("Sublicense Agreement"). The sublicense shall be mutually agreed upon by the Township and the Licensee, shall be subject to the approval of the Township Business Administrator and the Township Director of Recreation and must be provided no later than fourteen days (14) prior to the date to be added or revised. No later than April 30 of each year, Licensee shall provide a new proposed schedule for each year subject to the requirements of this provision.~~

6-(v) Any and all sub-licenses under this License Agreement shall be subject to the approval of the Board.

7. **Licensee's Care.** Licensee will commit no act of waste, will take good care of the Premises, and will comply with all laws, regulations, rules, and orders of any federal, state, or local government agencies or departments. Licensee will not abandon the Premises and will do nothing that could increase the cost of Township's fire or public liability insurance.

8. **Repairs.** Township will make all necessary repairs to the Premises at Township's expense except when the repairs are needed because of misuse or neglect by Licensee or by persons under Licensee's control or on the Premises at Licensee's invitation, in which even, Licensee shall make those repairs at Licensee's own expense.

9. **Improvements.** Without Township's written consent in advance, Licensee shall not alter, add to, or improve the Premises. Any improvements made by Licensee that constitute fixtures or cannot be removed without material harm to the Premises shall be Township's property upon installation. All of Licensee's personal property shall be removed by Licensee before the termination of this Agreement. Licensee, at the same time, shall repair any injury done to the Premises in connection with the installation and removal of the improvements and the personal property. Licensee shall surrender the Premises in the same condition as they were at beginning of the term, reasonable wear and tear and injury caused by conditions or events beyond Licensee's control excepted.

10. **Abandoned Property.** All of Licensee's property remaining on the premises after this Agreement terminates shall be deemed abandoned and the sole property of the Township.

11. **Rules and Regulations.** Attached to this agreement is a copy of certain Rules and Regulations. The rules and regulations are for use of the Premises by Licensee and/or persons or entities who will execute a sub-licensee agreement with Licensee for the use of the Premises. Any changes to these rules and regulations will be submitted to the Township and must be approved in writing before implementation.

12. **Services.** Township shall provide utilities to the Premises, including heat, hot water, electric and gas, if any. Township also agrees, in its discretion, to provide auxiliary police officers when necessary. Township shall retain the right to implement any cost saving features that do not substantially interfere with the use of the Premises by Licensee. Township shall provide garbage collection and landscaping services to the Premises. Licensee agrees to bag and place all garbage in a secure area. Township agrees to maintain the electrical, plumbing, HVAC and structural systems on the Premises.

13. **Damage to Building.** If the Premises are damaged by fire or any other cause, so that the cost of restoration, as reasonably estimated by Township, equals or exceeds fifty (50%) percent of the Premise's replacement value (exclusive of foundations) just prior to the damage, then Township may, no later than thirty (30) days following the damage, give Licensee notice of election to terminate this Agreement. If the cost of restoration equals or exceeds fifty (50%) percent of the replacement value and if the Premises are not reasonably usable for the purposes for which they are leased, Licensee may, no later than thirty days following the damage, give Township notice of election to terminate this Agreement. In the event of either of these elections, this Agreement shall terminate on the 31st day after the giving of notice, and Licensee shall surrender possession of the premises within a reasonable time. If the cost of restoration as estimated by Township amounts to less than fifty (50%) percent of the replacement value of the Premises, or if despite the cost Township does not elect to terminate this Agreement, Township shall restore the Premises and the premises with reasonable promptness, subject to delays in the making of insurance adjustments by Township, and Licensee shall have no right to terminate this Agreement except as provided in this Paragraph. Township need not restore fixtures and improvements owned by Licensee.

14. **Township May Cure Defaults.** If Licensee defaults in the performance of any covenant or condition of this Agreement, Township may, on reasonable notice to Licensee

(except that no notice need be given in case of emergency), cure the default. Licensee shall have reasonable opportunity to cure default prior to Township action to cure default.

15. **Default.** If Licensee fails to comply with any term and condition herein, the Township may terminate this Agreement on five (5) days notice.

16. **Notices.** Any notice by either party to the other shall be in writing and shall be deemed to be properly given only if delivered personally or mailed by registered or certified mail, return receipt requested, addressed (a) if to Licensee, at the above indicated location; (b) if to Township, at Township's address set out in this Agreement; or (c) at such addresses as Licensee or Township from time to time may designate in writing. Notice shall be deemed to have been given upon delivery if delivered personally, and if mailed, upon the third day after the date of mailing.

17. **Township's Right to Inspect Premises.** Township may enter the premises at any reasonable time on reasonable notice to Licensee (except that no notice is needed in case of emergency) to inspect the premises or make those repairs, replacements, and additions to the premises or the Building, ad Township deems necessary or desirable. Licensee shall have no claim or cause of action against Township solely for entering the premises in accordance with the Paragraph.

18. **Interruption of Services or of Occupancy.** Interruption or curtailment of any service maintained in the Building if caused by strikes, mechanical difficulties, or any other causes beyond Township's control shall not entitle Licensee to any claim against Township or to any abatement in rent, nor shall they constitute constructive or partial eviction, unless Township fails to take measures that are reasonable in the circumstances to restore the service without undue delay.

19. **Elements of Construction Eviction.** Licensee shall not be entitled to claim a constructive eviction from the premises unless Licensee shall have first notified Township in writing of the condition giving rise to the claim and, if the complaints are justified, unless Township fails to remedy the condition within a reasonable time after receipt of the notice.

20. **No Representations.** Neither party has made any representations or promises, other than those contained in this Agreement or in some further writing signed by the party making the representation or promise.

21. **Covenant of Quiet Enjoyment.** Township covenants that as long as Licensee pays the rent and any additional rent required under this Agreement and performs Licensee's covenants, Licensee shall peaceably and quietly have, hold, and enjoy the premises for the term provided, subject to the provisions of this Agreement.

22. **Waiver of Jury Trial.** To the extent waiver is permitted by law, the parties waive trial by jury in any action or proceeding brought in connection with this Agreement or the premises.

23. **Captions.** The captions in this Agreement are included for convenience only and shall not be taken into consideration in any construction or interpretation of this Agreement or any of its provisions.

24. **No Assignment.** The Licensee is not permitted to assign any aspect of this Agreement to any entity or person without the express written consent of the Township which consent may be withheld by the Township, in its sole discretion.

25. **Licensee's Non-Profit Existence and Board of Trustees.** The Licensee represents and warrants that it is and will remain a non-profit organization organized in accordance with the Internal Revenue Code provisions 501(c)(3). The Licensee's sole purpose and mission shall be to further the arts and cultural enrichment for the Township. Specifically, the Licensee shall be organized solely to (i) operate the performing arts center in the Township of West Orange for the cultural and educational benefit of the community, and (ii) to develop, produce and promote events of a musical or theatrical nature for the benefit of the Township.

26. **Agreement Binding on Successors, Representatives, and Assigns.** The provisions of this Agreement shall apply to, bind, and inure to the benefit of Township and Licensee, their successors, legal representatives, and assigns. It is understood that the term "Township" as used in this Agreement means only the owner, or the mortgagee in possession, or the lessee for the time being, of the Building, so that if the Building is sold or leased or if the mortgagee takes possession of the premises, Township shall be entirely freed and relieved of all covenants and obligations of Township accruing after such sale, Agreement, or taking of possession, and it shall be deemed without further agreement that the purchaser, the lessee, or the mortgagee in possession has assumed and agreed to carry out any and all of Township's covenants and obligations.

27. **Annual Reporting Requirements.** Licensee shall make available for inspection to the Township and/or the Board any and all financial records from the operation of the Premises upon three (3) days notice, including any financial records related to event or programs conducted by Licensee at the Premises. Pursuant to N.J.S.A. 40A:12-14(c) no later than April 30 of each calendar year, the Licensee shall submit a report to the Township Business Administrator and the Board containing the following information:

- (i) Description of the Licensee's use of the Premise for the preceding year;
- (ii) The activities undertaken in furtherance of the public purpose for which the Licensee shall operate on the Premises;
- (iii) The approximate value or cost, if any, of such activities in furtherance of such purpose; and
- (iv) An Affirmation of Licensee's continued tax-exempt status pursuant to both State and Federal law.
- ~~(v)~~(v) Annual financial statement for the Licensee reflecting its income, expenses, assets and liabilities as of December 31st of the preceding year.

Within thirty (30) days from the submission of its report to the Township Business Administrator and the Board, Licensee shall also appear before the Township Council at a regularly scheduled meeting to present the information contained in the report to the members of the Township Council.

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28. **Dissolution.** In the unlikely event of dissolution of Licensee, any and all assets of Licensee and any other entity or endowment formed for the purpose of supporting programming at the Oskar Schindler Performing Arts Center, shall be donated to a 501(c)3 organization in West Orange operating for the purpose of the continuation and perpetuation of cultural and arts programs in West Orange, New Jersey.

The above terms and conditions of this lease agreement are hereby agreed to by and between the parties executing below on this _____ day of ~~April~~ May, 2019.

Township of West Orange
a New Jersey Municipal Corporation, Township

By: Robert Parisi, Mayor

By: Clerk, Township of West Orange

Pleasant Valley Productions, Inc.
a New Jersey Not for Profit Corporation, Licensee

By: Camille Vecchio- DiLorenzo, President

By: Elizabeth Vecchio, Secretary