

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

New Jersey Arts Incubator ("NJAI") , a New Jersey Not for Profit Corporation whose address is c/o Amy Simon, Chairperson, 64 Wellington Avenue, West Orange, New Jersey ("Licensee" and, together with Township, the "Parties.").

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 April 1, 2013 ("Effective Date"). This Agreement shall not be effective until 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 (the "Premises").

3. **Term.** The term of this License shall be for five (5) years effective date of April 1, 2013 ending March 31, 2018.

4. **Licensee's Use.** Licensee shall use the Premises for a performing arts facility with all rights to indoor and outdoor usage of the building in furtherance of NJAI'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) plus five (5%) percent of the Net Profit (defined herein below) greater than \$150,000 and less than or equal to \$250,000 and ten (10%) percent of the Net Profit over \$250,000. Net Profit shall be defined as all revenues less all expenses of NJAI, including expenses incurred but not yet paid and expenses obligated by restricted grants. 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 (\$1,000,000) dollars per occurrence and two million (\$2,000,000) 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. This Agreement shall not be effective until Township receives the required insurance.

6. **Usage.** Licensee shall have the non-exclusive use of the Premises during the term of the Agreement. Township may utilize the facilities for Township events with notice at least thirty (30) days in advance. The Parties agree to negotiate any scheduling conflicts in good faith. All outside community users will be subject to the attached rules and regulations, and will sign a sublicense 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 NJAI's obligation to provide at least eight (8) programs annually at the Premises. Programming content shall be family oriented as determined by Township Business Administrator. Sublicensees of the Premises through NJAI shall be subject to this Agreement, which will be indicated in such Sublicense agreement. All Sublicensees must be not-for-profit organizations authorized to do business in the State of New Jersey. The Licensee agrees that Township may choose to continue an annual jazz or other music festival in September with which Licensee shall reasonably cooperate. NJAI shall advise the Township of any use of the Premises by any third party.

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 event, 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, subject to reasonable wear and tear and damage caused by conditions or events beyond Licensee's control except as to improvements.

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 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 persons or entities who will execute a sublicense agreement with Licensee for the use of the Premises. Any changes to these rules and regulations will be submitted to 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 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, 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, and Township deems necessary or desirable. Licensee shall have no claim or cause of action against Township solely for entering the premises in accordance with this 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 Constructive 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 Township which consent may be withheld by 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. Specifically, the Licensee shall be organized to (i) operate the performing arts center in Township 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 Township. The Licensee agrees to the following:

- i. The Mayor and Township Council shall each be permitted to appoint one (1) non-voting liaison to the Licensee's Board of Trustees and the Business Administrator of Township or his/her designee of shall be notified not less than five (5) days before all Board of Trustees meetings;
- ii. Township Business Administrator shall be provided with a copy of all minutes, resolutions and other actions by the Licensee's Board of Trustees within five (5) days of any such meetings or actions;
- iii. Township shall be provided with non-audited financial statements not less than annually which shall provide a full accounting of all income, assets, expenses, liabilities, grants and other financial information; and
- iv. If any aspect of Licensee's operations fails to comply with the terms herein, Township will notify Licensee of the failure. Upon such notification, Licensee shall have fifteen (15) days in which to correct such failure. If such failure is not corrected within fifteen (15) days, Township may terminate this Agreement on five (5) days written notice.

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 mortgagees in possession, or the lessee for the time being, of the Premises, so that if the Premises are 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. **Dissolution.** In the event of dissolution of Licensee, any and all assets of Licensee at Premises 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 _____ 2013.

Township of West Orange
a New Jersey Municipal Corporation

By: Robert D. Parisi, Mayor

By: Clerk, Township of West Orange

NEW JERSEY ARTS INCUBATOR
a New Jersey Not for Profit Corporation, Licensee

By: Lisa Scalora, Chairperson

By: Christine Wolff Strassman, Secretary

566015_3