

PALACE THEATER OPERATING AGREEMENT

This **PALACE THEATER OPERATING AGREEMENT**, dated as of the 10th day in the month of November, 2004 (the "Agreement"), is entered into by and between the City of Waterbury, a municipal corporation organized and existing under the laws of the State of Connecticut, with offices at 236 Grand Street, Waterbury, Connecticut 06702 (the "City") and the Palace Theater Group, Inc., a Connecticut non-stock corporation (the "PTG").

BACKGROUND:

A. The City is the owner of a public facility known as the Palace Theater, located at 100 East Main Street, Waterbury, Connecticut (the "Theater"), as more particularly described in Exhibit A. The Theater, which consists of a 2,650-seat auditorium and a 5,000 square foot stage house, is presently being renovated with funds furnished by the State of Connecticut, and is scheduled to be available for use to the general public in November 2004;

B. The PTG is a non stock Connecticut corporation organized in 2002, which has submitted an application to the Internal Revenue Service to be a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

C. City desires to engage PTG to provide management and operations services relating to the management of the Theater, including the management of all theatrical productions, shows and exhibits which are produced and held in the Theater, and PTG agrees to accept such engagement in accordance with the terms and subject to the conditions set forth in this Agreement;

D. The City intends to lease, subject to all applicable laws, to the PTG a building, commonly known as the "Rectory" which is adjacent to the Theater. PTG may use the Rectory for its own purposes and, subject to the City's Building, Planning and Zoning Regulations, sublease other space within the Rectory to one or more sub-lessors. PTG will make a reasonable annual payment in lieu of taxes to the City with respect to the value of the real estate it is leasing and the personal property it owns within the Rectory. PTG and the City will negotiate in good faith as to the amount of the payment in lieu of taxes that PTG will pay to the City. PTG shall have the right to enter into sublease agreements for all or part of the Rectory. Such agreements shall not extend beyond the Term of this Agreement and must be approved in advance by the City. Any such sublease agreement must provide that in the event that PTG's rights under this

Agreement are terminated that such sublease agreement shall automatically be assigned to the City.

E. The Theater is physically attached to the Waterbury Performing and Visual Arts Magnet School (the "School"). The School is currently under construction and is expected to commence admitting students in the Fall of 2004. In accordance with the provisions herein, the School is expected to make extensive use of the Theater for purposes of holding various school events such as convocations, graduations and certain performances.

ARTICLE I. ENGAGEMENT OF PTG

1.1 City's Appointment. City hereby engages and appoints PTG to serve as the sole and exclusive manager of the Theater during the Term (as hereinafter defined), and in connection therewith to provide the services specified in this Agreement, in accordance with the terms and conditions of this Agreement.

1.2 PTG's Acceptance. PTG accepts the foregoing appointment and engagement during the Term, and agrees to furnish, or to procure, coordinate and supervise all of the services required by this Agreement, in accordance with the terms and conditions set forth herein.

ARTICLE II. DUTIES & RESPONSIBILITIES

2.1 Maintenance and Repair of Theater. During the Term of this Agreement, PTG shall operate and maintain the Theater, at its own expense.

2.1.1 PTG shall carry out, itself or by contracting with a third party, the making of all ordinary maintenance and repairs to and in the Theater necessary to cause the Theater to be maintained in good operating condition and repair;. Ordinary maintenance shall be defined as: making all repairs and doing whatever is necessary to putting and keeping the premises in a fit and habitable condition and providing such maintenance as is necessary to making good the usual wear and tear or natural and unavoidable decay and keeping the property in good condition, and is not otherwise defined as a capital improvement pursuant to Article 2.1.8.

2.1.2 PTG shall perform such additional light maintenance and ordinary repairs, including cleaning, dusting, trash removal on not less than a weekly basis, replacing cracked or broken windows, doors and frames. PTG shall keep the structural supports, roof, ceiling, floors, interior and exterior walls of the Theater, including doors and passageways from the lobby, street and adjacent sidewalks and entrance lobbies in good order and repair and free of ice, snow, rubbish and other obstructions. In addition, PTG shall at all times necessary to accommodate an event at the Theater, keep the courtyard and adjacent walkways free of ice and snow at its sole cost. PTG shall require any contractor providing such snow and ice removal services to name the City as an Additional Insured and provide the City with proof thereof;

2.1.3 PTG shall maintain and keep free from all obstructions, all fire escapes and fire exits located at the Theater. PTG shall also make all non-structural ordinary repairs at the Theater required by public authorities;

2.1.4 Except as provided in 2.1.2, PTG shall not be responsible for maintaining and/or repairing access roads, pavement replacement, sewers, water lines, electric transmission lines and other major capital repairs and improvements in and around, but not actually in, the Theater which shall remain the responsibility of the City. Notwithstanding the foregoing, PTG is responsible for all major improvements, maintenance and renovations which are required within or on the Theater, in accordance with Section 2.1.8.

2.1.5 PTG shall be responsible to keep the Theater free of all insects, animals, vermin, obstruction, dangerous condition or defect and nuisance, and that it shall keep the Theater free of all accumulation and discarded articles of substances.

2.1.6 PTG and the City may agree that, in addition to PTG's responsibilities under this Article II, PTG shall provide physical improvements to the Theater to increase service scope, quality and/or efficiency and reduce risk. Any such improvements would have to be in accord with local, State and Federal statutes, regulations and ordinances, subject to the Board of Aldermen's prior written approval;

2.1.7 PTG shall be required to hire such persons or entities and purchase or lease such equipment and supplies (in its own name), at prevailing market prices, as may be necessary or desirable to carry out and accomplish its duties and obligations under this Article II, and

2.1.8 Capital Improvement and Repair Funding

(a) In order to provide funds for repairs and “Capital Improvements” (defined below), PTG shall add at least a One Dollar (\$1.00) charge to the price of each admission ticket, whenever PTG charges for admission to the Theater, to be put into a segregated fund, to be maintained and managed by PTG (the “Capital Fund”). The use of any sums comprising the Capital Fund shall be restricted to expenditures for Capital Improvements, repairs and maintenance (other than routine cleaning and trash removal), including, without limitation, the annual payments and pro rata repair payments provided for in this Section 2.1.8, provided however that any sums in excess of Five Hundred Thousand Dollars (\$500,000.00), as adjusted in accordance with the “CPI Adjustment” (defined below) (the “Adjusted Capital Fund Maximum”), in the Capital Fund may be used for PTG’s operating expenses. In the event that PTG no longer operates the Theater, said fund shall revert to the City, for the purposes stated herein.

(b) “Necessary Capital Expenditures” (defined below) for the Theater shall be addressed as follows:

(i) Any sums in the Capital Fund up to and including the Adjusted Capital Fund Maximum shall be used for any and all Necessary Capital Expenditures, except to the extent waived by the Board of Aldermen;

(ii) To the extent the sums to be taken from the Capital Fund under Section 2.1.8(b)(i) are inadequate to make any Necessary Capital Expenditure:

A. If the City’s general obligation bonds at such time are of “Investment Grade” (hereinafter defined), the City shall bear the cost of the Necessary Capital Expenditure, to the extent such cost exceeds sums to be taken from the Capital Fund at such time (“Excess Capital Cost”), subject to PTG’s obligation to make annual payments to the City on or before June 30 of each fiscal year (July 1st through June 30) during the remainder of the Term equal to the amount of the Excess Capital Cost borne by the

City, divided by the number of years of useful life (as reasonably determined by the City's independent financial auditors) of the Capital Improvement for which the Necessary Capital Expenditure is made. The annual payments shall include interest at the rate being paid by the City on bonding that includes the Excess Capital Cost or, if the City does not bond any of the Excess Capital Cost, at the interest rate on the City's then most recent general obligation bond issuance;

B. If the City's general obligation bonds do not have an Investment Grade rating at the time of the Necessary Capital Expenditure, PTG shall be responsible for any Excess Capital Cost, subject to the provisions of Section 2.1.8(c) below; and

- (iii) Notwithstanding the foregoing, if any repair or Necessary Capital Expenditure is required for an item that is non-severable as between the Theater and the School, e.g. furnace or central air conditioning unit, the City shall bear the repair expense or make the Necessary Capital Expenditure (as applicable), regardless of whether the City's general obligation bonds have an Investment Grade rating at such time, subject to PTG's obligation to pay a pro rata share of such repair expense or Necessary Capital Expenditure (based upon usage of the item by the Theater as compared with usage by the School, calculated in accordance with the metering of utility service concerning the applicable item or other equitable adjustment, as provided for in Section 2.2.1 hereof).
- (iv) PTG's pro rata share of any non-severable repair expense shall be paid within thirty (30) days after receipt of an invoice from the City. PTG shall make annual payments to the City on or before June 30 of each fiscal year during the remainder of the Term equal to PTG's pro rata share of any Necessary Capital Expenditure concerning a non-severable Capital Improvement, divided by the number of years of useful life of the Capital Improvement for which the Necessary Capital Expenditure is made, based upon reasonable calculation thereof by the City's

independent financial auditors. The annual payments shall include interest at the rate being paid by the City on bonding that includes the Necessary Capital Expenditure for the non-severable Capital Improvement or, if the City does not bond any such Necessary Capital Expenditure, at the interest rate of the City's then most recent general bond obligation issuance.

(c) At any time PTG is required to make an Excess Capital Expenditure, PTG shall have the option of not making the Excess Capital Expenditure, whereupon this Agreement shall terminate within 180 days after PTG has elected not to make such Excess Capital Expenditure.

(d) For purposes hereof:

- (i) "Capital Improvement" means an item for which a Necessary Capital Expenditure is made;
- (ii) "CPI Adjustment" means, beginning with the fiscal year starting July 1, 2007, and on July 1 of each fiscal year thereafter during the Term, an adjustment to the maximum amount available from the Capital Fund for Necessary Capital Expenditures to be obtained by multiplying the then applicable Adjusted Capital Fund Maximum (which begins at \$500,000.00) by the average annual increase in the Consumer Price Index for all urban consumers - U.S. City average - all items (1982-1984 = 110) over the previous 36 months; provided however that such annual CPI Adjustment shall never exceed five percent (5%) and shall never be negative.
- (iii) "Investment Grade" means "investment grade" as determined by any major bond rating agency (currently Moody's Investors Service: Baa3; Standard & Poors Corporation: BBB-; and Fitch Investor Service, LP: BBB-).

(iv) "Necessary Capital Expenditure" means an expenditure that is capitalized in accordance with Generally Accepted Accounting Principles, as they be amended from time to time; which expenditure is reasonably necessary to maintain the Theater in a condition that accords with industry standards.

(e) If this Agreement terminates on a date other than June 30, annual payments required from PTG to the City under this Section 2.1.8 shall be pro-rated based upon the portion of the fiscal year ending on the termination date and shall be payable on or before the termination date.

2.2 Utilities.

2.2.1 PTG shall pay all utility bills associated with the operation of the Theater, including but not limited to: electricity, heating fuel, gas, water and sanitary sewer. In those instances where it is practical, the City shall provide PTG with utility services through the City as purchaser of same from the applicable utility provided, the cost of which, at City rates, shall be reimbursed by PTG within (30) days of receipt of a bill from the City. Unless impractical, all utility service to the Theater shall be separately metered. Any sums directly payable by PTG to the applicable utility shall be made within the applicable payment period. When separate meters are not installed or are not functioning properly, in circumstances in which PTG is not a customer of the applicable utility (i.e., utility service is being provided to the Theater under the City's utility account) PTG shall pay a share of the applicable utility charge based upon a reasonable approximation of comparative usage of the applicable utility by the Theater and the School.

2.2.2 PTG shall be solely responsible for all costs and expenses, including the payment of any and all required deposits, incurred by the Theater from the foregoing utility companies or any others engaged by PTG during the Term; and

2.3 Regulations. PTG shall be responsible for securing all necessary licenses, permits and shall comply with all local, State and Federal legal and regulatory requirements. If a regulatory agency of the City, State of Connecticut or Federal Government issues some formal form of notice of violation to PTG for actions associated with PTG's duties and responsibilities hereunder, PTG shall pay all costs related to such violations.

2.4 Ancillary Services.

2.4.1 PTG or its designate shall be responsible for providing food and beverage services at the Theater, subject to local, State and Federal laws and ordinances. PTG or its designate may apply for a license to sell alcoholic beverages in accordance with the regulations established by the Department of Consumer Protection, Division of Liquor Control.

2.4.2 During the Term, PTG is responsible for operating and monitoring the adjacent parking garage at certain times when the City is not doing so, which includes, without limitation, weekday evenings and weekends when productions and events are scheduled to be performed at the Theater. Any revenues generated from PTG's operation of the parking garage may be retained by PTG. PTG shall be required to adhere to union policies as well as such other rules and regulations promulgated by the City pertaining to the operation of the parking garage. PTG shall reimburse the City for any additional costs and expenses incurred by the City as a result of PTG's operation of the parking facility; and

2.4.2.1 The City shall maintain the adjacent parking garage in good repair and operating conditions, free from ice, snow and debris.

2.4.3 PTG shall be responsible for providing security in accordance with regulations of the Waterbury Police Department and Fire Department.

2.5 Signs and Advertising. PTG shall be responsible for installing, displaying and maintaining all permanent and temporary exterior signs and advertising. Notwithstanding the foregoing, PTG shall not erect or display any permanent exterior sign or other permanent forms of advertising without the express prior written approval of the City which approval shall not be unreasonably withheld. All signage shall meet industry standards and shall comply with local laws.

2.6 General Office Duties. PTG shall perform general management and administrative services for the Theater, and maintain accurate books and records with respect to any and all of its duties and obligations herein. PTG shall maintain any and all records and documentation reflecting its receipts and disbursements during the Term of this Agreement, including the status

of all receivables. Such records and documentation reflecting its receipts, disbursements and expenses shall be maintained in the PTG offices and PTG shall make the same available for inspection and copying by authorized representatives of City, as set forth in Section 7.4 below.

2.7 Theater Productions. PTG shall coordinate and assist with the implementation of the theatrical productions, artistic presentations, shows, exhibits, and activities within the Theater, as more fully described below in Article 4.

2.8 PTG shall reimburse City for the cost of any services provided by the City, including but not limited to personnel, other than normal municipal services for which costs are not imposed by the City, such as police and fire responses to emergency needs.

2.9 Except as otherwise expressly provided in this Agreement, the City shall have no financial obligation concerning the operation and maintenance of the Theater.

ARTICLE III. PERSONNEL

3.1 PTG's Authority to Hire and Contract. PTG is authorized to hire, supervise, discharge and pay all employees, independent contractors and other personnel which PTG determines are necessary to be employed in connection with the management, operation and promotion of the Theater.

3.2 Payment of Salaries and Fees by PTG. PTG, and not City, shall be responsible for the payment of all salaries, wages and benefits of employees hired by PTG, and all local, State and Federal taxes and assessments (including, without limitation, Social Security taxes, unemployment insurance and workers' compensation insurance) incident to the employment of such personnel, as well as all fees and charges of independent contractors which PTG engages on its behalf. All such costs and expenses shall be deemed, construed and treated as operating expenses.

3.3 Collective Bargaining Agreements. During the Term of this Agreement, PTG shall refrain from taking any action that would cause the City to be in violation of any agreements with employee unions to which the City is a party. Notwithstanding the foregoing obligation and subject to the terms and conditions herein, the PTG shall still have the exclusive right to: (i)

manage all of PTG's operations and its business affairs, (ii) direct the work force, (iii) determine procedures and duties, (iv) assign work, evaluate jobs and the performance of jobs for pay purposes and to reevaluate them, and (v) decide the methods, means and processes of operating the Theater, the number and classification of employees to be used in the various aspects of the PTG's operations or for particular assignments. PTG also retains the right to take whatever steps it deems necessary to meet and comply with its duties and obligations hereunder and all Federal, state or local regulations.

3.4 Status of Employees and Contractors. PTG hereby acknowledges that any and all personnel which it hires or engages to perform the services hereunder shall be deemed employees and/or contractors solely of PTG, and shall not be deemed in any manner to constitute employees, agents, contractors or representatives of the City. In addition, the City shall not be liable for any act or omission on the part of such employees and/or contractors. PTG hereby indemnifies the City with respect to any such act or omission pursuant to Article 12.1.

ARTICLE IV. THEATER PROVISIONS

4.1 Presentation Duties. PTG will insure that a minimum number of events shall be staged or exhibited at the Theater in each of the following fiscal years (July 1st through June 30th); 2004-2005 – 30 Events; 2005-2006 – 50 Events. The foregoing performance standards are minimal goals for each year with respect to theater utilization. It is the intent of the parties to make use of the Theater on as many dates as is possible while aspiring to ever increasing quality of artistic and dramatic endeavor utilizing local, national and international artists.

4.1.1 Three Year Period. The parties intend to establish a three year benchmark to determine if PTG is presenting an adequate number of performances. For the three year period of 2006-2007, 2007-2008 and 2008-2009, PTG shall be required to present 240 performances. ("Initial Three Year Period"). For the three year period of 2007-2008, 2008-2009 and 2009-2010 the new benchmark shall be 270 performances. Beginning with 2008-2009, 2009-2010, 2010-2011 and thereafter the new benchmark shall be 300 performances. Each year shall commence a new three year period. Failure to achieve the benchmark during any three year period, including the Initial Three Year Period, shall be an Event of Default, unless PTG shall have presented at least ninety-five percent (95%) of the benchmark number of performances.

4.2 Use of the Theater.

4.2.1 PTG agrees to comply and cause its agents, employees, invitees to comply with all fire regulations which apply to the theater;

4.2.2 PTG shall use its best efforts to comply and shall cause its audience members to comply with all fire and police regulations;

4.2.3 PTG shall not do, or permit to be done, upon the Theater anything that will tend to injure, mar or in any manner deface the Theater; and

4.2.4 PTG agrees that no portion of the sidewalks, entries, vestibules, halls or ways of access to public utilities of the Theater shall be obstructed by PTG or used for any purpose other than ingress and egress to and from the Theater.

4.3 PTG to Furnish.

4.3.1 PTG will furnish and pay for all costs necessary for operating the Theater as provided above in Article 2, including, without limitation, utility charges, refuse removal, telephone, maintenance and supplies, licenses, permits, exterminating services, alarm system, payroll, armored car service, usher and porter uniform cleaning and cleaning supplies; PTG will not be responsible for paying any real estate taxes or personal property taxes on the theater building or its contents. This provision does not apply to the building known as the "Rectory".

4.3.2 PTG shall also furnish all personnel, services, properties and materials not herein specifically enumerated but necessary to take-in, present and take-out any productions which shall be performed at the Theater as complete theatrical productions including, without limitation, complete case, scenery, costumes, electrical and sound equipment, all literary and musical rights and materials, advertising, signs and press materials.

4.4 Selection of Productions. PTG hereby acknowledges and agrees that, before it is permitted to enter into any licensing or production agreement with a prospective producer to acquire rights in and to a prospective production or presentation, such production shall be submitted to the PTG Board for its approval.

4.5 Concession. As stated above, PTG shall have the exclusive right to operate or contract with concessionaries for the operation of checking facilities and for the sale of candy, refreshments, liquor (if permitted by law) and like items. PTG shall also be permitted, subject to its right to secure the necessary licenses, play-related merchandise including souvenirs books, sheet music, records, novelties, t-shirts, etc. for its own account and at its own expense (including payment of applicable sales tax). All revenue generated from the concession and the sale of merchandise shall belong to PTG.

4.6 Box Office/Playbill.

4.6.1 Price scale and distribution of tickets for each production shall be under PTG's exclusive control. PTG shall have sole and exclusive control and supervision of the box office and its personnel;

4.6.2 PTG shall be responsible for contracting and/or developing on its own an electronic and computerized ticket issuing and telephone reservation system.

4.6.3 PTG shall be responsible to enter into an agreement with a playbill company to print and distribute programs where appropriate for the presentation in the Theater and to change the content from time to time.

4.7 Theater Condition. Each and every improvement, change, alteration and/or permanent decoration including, without limitation, additional electrical signs, changes in the size of the orchestra pit, seating, stage floor surface, stage traps, platforms and switchboards, booms and boxes, and outlets on balcony rails which PTG may wish to make to the Theater from one production to the next must be approved by the Board of Aldermen in writing before any such improvement, change, alteration or permanent decoration can be made to the Theater, specifically excluding temporary changes for theatrical productions. Said approval shall not be unreasonably withheld.

4.8 Unsuitability of Theater. If the Theater in the opinion of City is rendered unsuitable for PTG's use due to fire, emergency or calamity, act of God, strikes, labor disputes or other contingency or unforeseen occurrences beyond the control of City and/or PTG (an "Unforeseen Event"), City shall not be responsible to PTG for any damage caused thereby and

City may either suspend PTG's use of the Theater until such time as City, in its sole discretion, shall permit use thereof or if such Unforeseen Event shall continue for a period in excess of one (1) year, City may terminate this Agreement. The terms "strikes" and "labor disputes" as used herein, will be deemed to include all strikes by or lockouts of persons employed in the Theater by PTG and will also be deemed to include picketing of the Theater by representatives of any labor union having or claiming to have jurisdiction over such employees. The parties agree that any insurance proceeds which are paid out to either PTG or the City as a result of a fire, flood or some other type of calamity which renders the Theater unsuitable for use shall be the sole property of the City.

In the event the Theater is determined to be unsuitable as defined above and said calamity/occurrence is covered by insurance either maintained by the City of Waterbury or PTG, the parties agree to mutually choose an Independent Consultant Entity to evaluate options for rebuilding and repairing the Theater. The cost of such Independent Consultant Entity shall be shared by both parties. The Independent Consultant Entity shall be charged with, among other issues, evaluating the needs of the School such as a need for an auditorium. The conclusions of the Independent Consultant Entity shall be given strong consideration by both parties and shall not be binding on either.

They will attempt to agree on a plan of rebuilding and/or repair as suggested by the Independent Consultant Entity. If the parties cannot agree, the parties will submit the matter for mediation only pursuant to Sections 14.4.2 and 14.4.3 of this Agreement. In the event the parties are not able to reach an agreement through mediation, the City shall have the final decision as to use of insurance funds, which may include the termination of PTG's rights as contained hereunder, provided however, that the City shall be required to use the funds to accommodate the School, rebuilding and/or repair of the Theater and if these are not possible, for other community based arts applications but not as general operating funds.

4.9 Affiliate Theater Agreements. All agreements and arrangements regarding management services which PTG intends to consummate with other regional theater companies and/or production companies, including, without limitation, an agreement with Professional Facilities Management in Providence, Rhode Island, shall be submitted to the City.

4.10 Compliance with Laws. PTG agrees to comply with all local, state and federal laws, rules and regulations in respect of operating the Theater. Without limiting the foregoing, PTG

shall obtain all necessary permits, certificates or licenses required by all applicable laws, rules and regulations in connection with the operation of a theater and staging of productions.

ARTICLE V. SCHOOL PROVISIONS

5.1 School's Use of the Theater. PTG and the City agree to cooperate with each other in allowing the School to use the Theater for such events as convocations, graduations and other events and/or School performances approved by PTG, such approval not to be unreasonably withheld or delayed. The School shall make every reasonable effort to provide PTG with sufficient advance notices of its events to make the Theater available to it and avoid conflicts. Notwithstanding the foregoing, the School's events cannot hinder, delay, interfere with or obstruct any other productions, shows or events which are appearing or are scheduled to appear at the Theater, including the load-in and load-out of such productions. In addition, the School shall make all reasonable accommodations and shall not do anything to prevent access to any Theater facilities which may be situated on School premises, including the Theater dressing rooms located beneath the School, adjacent to the Theater. Attached hereto as Exhibit B is an agreement between PTG and the Waterbury Arts Magnet School, which shall govern their relationship and shall be amended from time-to-time as needed.

5.2 Financial Contribution. Pursuant to a Resolution Concerning Property Management and Certain Real Estate Transfers that was passed by the Waterbury Financial Planning and Assistance Board ("WFPAB") on August 13, 2003 (attached hereto as ExhibitC), WFPAB ordered that "[t]he Board of Education of the City of Waterbury is hereby directed to pay the sum of two hundred and fifty thousand dollars (\$250,000.00) per year to PTG as an annual contribution to the operating expenses of the Theater in recognition of the significant use that the Magnet School will have of such facility. Said sum shall be paid from State grant money provided to the Board of Education of the City of Waterbury for the Waterbury Performing and Fine Arts Magnet School or if not possible, other City resources." This section shall be subject to any future resolution by WFPAB. PTG hereby acknowledges that the City is a municipal corporation and that the City's obligation to make payments under this Agreement is contingent upon the appropriation by the City's Board of Aldermen of funds sufficient for such purposes, for each budget year in which this Agreement is in effect. If sufficient funds to provide for the payment hereunder are not appropriated, the City is under no obligation to make any such payment. The school's use of the Theater is contingent upon payment.

5.3 Use of School Theater. In the event PTG or the City wishes to stage a smaller-scale production which would be more conducive to a smaller theater setting, such as the one located in the School, rather than the Theater, PTG and the School shall work together, in good faith, to make the necessary arrangements allowing such productions to be held at the School.

ARTICLE VI. INSURANCE

6.1 Insurance Policies. During the Term of this Agreement, PTG is required to have insurance for the Palace Theater and the Rectory Building and, on a pro-rata basis, for the Parking Facility. PTG shall obtain on its own behalf, or if possible and if acceptable to the City, the City shall provide coverage as part of the City's coverage. PTG shall reimburse the City in accordance with Article 6.4 for all costs incurred by the City for any coverage provided to and on behalf of PTG. PTG is required to obtain and maintain the following insurance with insurance companies licensed to do business in the State of Connecticut with a minimum of an "A-" rating in the current edition of Best's Insurance Guide:

6.1.1 Commercial general liability coverage, including coverage for personal or bodily injury, blanket contractual liability coverage, product liability insurance, and liquor law liability coverage, which covers PTG, its affiliates, directors, employees, contractors and agents, and which provides for limits of liability of at least ten million (\$10,000,000.00) dollars per occurrence and ten million (\$10,000,000.00) in the aggregate for personal and bodily injuries to, or the death of, one or more persons arising out of or in connection with the operation of the Theater for any purpose.

6.1.2 Malpractice and errors and omissions insurance with minimum coverage limits that are acceptable to the City's Director of Finance to cover its work performed pursuant to this Agreement.

6.1.3 Property and Equipment insurance with coverage limits that are acceptable to the City's Director of Finance.

6.1.4 Fire and extended coverage casualty insurance thereon to the extent of the full insurable value thereof with coverage limits as determined by the City's Director of Finance payable in full to the City as the sole beneficiary.

6.1.5 To the extent required by law, worker's compensation, owned, hired and non-owned auto and disability insurance, employer's liability insurance and all other insurance coverage of similar character applicable, or relating to, the employment of PTG's directors, employees, representatives, independent contractors and agents with coverage limits that are acceptable to the City's Director of Finance.

6.1.6 Fidelity and money and securities coverage, care and custody coverage, and directors' and officers' coverage, with minimum coverage limits that are acceptable to the City's Director of Finance.

6.1.7 PTG shall require any of its subtenants using either the Palace Theater or the Rectory to have the same type of insurance as required of PTG by this Article. All such policies shall name the City as additional insured and the certificates shall be provided to the City in accordance with Article 6.3.

6.1.8 The PTG will be responsible for any deductible of any insurance it obtains by itself or the deductible that is included in any insurance coverage provided by the City. PTG shall be responsible to obtain additional insurance for any policy for which the deductible is above \$10,000.00 or in the alternative to establish a sinking fund to cover said deductible in the amount of 20% per annum of the amount of the deductible.

6.1.9 The City's Director of Finance shall have the authority to change the limits of coverage, from time-to-time, as the City's needs may change.

6.2 Optional Insurance. The PTG, at its option, may obtain insurance protection with respect to items of personal property and/or business interruption insurance, as it deems advisable. PTG acknowledges that City is not obligated in any manner to PTG for interruption of the business of PTG by reason of fire damage or otherwise, and protection against such losses is at the sole discretion of PTG.

6.3 Certificates.

6.3.1 Certificates evidencing all insurance required hereunder shall be delivered by PTG to the City's Director of Finance prior to the Mayor's signing of this Agreement. The certificate evidencing the commercial general liability coverage shall expressly state that the policy includes blanket contractual liability coverage. PTG shall also be required to deliver copies of such certificates to the City's Director of Finance immediately following the annual renewal of such policies as well as any new policies obtained by PTG in place of policies previously approved by City. If such certificates are not delivered to the City's Director of Finance by the date required, in a form and from an insurer satisfactory to the City's Director of Finance, City shall have the right but not the obligation, in its sole discretion, to purchase the insurance coverage required hereunder to protect the interests of the additional named insureds set forth in Article 6.3.2 below. In such instance, PTG must immediately reimburse City for its costs. PTG's failure to reimburse City shall be deemed an Event of Default hereunder. PTG's failure to purchase said insurance coverage, in whole or in part, shall not give rise to any claim or defense by PTG against City, and shall not relieve PTG of any of its obligations under this Agreement.

6.3.2 Certificates of insurance evidencing the insurance required under this Agreement (other than worker's compensation insurance) shall contain the following endorsement.

"Additional Insureds: The City of Waterbury, CT and the Waterbury Board of Education and all of its affiliated entities, whether direct or indirect, and all employees, representatives, agents, successors and assigns of any of the foregoing. Such coverage shall be primary for all purposes, without any right of contribution."

6.3.3 It is understood by the parties that PTG may not change the terms and conditions of any insurance policy, except upon the prior written consent of City's Director of Finance, which approval may be granted or withheld at City's sole discretion.

6.4 Payment of Premiums. PTG shall promptly pay the premiums on all insurance policies required hereunder and shall furnish the City's Director of Finance with receipts evidencing such payments. Any renewed policies of insurance shall be delivered to the City's Director of Finance

not less than thirty (30) days prior to the expiration of the old policy. In the event PTG fails to deliver the policies in the manner stated herein, City may take out such required policies and charge such costs and expenses incurred in obtaining said policies to PTG, for which PTG shall immediately reimburse the City. PTG's failure to reimburse the City within five (5) days of the City notifying PTG in writing of said policies, shall constitute an Event of Default hereunder, pursuant to Article 8 below.

6.5 Termination of Policies.

6.5.1 All certificates of insurance shall provide that such policies may not be cancelled or modified in any manner upon not less than thirty (30) days prior written notice to City. Any reference to the words "endeavor to" and "but failure to mail such notices shall impose no obligation" in any of the policies required hereunder must be crossed out of the cancellation clause on each certificate of insurance; and

6.5.2 PTG's failure to obtain and/or maintain each of the insurance policies required hereunder during the Term of this Agreement shall constitute an Event of Default.

ARTICLE VII. ACCOUNTABILITY

7.1 Maintenance of Books and Records. PTG shall keep books and records with respect to all of its activities during the Term and shall not discard the same for a period of five (5) years thereafter. PTG shall furnish to the Board and the City's Director of Finance and the Board of Aldermen detailed quarterly accounting statements of receipts and disbursements for the prior month. Such statements shall also indicate the status of all receivables.

7.2 Preparation of Budgets. PTG shall prepare annual budgets (the "Budgets") for the Theater covering each year during the Term hereof. No later than sixty (60) days' prior to the commencement of a fiscal year (as hereinafter defined), PTG shall submit operating revenue, expense and capital budgets to the City's Director of Finance and the Board of Aldermen. Each of the Budgets shall provide quarterly details. Not later than thirty (30) days after each quarter and annual reporting period, PTG shall provide to the City's Director of Finance and the Board of Aldermen a written analysis of actual results compared to the Budget for the respective period.

7.3 Business Plan. PTG shall be required to present to the City's Director of Finance and the Board of Aldermen and the PTG Board a comprehensive business plan for itself and the Theater as of the date of execution of this Agreement (the "Business Plan") and thereafter on each three (3) year anniversary of the effective date hereof. The business plan shall include, among other topics, the number of stage productions PTG anticipates staging at the Theater as well as all other sources of revenue from which PTG expects to establish and meet its Budget.

7.4 Audit. During the Term, PTG shall provide the City's Director of Finance and the Board of Aldermen full disclosure of information regarding its financial condition. PTG will make the books and records and all other documents pertaining to the financial condition of the Theater available to the Board and its representatives at reasonable times upon reasonable advance notice at a location determined by the Board for examination, audit, inspection and copying. In addition to the foregoing, PTG shall have conducted on its behalf full and complete annual audits of its financials, such audits to be carried out by a certified public accounting firm approved by the Board. The results of the annual audit should be certified by the accountants who performed the audit, and thereafter disclosed to the Board as well as City's Director of Finance and Board of Aldermen by PTG. PTG's failure to have the audit performed each year during the Term of this Agreement and have the results disclosed in writing to the City's Director of Finance and Board of Aldermen shall constitute an Event of Default hereunder.

7.4.1 Selection of Auditor. The auditor shall be selected by the Board of Directors of PTG. After the Board of Directors of the PTG selects the auditor, they shall forward said choice by certified mail to the Board of Aldermen for approval. If the Board of Aldermen fails to notify the Board of Directors of the PTG within 45 days after receiving such selection, then said failure to object shall be deemed as an approval of said selection. If in the event the Board of Aldermen opposes said selection and further complies with the requirements herein, it shall provide three (3) auditors from a certified accounting firm from which the Board of Directors of the PTG shall be required to make a selection from.

7.5 Deficit.

7.5.1 PTG hereby acknowledges that it, alone, shall be responsible for its and the Theater's full and complete compliance with the Budgets submitted to the Board and the City. Beginning with the fiscal year which commences on July 1, 2006 in the event of a deficit in PTG's Budget at the end of a fiscal year during the Term, PTG shall be required to eliminate such deficit no later than the end of the second fiscal year (the "Deficit Cure Period"), following the Initial Deficit Year. PTG's failure to eliminate any and all deficits by the end of the Deficit Cure Period shall be deemed an Event of Default hereunder. Said deficit may be eliminated either by earned income of PTG, from other sources such as charitable contributions or foundation grants or authorized expenditure from endowment funds.

7.5.2 If, at the end of the Deficit Cure Period, PTG is unable to eliminate the deficit, the City shall have the right, in its sole discretion, to prepare and make available to the general public a request for proposal (the "RFP"), from which the City shall replace PTG with a new management company. PTG shall be required to assist the City in the RFP process and the transition which follows, if necessary, in accordance with Section 13.5 below.

7.6 State Appropriations. The City and PTG acknowledge that the State of Connecticut has appropriated the sum of nine hundred thousand (\$900,000) dollars toward the operation and maintenance of the Theater; provided, however, the City engages PTG to operate and manage the Theater. In the event the State fails to appropriate some or all of these monies to PTG in the future, the City shall have no obligation to use its own funds in place of these State funds and PTG shall be required to procure these funds elsewhere.

7.7 Fiscal Year. The PTG's annual accounting period for tax and/or reporting purposes shall run from July 1 to June 30.

TICLE VIII. BOARD OF DIRECTORS

8.1 Composition of Board. No later than July 1, 2004, the Board shall consist of fifteen (15) members. As of the effective date hereof, the Board shall consist of eight (8) members. The parties acknowledge that the greater of twenty percent (20%) of the Board or five (5) members shall be mayoral appointees (the "Mayoral Appointees"), two of whom shall be members of the Board of Aldermen, chosen by the Mayor. The two aldermanic appointees shall not belong to

the same political party. The Mayor shall provide double the number of proposed Mayoral Appointees needed from the representative group and such proposed Mayoral Appointees shall have broad qualifications to enhance the mission of the PTG in furthering a strong sense of community and a appreciation for the arts. The Board nominating committee will be required to select the requisite number of members from the proposed appointees provided by the Mayor in a timely fashion. This procedure shall not apply to the Aldermanic appointments, which shall be made solely at the Mayor's discretion. The remaining members of the Board shall be appointed by PTG. City Aldermen who serve as members of the Board shall remain on the Board only so long as such individuals remain on the Board of Aldermen. In the event such individuals are no longer members of the Board of Aldermen for any reason, such individuals shall immediately cease to be members of the Board and shall be replaced by the Mayor as soon as practicable. All subcommittees of the Board shall include at least one Mayoral Appointee.

8.2 Election of the Board.

8.2.1 No later than July 1, 2004, the Board shall consist of fifteen (15) members. As of that date, one third (1/3) of the Board members shall be appointed to a term of one year; one third (1/3) of the Board members shall be appointed to a term of two (2) years; and one third (1/3) of the Board members shall be appointed to a term of three (3) years. Mayoral Appointees shall be included in each of the staggered terms. Thereafter, at each annual meeting of the Board, Board members shall be appointed to fill expiring terms and those so appointed shall be appointed to a term of two (2) years or until their successors are duly appointed and qualified.

8.2.2 Newly created directorships resulting from any increase in the authorized number of Board members or any vacancies on the Board resulting from death, resignation, retirement, disqualification, removal from office or other cause may be filled only by a majority of the Board members then in office, even though less than a quorum. Notwithstanding the foregoing, any vacancies in any of the offices appointed by the Mayor may only be filled by the Mayor, and not by the Board or any other authorized persons or representatives of PTG. To the extent reasonably possible, consistent with this Section 8.2.2, the terms of any newly created directorships shall be staggered in order to be included with the terms that expire at the latest date following such allocation. Any appointments to fill vacancies resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be for the remainder of the term vacated. In the event of a vacancy on the Board, the remaining Board members, except as otherwise provided by law, may exercise the powers of the full Board until the vacancy is filled.

8.3 Meetings of the Board. The Board shall hold, at a minimum, meetings six (6) times per year on such dates, at such places and times as the Board shall designate in writing. No later than September 1st, the Board shall publish a schedule of the dates of meetings for each of such months. All Board meetings shall be open to the public and may be videotaped or televised. A secretary appointed by the Board shall be responsible for keeping the minutes of each meeting. The secretary shall be required to furnish to the City Clerk a copy of the minutes of each meeting. Each Board meeting shall commence with the secretary or his designee reading aloud the minutes of the previous Board meeting before moving to new business. The minutes of each meeting shall also be made available for public inspection.

8.4 Quorum. Forty (40) percent of the Board membership shall constitute a quorum at any meeting of the Board on or after July 1, 2004, at which time Board members shall be increased to fifteen (15). Less than a quorum may adjourn the meeting to a fixed time and place; no further notice of any adjourned meeting is required. At such adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted at the meeting as originally scheduled.

8.5 Voting. Each Board member shall be entitled to one (1) vote. The affirmative vote of fifty percent (50%) of the Board members present and voting at a meeting in which a quorum exists pursuant to Section 8.4 hereof shall be required for any action of the Board. The Board will not vote or take any material action (i.e., an action whose effect is neither insignificant nor insubstantial) unless such vote or action taken by the Board occurs at a meeting that was announced publicly at least seven (7) days in advance and is subsequently open to the public. Notwithstanding the foregoing, upon the occurrence of a force majeure event or some other type of emergency which directly affects the Theater and requires the scheduling of an emergency Board meeting, as determined in good faith by the Board, the Board shall be permitted to meet and take whatever action is necessary and prudent in light of such an event without the requirement of making a public announcement and opening the emergency meeting to the public. In the event such an emergency occurs, the secretary of the Board shall be responsible to record detailed and comprehensive minutes of the meeting and forward such minutes to the City Clerk no later than twenty-four (24) hours after the meeting. The minutes shall also be made available to the public.

8.6 Officers of PTGs. The Board shall have the right to appoint an executive director and officers to run the PTG's day-to-day business and affairs.

ARTICLE IX. FREEDOM OF INFORMATION DISCLOSURE

9.1 Disclosure.

PTG agrees to comply with the Connecticut Freedom of Information Act, as it may be amended from time to time, to the extent it is required to do so and in any event, all of its Board meetings shall be open to the public; the Board shall go into executive session only for the matters for which executive sessions are allowed under FOI and/or discuss such business matters wherein public discussion would prejudice the business interests of PTG. This subsection shall apply to books and records maintained by PTG, including those referred to in Article 2.6.

ARTICLE X. REPRESENTATIONS AND WARRANTIES

10.1 PTG hereby represents and warrants to the City as follows:

10.1.1 It is a non stock corporation, validly formed, organized and existing in good standing under Connecticut law, which has applied to the Internal Revenue Services to be a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

10.1.2 This Agreement has been duly authorized, executed and delivered on behalf of PTG and constitutes the valid, legal and binding agreement of PTG, enforceable in accordance with its terms;

10.1.3 The entering into and performance of this Agreement will not violate an judgment, order, law or regulation applicable to PTG or any provision of PTG's charter or By-laws;

10.1.4 The performance of its duties and obligations herein will in no way violate the rights of any person, firm or corporation;

10.1.5 It is not a party to any agreement, which would (i) require the prior consent of any party to PTG's making of and performing this Agreement, or (ii) constitute a default under any such agreement;

10.1.6 As of the effective date hereof, PTG is not a party to any contract which would have a material adverse effect on its ability to perform under this Agreement; and

10.1.7 In the event that certain actions taken or proposed to be taken by PTG would jeopardize PTG's Sec. 501(c)(3) federal tax exempt status, PTG shall cease and desist from such actions forthwith upon notice thereof.

10.1.8 Compliance with Chapters 38 and 40 of the Code of Ordinances of the City By executing this Agreement, PTG represents and warrants that, at all pertinent and relevant times to the Agreement, it has been, is and will continue to be in full compliance with the provisions of Chapters 38 and 40 of the Code of Ordinances of the City as well as any other relevant provisions of the Charter and the Code of Ordinances as they may be amended from time to time.

10.2 The City hereby represents and warrants to PTG as follows:

10.2.1 This Agreement has been duly authorized, executed and delivered on behalf of the City, and constitutes the valid, legal and binding agreement of the City, enforceable in accordance with its terms;

10.2.2 The entering into and performance of this Agreement will not violate any judgment, order law or regulation applicable to the City of any provision of its Charter.

10.2.3 The performance of its duties and obligations herein will in no way violate the rights of any person, firm or corporation;

10.2.4 As of the effective date hereof, the City is not a party to any contract which would have a material adverse effect on its ability to perform under this Agreement.

11.2 Warranty. PTG hereby warrants to the City that it shall perform its duties and responsibilities under this Agreement using its commercial best efforts.

ARTICLE XII. INDEMNIFICATION

12.1 PTG's Indemnification. PTG agrees to fully indemnify, defend and hold harmless to the fullest extent permitted by law the City, its employees, agents, representatives and their successors and assigns from, against and in respect of, all Losses (as hereafter defined) arising out of or in any manner incident, relating or attributable to any one or more of the following:

12.1.1 Any inaccuracy in any of PTG's representations or warranties contained in this Agreement;

12.1.2 Any failure by PTG to perform or observe, or to have performed or observed, in full, any covenant, agreement or condition to be performed or observed by PTG under this Agreement; or

12.1.3 PTG's negligence, gross negligence, willful misconduct or intentional acts in connection with its duties and obligations herein.

For purposes of this Section 12.1, "Losses" shall mean any and all claims, losses, liabilities, settlement payments, costs and expenses (including reasonable attorney's fees and disbursements), interest, awards, obligations, judgments and damages (including punitive damages), diminution in value, fines, fees, penalties and other charges (collectively, the "Losses"), joint or several, based on or arising out of any of the foregoing.

12.2 Third Party Claims. In the event of any claim or demand in respect of which the City might seek indemnity under this Article 12 is asserted against or sought to be collected from PTG by a person, firm or corporation other than a party hereto or any of its affiliates, representatives, successors or assigns (a "Third Party Claim"), then the City shall give written notice to PTG of such Third Party Claim, provided that the City's failure to give notice as provided herein shall not relieve PTG of its obligations under this Article 12. PTG shall be entitled, at its expense, to control such claim, or in the event an action is brought against the City, to participate in and to assume the defense thereof, with counsel approved in advance by the City, which approval shall not be unreasonably withheld, except when Counsel is selected by an insurance carrier and the City is not permitted to approve counsel. PTG may not settle any matter without the prior written

consent of the City, such consent not to be unreasonably withheld. If PTG is not entitled to, or elects not to, assume the defense of a Third Party Claim, it will continue to be obligated to pay the reasonable and necessary fees and expenses of the City's counsel with respect to such claim as well as any Losses resulting therefrom.

12.3 Other Claims. In the event of any claim or demand, other than a Third Party Claim, in respect of which the City might seek indemnity under this Article 12, the City shall deliver an indemnity notice with reasonable promptness to PTG. The failure by the City to give the indemnity notice shall not impair its rights hereunder. PTG will notify the City within the twenty (20) day period following its receipt of such indemnity notice (the "Disputed Period") as to whether it disputes its liability to the City hereunder. If PTG notifies the City that it does not dispute the claim described in the indemnity notice, or fails to notify the City within the Dispute Period, the Loss specified in the indemnity notice will be conclusively deemed a liability of the City and PTG shall pay the full amount of such Loss, when it has been finally determined. If PTG has timely disputed its liability with respect to such claim, PTG and the City will proceed in good faith to negotiate a resolution of such dispute, and if the same is not resolved through negotiations within sixty (60) days following the City's receipt of a written notice from PTG disputing such claim, such dispute shall be finally settled in accordance with the dispute resolution procedures of Section 14.4 below.

12.4 City's Indemnification. PTG acknowledges that the City shall have no indemnification obligations to PTG hereunder for third-party claims or otherwise.

ARTICLE XIII. TERM & TERMINATION.

13.1 Term of Appointment. This Agreement and PTG's engagement hereunder shall commence on the effective date hereof and continue in effect for a period of twenty (20) years (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall continue in effect for two (2) subsequent and consecutive ten (10) year periods, unless sooner terminated in accordance with the provisions of this Article 13 (the Initial Term and each subsequent term, collectively the "Term"). Notwithstanding the foregoing, prior to the renewal of either renewal term, the following conditions precedent must be met: (i) PTG shall not be in breach or default of any provision hereunder, and (ii) PTG shall not have committed an Event of Default, which shall not have been cured.

13.2 Voluntary Termination. PTG shall have the right to terminate this Agreement by notifying the City of its intention not less than ninety (90) days prior to the expiration of the Initial Term or any subsequent renewal term. Notwithstanding PTG's termination of the Agreement pursuant to this Section 13.2, PTG agrees to continue its operation and maintenance of the Theater until the latter to occur of: (i) the end of the then current fiscal year, or (ii) when the City enters into an operating agreement with PTG's replacement, which period shall terminate no later than the closing of the final engagement PTG is legally required to present at the Theater in the following year.

13.3 City's Termination. City may terminate this Agreement upon the occurrence of any of the following Events of Default:

13.3.1 If PTG is in material breach of its duties and obligations herein and such material breach is confirmed by judicial decree pursuant to paragraph 14.4 and PTG fails to comply with said decree.

13.3.2 (i) PTG makes a general assignment for the benefit of creditors, (ii) takes the benefit of any insolvency act, (iii) a receiver or trustee is appointed for PTG or PTG's property, (iv) the filing of a voluntary petition in bankruptcy by PTG, or (v) the admission by PTG of its inability to pay its debts generally as they become due;

13.3.3 PTG realizes a deficit at the end of any Deficit Cure Period pursuant to paragraph 7.5;

13.3.4 Pursuant to Section 4.8 and 14.1, an Unforeseen Event pertaining to use of the Theater which continues for a period equal to or in excess of one (1) year;

13.3.5 PTG shall fail to promptly reimburse City for the cost of insurance as required by Article V of this Agreement or to deliver any requisite annual certificate with respect thereto within ten (10) days of the date after receipt of notice of PTG's failure to provide such certificate when due under the terms hereof;

13.3.6 PTG shall fail to comply in full with any of the performance standards established in accordance with Section 4.1 and 4.1.1.

13.3.7 A final determination is made by the Internal Revenue Service that PTG is not entitled tax exempt status.

13.3.8 PTG shall fail to comply with governmental regulations pursuant to Section 2.3.

13.4 Effect of Termination. Upon termination of this Agreement and PTG's engagement hereunder,

13.4.1 the obligations created hereby for PTG shall immediately cease and PTG shall have no further right or obligation to operate the Theater;

13.4.2 PTG shall surrender and deliver to City possession of all box office accounts, including but not limited to subscription ticket sales;

13.4.3 PTG shall deliver to the City all materials, supplies, keys, contracts and documents, records, receipts for deposits, necessary for the City or PTG to continue operation of the theater;

13.5 Assistance with Transition. PTG agrees that upon expiration or termination of this Agreement for any reason, it shall provide to the City and/or PTG's replacement all reasonable assistance required and requested by the City in the transfer of its duties and responsibilities from PTG to its replacement, including, without limitation, remaining engaged by the City to carry out its duties and responsibilities until the closing of the final engagement (i.e., production, event, concert, etc.) which it is legally required to present at the Theater during the course of the following year.

ARTICLE XIV. MISCELLANEOUS

14.1 Force Majeure. Neither party shall be liable to the other for any delay or failure to perform its obligations under this Agreement if such delay or failure arises from a cause beyond the reasonable control of and is not the fault of such party, including but not limited to labor

disputes, strikes, industrial disturbances, acts of God, acts of terrorism, floods, lightening, utility or communications failures, earthquakes or other casualty. If a force majeure event occurs, the non-performing party is excused from whatever performance is prevented by the force majeure event to the extent prevented. If such force majeure event shall continue in excess of one (1) year, the City reserves the right to terminate this Agreement and take over all operations and maintenance duties of the Theater.

14.2 Notices. All notices, requests or instruction hereunder shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, or by nationally recognized overnight courier (such as FedEx) or via facsimile as follows:

(a) If to City:

The City of Waterbury
236 Grand Street
Waterbury, Connecticut 06702
Fax No.: (203) 574-6804
Attention: Honorable Michael J. Jarjura, Mayor

with a copy to:

Cowan DeBaets Abrahams & Sheppard
41 Madison Avenue
New York, New York 10010
Fax No.: (212) 974-8474
Attention: Timothy J. DeBaets, Esq.

(b) If to PTG:

Palace Theater Group, Inc.
100 East Main Street
Fax No.: (203) 755-8494
Attention: Frank Tavera

Any notice required or permitted under this Agreement will be treated as having been given when: (i) delivered personally, (ii) sent by facsimile; (iii) sent by commercial overnight courier with written verification of receipt, or (iv) mailed postage prepared by certified or registered mail, return receipt requested, to the party to be notified, at the contact information below or at such other place of which the other party has been notified in accordance with the provisions of this Section 14.2.

14.3 Relationship of the Parties. Nothing contained in this Agreement, nor any action taken by any party to this Agreement, shall be deemed to constitute either party (or any of such party's employees, agents, or representatives) an employee, or legal representative of the other party, nor to create any partnership, joint venture, association, or syndication among or between the parties, nor to confer on either party any express or implied right, power or authority to enter into any agreement or commitment on behalf of (nor to impose any obligation upon) the other party.

14.4 Dispute Resolution.

14.4.1 Any dispute, controversy, claim or disagreement (collectively, a "Dispute") between or among any of the parties hereto arising from, relating to or in connection with this Agreement shall be resolved in accordance with this Section 14.4.

14.4.2 The parties shall use all reasonable efforts to amicably resolve any dispute or controversy arising directly out of this Agreement. In the event that efforts of the parties do not produce a resolution acceptable to both parties, then either party may initiate mediation with a mediator who is agreeable to both PTG and the City. The cost of the mediator shall be equally shared by PTG and the City.

14.4.3 Mediation meetings shall commence within thirty (30) days of the initiation of mediation by either party. Mediation meetings shall be adjourned from time to time at the discretion of the mediator. Mediation shall be concluded within thirty (30) days of commencement. The mediator shall report his recommendations to both parties within ten (10) days of completion of mediation meetings; if matters giving rise to a claimed default have been resolved the mediator shall so report.

14.4.4 In the event of a Dispute which cannot be resolved by mediation, either party may commence an action in the Superior Court for the Judicial District of Waterbury at Waterbury in the State of Connecticut to enforce this Agreement at law and at equity including specific performance. Each party to this Agreement consents to the exclusive jurisdiction of the Superior Court for the Judicial District of Waterbury at Waterbury. Each party waives, to the fullest extent permitted by law, any objection which it may now or later have to the venue of any legal action or proceeding arising out of or relating to this Agreement and any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

14.4.5 All Disputes arising under this Agreement shall be governed and construed in accordance with Connecticut Law, applicable to contracts made and performed entirely within the State of Connecticut.

14.5 Waiver. No failure by either party to exercise its rights under this Agreement shall be deemed a waiver of any such rights. No term or provision hereof shall be deemed waived or any breach excused, unless such waiver or consent shall be in writing and signed by the party claimed by the other to have waived or consented. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

14.6 Validity. If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and shall be binding upon the parties hereto, and shall be enforceable, as though said invalid or unenforceable provision were not contained herein. Without limiting the generality of the preceding sentence, if any remedy set forth in this Agreement is determined to have failed of its essential purpose, then all other provisions of this Agreement, including the limitation of liability and exclusion of damages, shall remain in full force and effect.

14.7 Assignment. Neither this Agreement nor any of the rights granted hereunder nor any interest therein, may be sold, assigned, conveyed, delegated, subcontracted or otherwise transferred or encumbered by PTG at any time (including without limitation by means of a change of control of a party), without the Board of Aldermen's written consent, and any attempt to do so will be deemed null and void (and shall be deemed to be an Event of Default). This Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

14.7.1 During the Initial Term of this Agreement, the City shall refrain from the sale, conveyance, mortgage, pledge or hypothecation of the Theater premises and its appurtenances.

14.8 Further Assurances. Each party shall use commercially reasonable efforts to cause the transactions contemplated by this Agreement to be consummated. At the reasonable request of either party, each party shall, from time to time, execute and deliver to the other party such additional documents, further agreements and instruments, and shall take all such other actions, as

may be reasonably required or appropriate to more effectively complete, execute, perfect or affirm the matters contemplated by this Agreement.

14.9 Approvals. If PTG requires the consent or approval of City prior to taking any action, then it shall be a condition precedent to the taking of such action that the prior written consent or approval of City shall have been obtained.

14.10 Interpretation. The parties hereto agree and acknowledge that: (i) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement, and (ii) the terms and provisions of this Agreement shall be construed fairly as to all parties hereto and not in favor of or against any party, regardless of which party was generally responsible for the preparation of this Agreement. Each of the signatories below acknowledges they have reviewed this Agreement and have had an opportunity to consult with counsel of their choosing.

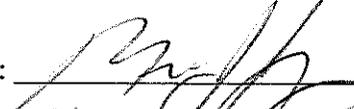
14.11 Headings. All headings and titles in this Agreement are for convenience only, are not part of this Agreement, and are not to be used in any way in the construction or interpretation of this Agreement.

14.12 Counterparts. This Agreement may be executed in any number of counterparts (including by facsimile), each of which when executed and delivered shall be deemed an original, but which counterparts together shall constitute one and the same instrument.

14.13 Entire Agreement; Changes. This Agreement, together with all Exhibits hereto, constitute the entire agreement and supersede all previous communications or agreements, either oral or written, between the parties with respect to the subject matter hereof. In entering into this Agreement, neither party has relied upon any statement, representation, warranty or agreement of the other party except for those expressly contained in this Agreement. Any amendment or modification to any provision of this Agreement must be agreed to in writing by the parties and must comply with the Procurement Ordinance of the City of Waterbury.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the effective date set forth above by their respective authorized officers below.

THE CITY OF WATERBURY

By: 
Name: Michael A. Jarjura
Title: Mayor

PALACE THEATER GROUP, INC.

By: 
Name: James C. Smith
Title: Acting Chairman

Approved as to Form:

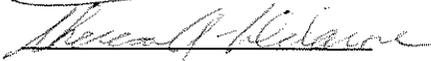


Exhibit A

SCHEDULE A
DESCRIPTION OF PROPERTY
LOCATED IN WATERBURY, CONNECTICUT
PROPERTY OF
THE CITY OF WATERBURY

FIRST PIECE:

That certain piece or parcel of land, with all the improvements thereon, situated in the Town of Waterbury, County of New Haven and State of Connecticut, bounded and described as follows:

Beginning at a point on the easterly side of Brook Street, which point is a distance of 229.22 feet from the southeasterly corner of Brook Street and East Main Street,

thence running S 82° 23' 41" E a distance of 41.01 feet;
thence running N 09° 59' 37" E a distance of 107.42 feet;
thence running S 67° 58' 09" E a distance of 16.36 feet;
thence running N 10° 04' 27" E a distance of 9.56 feet;
thence running S 64° 31' 44" E a distance of 39.94 feet;
thence running N 31° 33' 59" E a distance of 59.34 feet;
thence running S 58° 13' 12" E a distance of 1.28 feet;
thence running N 32° 55' 12" E a distance of 12.11 feet;
thence running S 60° 20' 57" E a distance of 46.88 feet;
thence running S 31° 41' 57" W a distance of 64.48 feet;
thence running S 58° 18' 04" E a distance of 61.93 feet;
thence running S 30° 47' 41" W a distance of 37.36 feet;
thence running S 68° 34' 28" E a distance of 1.52 feet;
thence running S 28° 09' 32" W a distance of 25.15 feet;
thence running S 61° 50' 28" E a distance of 13.33 feet;
thence running S 68° 48' 28" E a distance of 14.54 feet;
thence running S 22° 20' 32" W a distance of 48.76 feet;
thence running N 68° 06' 57" W a distance of 4.34 feet;
thence running S 27° 28' 52" W a distance of 41.53 feet;
thence running N 73° 07' 28" W a distance of 121.64 feet;
thence running N 10° 00' 32" E a distance of 15.93 feet;
thence running N 76° 06' 28" W a distance of 54.33 feet;
thence running N 07° 36' 19" E a distance of 56.65 feet
to the point of beginning.

SCHEDULE A - CONTINUED

SECOND PIECE:

That certain piece or parcel of land with all the improvements thereon, situated in the Town of Waterbury, County of New Haven and State of Connecticut, bounded and described as follows:

Beginning at a point on the southerly side of East Main Street, which point is a distance of 67.94 feet east from the southeasterly corner of Brook Street and East Main Street.

thence running S 68° 55' 30" E a distance of 127.22 feet along East Main Street

thence running S 31° 41' 57" W a distance of 39.50 feet along land now or formerly of M & A Realty;

thence running N 60° 20' 57" W a distance of 46.88 feet;

thence running S 32° 55' 12" W a distance of 12.11 feet;

thence running N 58° 13' 12" W a distance of 1.28 feet;

thence running S 31° 33' 59" W a distance of 59.34 feet;

thence running N 64° 31' 44" W a distance of 39.94 feet;

thence running N 10° 04' 27" E a distance of 110.14 feet to the point or place of beginning.

Together with the benefit of and subject to such water rights and riparian rights as may exist in Great Brook, so-called, running through said premises from north to south; and also party wall agreements between Trott and Hayes, one dated July 26, 1901 and recorded in Waterbury Land Records, Volume 170, Page 583, the other dated July 29, 1901 and recorded in Waterbury Land Records, Volume 170, page 585, and in Waterbury Land Records, Volume 84, Page 364, and in agreement recorded in Volume 2 of Leases at Page 106, if now in force, and agreement recorded in Waterbury Land Records, Volume 223, Page 104, if now in force.

Together with rights as reserved in the deed from Poli-New England Theatres, Incorporated to S.M. Brook, Incorporated dated September 30, 1949, recorded October 10, 1949 in Waterbury Land Records, Volume 612, Pages 37-38.

Together with right of passageway as set forth in agreement by and between Ellen E. Hayes and Poli-New England Theatres, Inc. dated December 10, 1937, recorded June 15, 1944 in Waterbury Land Records, Volume 538, Pages 161-162. See release by said parties of the obligation of making any and all payments required, dated July 8, 1950, recorded October 3, 1950 in Waterbury Land Records, Volume 629, Pages 95-96.

SCHEDULE A - CONTINUED

Together with passway rights over the northerly portion of Parcel C (Map Book 19, Page 41) as an appurtenance to Parcel B (Map Book 19, Page 41) until such time as free passageway from said Parcel B over the northerly portion of Parcel C to Brook Street may be prevented by reason of construction or other obstruction being placed thereon or otherwise, as reserved in the deed of Parcel C from Poli-New England Theatres, Inc. to Edward Seery Hayes, Trustee u/w/o Ellen E. Hayes dated October 2, 1950, recorded October 3, 1950 in Waterbury Land Records, Volume 629, Pages 107-108.

Together with conditional passway rights over Parcel A (Map Book 19, Page 41) as an appurtenance to Parcel B (Map Book 19, Page 41) as set forth in easement from Edward S. Hayes Executor of Estate of Ellen E. Hayes to Poli-New England Theatres, Inc. dated October 2, 1950, recorded October 3, 1950 in Waterbury Land Records, Volume 629, Pages 109-112.

We have taken the description from an unrecorded map entitled "Map Prepared for the City of Waterbury, Palace Theatre Property, East Main Street, Waterbury, CT, Date: 12-8-93" and from instruments of records, namely Notice of Contract in Waterbury Land Records, Volume 3949, Pages 56-57 and Statement of Compensation in Waterbury Land Records, Volume 3960, Page 268-271. The aforesaid property was acquired as one piece.

NOTE – The aforementioned map indicates various encroachments.

Being the same premises acquired by the City of Waterbury by certificate of taking vs. Tempo Enterprises, Inc. et al dated and recorded May 23, 2000 in Volume 3976, Page 207 of the Waterbury Land Records.

SCHEDULE B
ENCUMBRANCES TO PROPERTY
LOCATED IN WATERBURY, CONNECTICUT
PROPERTY OF
THE CITY OF WATERBURY

1. Certificate of Assessment – Layout and Right of Way for Great Brook from East Main Street to Brook Street, May 2, 1921 in Volume 1, Pages 216-217 of Building Lines & Assessments which traverses said property in a northerly and southerly direction.
2. Negative Pledge and Agreement – Naugatuck Valley Development Corporation and The City of Waterbury to State of Connecticut, acting by and through its Department of Economic and Community Development dated August 14, 2003 and recorded September 15, 2003 in Volume 4763, Page 214 of the Waterbury Land Records. Affects this and other land.
3. Use Restriction – Naugatuck Valley Development Corporation and The City of Waterbury to State of Connecticut, acting by and through its Department of Economic and Community Development dated August 14, 2003 and recorded September 15, 2003 in Volume 4763, Page 238 of the Waterbury Land Records. Affects this and other land.
4. Building lines, if established, and zoning ordinances enacted by the Town of Waterbury and the Rules and Regulations of the Planning Commission of said Town of Waterbury and any and all provisions of any ordinances, municipal regulation, or public or private law.

SCHEDULE C
NOTES TO CERTIFICATE OF TITLE
LOCATED IN WATERBURY, CONNECTICUT
PROPERTY OF
THE CITY OF WATERBURY

- NOTE 1: No search was made with respect to financing statements filed or recorded under the Uniform Commercial Code.
- NOTE 2: Subject to such state of facts and conditions as an accurate survey and personal inspection of the premises would disclose.
- NOTE 3: Inquiry should be had of the proper authorities regarding the payment of taxes, water bills, and/or assessments which may be due but for which liens have not been filed.
- NOTE 4: This Certificate of Title is issued for the sole use and benefit of (and our liability is limited only to) the person or persons to whom it is issued for the purpose of conveyance of title and conveyance of a mortgage on the property described.
- NOTE 5: Map attached for reference only. We make no representation as to accuracy or validity.