

USE AND OCCUPANCY AGREEMENT

THIS AGREEMENT (“AGREEMENT”) is made this ____ day of ___, 20___, by and between _____, with its principal office at _____ (“OWNER”), and _____, with its principal office at _____ (“ORGANIZATION”).

WITNESSETH

WHEREAS, OWNER and ORGANIZATION desire to enter into an agreement for the use and occupancy by ORGANIZATION of _____ (the “Premises”) consisting of _____; and

WHEREAS, the parties have agreed to modify, amend, and supersede any and all prior agreements between them with respect to the Premises, whether written or oral, by entering into this AGREEMENT with the terms and provisions as hereinafter set forth.

NOW, THEREFORE, in consideration of mutual covenants contained herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DESIGNATED PORTION OF LICENSED AREA.** OWNER, in consideration of the payments provided in this AGREEMENT, does hereby agree to license to ORGANIZATION certain areas in the Premises, subject to OWNER’s use as provided in Article 2 below, consisting of _____ (all of which designated areas shall hereinafter be referred to as the “Licensed Area”).
2. **OWNER’S USE OF LICENSED AREA.** Notwithstanding the foregoing, OWNER shall have exclusive use of Licensed Area .
3. **TERM.** The AGREEMENT term shall be as follows: Beginning on _____ and continuing until _____, unless otherwise terminated as provided herein (the “TERM”).
4. **USE AND OCCUPANCY FEES.** ORGANIZATION shall pay to OWNER the following for use and occupancy of the Licensed Area: \$ _____, which amount shall be paid in full prior to use of space unless agreement lasts for more than one week, in which case the amount shall be paid on a weekly basis in the following amounts:

(b) _____ to _____: \$ _____ per week.

All payments shall be made to OWNER at _____ or at such address as may be changed from time to time by OWNER.

If ORGANIZATION fails to pay any installment of use and occupancy fees within five (5) days of the first day of the month, in addition to any other right or remedy of OWNER, ORGANIZATION shall pay

to OWNER a late charge equal to five (5%) percent of the unpaid amount.

5. **SECURITY DEPOSIT.** ORGANIZATION has deposited with OWNER the sum of \$ _____ as security for the full and faithful performance and observance by ORGANIZATION of the terms, covenants and conditions of this AGREEMENT. If ORGANIZATION defaults in the performance or observance of any term, covenant or condition of this AGREEMENT, including without limitation the obligation of ORGANIZATION to pay any use and occupancy fee or other sum required hereunder, OWNER may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any use and occupancy fee or any other sum as to which ORGANIZATION is in default or for any sum which OWNER may expend or may be required to expend by reason of ORGANIZATION's default, including without limitation any damages or deficiency accrued before or after summary proceedings or other re-entry by OWNER. If ORGANIZATION shall fully and faithfully observe and perform all of the terms, covenants and conditions of this AGREEMENT, the security, without interest, shall be returned to ORGANIZATION after the end of the term of this AGREEMENT and the delivery of possession of the Premises to OWNER.
6. **POSSESSION.** At the expiration of the TERM, ORGANIZATION shall remove its goods and effects and peaceably yield up the Licensed Area to OWNER in as good a condition as when delivered to ORGANIZATION, ordinary wear and tear excepted.
7. **CONDITION OF LICENSED AREA.** ORGANIZATION acknowledges that it is fully and completely knowledgeable of and familiar with the Licensed Area and all buildings and improvements thereon and therein, and it is agreed and understood that neither OWNER nor any persons purporting to act on behalf of OWNER has made or now makes any representations or warranties as to the physical condition, expenses, operation or any other matter or thing unless specifically set forth. ORGANIZATION shall accept the Premises and the land and buildings of which same form a part in their present condition, "AS IS", "WHERE IS" and with all defects, and without any representation or warranty by OWNER as to the condition of said Premises, land and buildings or improvements or as to the use or permitted use thereof.
8. **USE OF LICENSED AREA.** ORGANIZATION may use the Licensed Area only for activities typically associated with operating a theater and to the extent permitted by law.

ORGANIZATION agrees to moderate the use of any radio, loudspeaker, phonograph or other instrument in the Premises, and ORGANIZATION shall not permit any noise, fumes or odors to be emitted from the Premises.

ORGANIZATION shall not use or occupy or permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises, in any manner which in any way will violate any rules and regulations of governmental authorities, any certificate of occupancy affecting the Premises, or make void or voidable any insurance then in force with respect to the Premises. In the event that ORGANIZATION's use of the Premises at any time shall cause fire or other insurance on the building to increase, ORGANIZATION on demand shall pay the amount of such increase to OWNER as use and occupancy fee. In the event that any governmental authority shall contend or declare by notice of violation or order, or otherwise, that the Premises are being used in an manner in violation of any law, rule or regulation or in violation of any certificate of occupancy, ORGANIZATION, within ten days

after notice, shall discontinue such use of the Premises, and failure to discontinue such use shall constitute a material default by ORGANIZATION hereunder. The statement in this AGREEMENT of the nature of ORGANIZATION's business shall not be deemed or construed to constitute a representation or warranty by OWNER that such business may be conducted in the Premises or is lawful or permissible under any certificate of occupancy issued for the building.

ORGANIZATION agrees to secure and maintain, at its own expense, all licenses and permits from Federal, State and local authorities as may be necessary for the conduct of ORGANIZATION's business, and shall comply with all applicable laws, rules and regulations, including those involving the service of alcohol. OWNER does not represent that any license or permit which may be required will be granted or, if granted, will continue in effect or be renewed. ORGANIZATION's obligations under this AGREEMENT shall in no way be affected by ORGANIZATION's inability to secure or maintain any license or permit.

- 9. PROPERTY INSURANCE.** OWNER and ORGANIZATION shall each maintain appropriate insurance for their respective interests in the Licensed Area and property located on the Licensed Area. OWNER shall be named as an additional insured on ORGANIZATION's policies. ORGANIZATION shall deliver appropriate evidence to OWNER as proof that adequate insurance is in force issued by companies reasonably satisfactory to OWNER. OWNER shall receive advance written notice from the insurer prior to any termination of such insurance policies. ORGANIZATION shall also maintain any other insurance that OWNER may reasonably require for the protection of OWNER's interest in the Licensed Area. ORGANIZATION is responsible for maintaining casualty insurance on its own personal property. Notwithstanding anything herein to the contrary, ORGANIZATION shall be responsible for any and all damage caused to the Premises by its agents, employees or invitees.
- 10. LIABILITY INSURANCE.** ORGANIZATION, at its sole expense, shall keep and maintain in full force and effect during the TERM hereof extended coverage, property damage, and public liability insurance protecting the interests of the ORGANIZATION and OWNER and of the holder of any mortgage heretofore or hereafter placed upon the Licensed Area. ORGANIZATION will obtain appropriate endorsements in OWNER's name therefor with respect to the Licensed Area and the use and occupancy thereof and the exterior areas, playground, and yards, sidewalks and vault spaces and exterior signs adjacent or contiguous thereto, and deliver to OWNER, duplicate original policies of all such insurance herein required, together with satisfactory proof of the payment by ORGANIZATION of all premiums due thereon for such insurance coverage to be in force for one (1) year. All such policies shall provide that same may not be cancelable for non-payment of premiums without thirty (30) days prior written notice to OWNER, and shall have a "deductible" clause not to exceed Three Thousand (\$3,000.00) Dollars. Such insurance shall be with an insurance company or companies licensed in New York State and by policy or policies all as may be approved (such approval not to be unreasonably withheld or delayed) by the OWNER in the minimum amount of: Three Million (\$3,000,000.00) Dollars combined single limit during the TERM hereof. ORGANIZATION will promptly pay all premiums on all of the insurance referred to above whenever the same shall become due and payable in accordance with the terms of any and all such policies and furnish OWNER within ten (10) days of written demand, with originals of such policies. ORGANIZATION will within ten (10) days of written demand show OWNER, and furnish OWNER copies of all receipts or other reasonably satisfactory evidence showing payment of the aforesaid premiums. In the event ORGANIZATION fails to either obtain or maintain such insurance coverage and deliver policies for same upon demand to OWNER, then

at the option of OWNER and in addition to all of its other rights and remedies, OWNER may obtain such coverage and the costs thereof shall be due and payable to OWNER on demand.

To the fullest extent permitted by law, ORGANIZATION shall indemnify, defend (with legal counsel reasonably acceptable to OWNER) and hold harmless OWNER and OWNER's agents, partners, shareholders, officers, directors, employees, successors and/or assigns harmless from and against any and all claims, actions, damages, injuries, liabilities, settlements and expenses, including reasonable attorney's fees, arising from or out of (a) any occurrence in, upon or about the Premises including any injury to or death of any person or persons, or injury or damage to property, or otherwise arising from or in connection with the occupancy or use of the Premises, or (b) any work, installation or things whatsoever done in, at or about the Premises, or (c) resulting from any default by ORGANIZATION in the payment or performance of any of ORGANIZATION's obligations under this AGREEMENT or from any act, omission or negligence of ORGANIZATION or any contractors, agents, employees, customers, subtenants, licensees, guests or invitees of ORGANIZATION. This Article shall apply prior to the commencement of the term of this AGREEMENT if ORGANIZATION has possession or use of the Premises.

11. MAINTENANCE. ORGANIZATION shall have the responsibility to maintain the Licensed Area in good repair at all times during the TERM of this AGREEMENT.

ORGANIZATION shall be responsible for cleaning the Licensed Area and shall supply cleaning supplies and materials. ORGANIZATION shall be solely responsible for any and all costs and expenses and shall retain and pay all appropriate and necessary personnel to fully clean the Licensed Area, so as to be in a state of cleanliness as appropriate following the daily use of the Licensed Area by ORGANIZATION. All personnel retained by ORGANIZATION shall be supervised and paid by ORGANIZATION, and shall provide no services for and on behalf of OWNER. ORGANIZATION agrees to pay one hundred (100%) percent of the dumpster fees within ten (10) days of being billed by same.

OWNER shall be responsible for cleaning the Licensed Area promptly after its use of same as provided in Article 2 above.

ORGANIZATION's personnel shall comply with such reasonable rules established by OWNER from time to time regarding the use and occupancy of the Licensed Area, including but not limited to (i) building security; (ii) hours of access to the Premises by ORGANIZATION's personnel; and (iii) coordination with other programs taking place in and around the Premises.

12. UTILITIES AND WATER. OWNER shall provide heat, electricity, and hot water.

ORGANIZATION covenants and agrees that its use of electric current shall never exceed the capacity of the existing conductors, feeders, risers, wiring installations or other equipment servicing the building. ORGANIZATION shall not alter or make any addition to the electrical equipment without the prior written consent of OWNER. If OWNER grants such consent, all additional risers and other equipment shall be provided by OWNER, and the reasonable costs and expenses thereof shall be paid by ORGANIZATION to OWNER on demand, without setoff or deduction.

13. **LIENS.** ORGANIZATION shall indemnify and hold OWNER harmless from and against any and all bills for labor performed or equipment, fixtures and materials furnished to or for ORGANIZATION, and from and against any and all liens or claims therefore or against the Premises or the building of which it forms a part, and from and against any and all liability, claim, loss, damage or expense, including reasonable attorney's fees, in connection with any work performed by or for ORGANIZATION. The Premises and the building shall at all times be free of liens for labor and materials supplied or claimed to have been supplied to or on behalf of ORGANIZATION, and no financing statements or other security instruments shall be filed against the Premises or the building or the contents thereof.

If, in connection with any work being performed by or for ORGANIZATION or any subtenant, or in connection with any materials being furnished to ORGANIZATION or any subtenant, any mechanic's lien or other lien or charge shall be filed or made against the Premises or any part thereof, or if any such lien or charge shall be filed or made against OWNER, as owner, then ORGANIZATION, at ORGANIZATION's expense, within ten days after such lien or charge shall have been filed or made, shall cause the same to be cancelled and discharged of record by payment thereof or filing a bond or otherwise.

Nothing in this AGREEMENT shall constitute any consent or request by OWNER, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving ORGANIZATION any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in any fashion that would permit the filing or making of any lien or claim against OWNER, the Premises or the building.

14. **HAZARDOUS MATERIALS.** ORGANIZATION hereby covenants that ORGANIZATION and its agents, employees and contractors will not generate, store, use, treat or dispose of any Hazardous Substances (as hereinafter defined) in, on or at the Premises, except for Hazardous Substances commonly used in restaurant or retail operations, and so long as ORGANIZATION strictly complies or causes compliance with all laws, statutes, rules, orders, regulations, ordinances and decrees concerning the use or storage of such Hazardous Substances. ORGANIZATION hereby agrees to indemnify OWNER and hold OWNER harmless from and against any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, reasonable attorney's fees, and consultant and expert fees) arising as a result of: (a) the leakage, spillage, discharge, or release of any hazardous material as a result of ORGANIZATION's or its agents', employees', or contractors' or invitees' acts or omissions; or (b) ORGANIZATION's violations of any environmental laws, regulations, ordinances or rules with respect to the Premises; or (c) ORGANIZATION's failure to provide adequate disclosures or warnings required by any environmental laws, regulations, ordinances or rules.

As used herein, the term "Hazardous Substances" shall mean and include those elements or compounds which are contained in the lists of hazardous substances or wastes now or hereafter adopted by the United States Environmental Protection Agency (the "EPA") or the lists of toxic pollutants designated now or hereafter by Congress or the EPA or which are defined as hazardous, toxic, pollutant, infectious or radioactive by CERCLA or any Superfund law or any Superlien law or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or

material, as now or at any time hereafter in effect.

The obligations under this Article 14 shall survive the expiration or earlier termination of the Term.

15. **DEFAULTS.** ORGANIZATION shall be in default of this AGREEMENT if ORGANIZATION fails to fulfill any obligation or TERM of this AGREEMENT by which ORGANIZATION is bound. Subject to any governing provisions of law to the contrary, if ORGANIZATION fails to cure any financial or other obligation within ten (10) days after written notice of such default is provided by OWNER to ORGANIZATION, OWNER may take possession of the Licensed Area without further notice (to the extent permitted by law), and without prejudicing OWNER's rights to damages. In the alternative, OWNER may elect to cure any default and the cost of such action shall be added to ORGANIZATION's financial obligations under this AGREEMENT. ORGANIZATION shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by OWNER by reason of ORGANIZATION's defaults. All sums of money or charges required to be paid by ORGANIZATION under this AGREEMENT shall be a use and occupancy fee, whether or not such sums or charges are designated as a "use and occupancy fee". The rights provided by this Article are cumulative in nature and are in addition to any other rights afforded by law.
16. **SIGNS AND ADVERTISING.** With OWNERS's prior written consent, ORGANIZATION may place signs on the Premises, provided same are permitted by applicable zoning ordinances. ORGANIZATION shall repair all damage to the Premises resulting from the removal of such signs installed by ORGANIZATION.
17. **PREMISES RULES.** ORGANIZATION shall comply, and shall cause its agents, employees and invitees to comply, with the rules established by OWNER from time to time.
18. **HOLDOVER.** If ORGANIZATION maintains possession of the Licensed Area for any period after the termination of this AGREEMENT ("Holdover Period"), ORGANIZATION shall pay to OWNER AGREEMENT payments during the Holdover Period at a rate equal to 200% of the last stated Use and Occupancy fee hereunder.
19. **CUMULATIVE RIGHTS.** The rights of the parties under this AGREEMENT are cumulative, and shall not be construed as exclusive unless otherwise required by law.
20. **REMODELING OR STRUCTURAL IMPROVEMENTS.** ORGANIZATION shall make no changes, improvements nor renovations to the Licensed Area without the express written permission of the OWNER, which permission may be denied for any reason or no reason. Notwithstanding the foregoing, in the event that OWNER shall permit any change, improvement, or renovation to the Licensed Area, ORGANIZATION shall secure, at its own cost and expense, any and all required approvals and certifications. If ORGANIZATION shall fail to secure such approvals, OWNER may, but shall not be obligated to, secure them, in which event, ORGANIZATION shall pay all of the OWNER'S costs and expenses upon demand. OWNER shall have the right to make structural and non-structural improvements to the Premises, including the Licensed Area, without the prior approval of ORGANIZATION.
21. **ACCESS BY OWNER TO LICENSED AREA.** OWNER shall have the right to enter the Licensed

Area to make inspections, provide necessary services, or otherwise.

- 22. INDEMNITY REGARDING USE OF LICENSED AREA.** To the fullest extent permitted by law, ORGANIZATION agrees to indemnify, hold harmless, and defend OWNER from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees and court costs, including but not limited to loss of life, bodily or personal injury or property damage, which OWNER may suffer or incur in connection with ORGANIZATION's possession, use or misuse of the Licensed Area, except OWNER's act or negligence. ORGANIZATION shall be solely responsible for the safety and security of the Licensed Area.

ORGANIZATION does hereby indemnify, defend, save harmless and protect OWNER from any and all suits, actions, damages, claims, liabilities and expenses of any type or nature, including reasonable attorney fees and court costs arising from the serving alcohol.

In addition to the foregoing, ORGANIZATION does hereby indemnify, defend, save harmless and protect OWNER from any and all suits, actions, damages, claims, liabilities and expenses of any type or nature, including reasonable attorney fees and court costs arising from the conduct and use of the Licensed Area by the ORGANIZATION's employees, agents, servants, Organizations and guests.

- 23. COMPLIANCE WITH REGULATIONS.** ORGANIZATION shall promptly comply with all laws, ordinances, requirements and regulations of the federal, state, county, municipal and other authorities, and the fire insurance underwriters. ORGANIZATION shall only use the kitchen as provided above provided that ORGANIZATION complies with all applicable rules and regulations, and further provided that during such time at least one employee or agent of ORGANIZATION is certified for food preparation by the New York State Department of Health and Suffolk County Department of Health Services.

- 24. TAXES.** ORGANIZATION acknowledges that currently the Premises are exempt from real property taxes due to OWNER's status as a not-for-profit religious corporation. In the event that this AGREEMENT shall cause the Premises, or any portion thereof, to be subject to any real property tax, ORGANIZATION shall pay or cause to be paid any such tax when due, and upon termination of the AGREEMENT, shall pay as and for use and occupancy fees, any and all costs and expenses, including reasonable attorney's fees, to secure the real property tax exemption for the Premises. The above provision shall survive termination of this AGREEMENT.

- 25. SUBORDINATION OF AGREEMENT.** This AGREEMENT is subordinate to any mortgage that now exists, or may be given later by OWNER, with respect to the Premises.

- 26. ASSIGNABILITY/SUBLETTING.** ORGANIZATION may not assign or sublet any interest in the Licensed Area, nor assign, mortgage or pledge this AGREEMENT, without the prior written consent of OWNER, which consent may be withheld by OWNER for any reason or no reason.

- 27. NOTICE.** Notices under this AGREEMENT shall not be deemed valid unless given in writing by Certified Mail, Return Receipt Requested or nationally recognized overnight carrier, postage prepaid, Such addresses may be changed from time to time by either party by providing notice as set forth above. Notices mailed in accordance with the above provisions shall be deemed received on the third day after

posting by Certified Mail or the next day for overnight delivery.

- 28. **GOVERNING LAW.** This AGREEMENT shall be construed in accordance with the laws of the State of New York.
- 29. **ENTIRE AGREEMENT/AMENDMENT.** This AGREEMENT contains the entire agreement of the parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this AGREEMENT. This AGREEMENT may be modified or amended in writing only and signed by the parties hereto.
- 30. **SEVERABILITY.** If any portion of this AGREEMENT shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this AGREEMENT is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- 31. **WAIVER.** The failure of either party to enforce any provisions of this AGREEMENT shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this AGREEMENT.
- 32. **BINDING EFFECT.** The provisions of this AGREEMENT shall be binding upon and inure to the benefit of both parties and their respective legal representatives, successors and assigns, as of the date first written above.
- 33. **CANCELLATION.** Notwithstanding anything herein to the contrary, **ORGANIZATION shall have the right to cancel this AGREEMENT on fourteen (14) days notice to OWNER, at which time the ORGANIZATION's right of occupancy shall cease.**

OWNER:

[_____]

By:

ORGANIZATION:

[_____]

By: