

This Agreement made in triplicate this \_\_\_\_\_ day of \_\_\_\_\_, 2025

- Between -

THE CORPORATION OF THE CITY OF PORT COLBORNE

66 Charlotte Street, Port Colborne, Ontario, L3K 3C8

(Hereinafter referred to as the "City")

- and -

LIGHTHOUSE FESTIVAL THEATRE CORPORATION

P.O. Box 1208, 247 Main Street, Port Dover, Ontario, NOA 1N0

(herein referred to as "Lighthouse Festival Theatre")

**WHEREAS** the City owns the building municipally known as the Roselawn Centre (hereafter referred to as the "Roselawn Centre"), located at 296 Fielden Avenue, Port Colborne, Ontario, L3K 4T6; and

**WHEREAS** the City is desirous of having the Roselawn Centre regularly and well-used, managed and occupied as a theatre or centre for artistic groups and the performing arts and activities incidental or ancillary thereto; and

**WHEREAS** the City requires an independent contractor to operate and manage theatre programming and ancillary services, and is desirous of having certain premises within the Roselawn Centre, as described herein, utilized for said purpose, in accordance with the terms and conditions of this Agreement; and

**WHEREAS** Lighthouse Festival Theatre, incorporated in 1981 and located in Port Dover, is a year round theatre, that presents high quality professional theatre with a focus on Canadian artists for the Niagara Region, building a stronger subscription base, developing relationships with sponsors and donors, and investing back into the artistic community; and

**WHEREAS** the City often seeks and makes use of relationships with local recreational and cultural organizations through service and other agreements to deliver to the community valuable programming and events that may enrich the quality of life and contribute to a strong sense of community; and

**WHEREAS** Lighthouse Festival Theatre has an established presence in the community and relationship with the City, having successfully delivered theatre production and box office services (operating as Showboat Festival Theatre) at the Roselawn Centre since 2012, and

**WHEREAS** the City is desirous to have Lighthouse Festival Theatre manage and operate theatre programming and ancillary services at the Roselawn Centre; and

**WHEREAS** the City and Lighthouse Festival Theatre are committed to ensuring that the Roselawn Centre is properly maintained and well-used by the community, visitors and user groups for the continued economic and cultural development of the City of Port Colborne.

**NOW THEREFORE**, in consideration of the covenants herein, the City and Lighthouse Festival Theatre hereby agree as follows:

**1. Managed Premises Defined:**

The managed premises (the "premises"), as it pertains to this Agreement, defined as an area of approximately 12,000 square feet located within the Roselawn Centre, including the box office, theatre space, office space, front house, washrooms, lobby, basement, garage, and storage; all shown as highlighted on Schedule "A". The Premises do not include the heritage home, President's Room, back bar or kitchen.

**2. Term:**

The term shall be for a period of FIVE (5) YEARS (the "Term"), computed from March 28, 2025 or such earlier date as the parties may otherwise agree in writing (the "Commencement Date"), unless terminated as provided herein.

**3. Permitted Uses:**

Lighthouse Festival Theatre shall have exclusive use and occupancy of the Premises for the purposes of carrying out its objectives and obligations under this Agreement throughout the Term and any renewal or extension thereof

principally as a theatre or centre for the performing arts and activities incidental or ancillary thereto including short term licences of the Premises (or parts thereof) to third parties for same or similar uses, food and beverage services (including obtaining and maintaining its own liquor sales licence) and Lighthouse Festival Theatre own programming; subject to use by the City as set out in section 4.21 below). Lighthouse Festival Theatre shall have discretion regarding program scheduling and content, subject to the City's right to prohibit any programming which it deems, in its sole discretion, acting reasonably, to be contrary to the morals and values of the City of Port Colborne. Lighthouse Festival Theatre shall have the discretion to set the fees and other charges for participation in its own programming or for any use or occupancy of the Premises, in whole or in part, by third parties during the term, which fees and other charges shall be, in full, to Lighthouse Festival Theatre.

#### **4. Covenants of Lighthouse Festival Theatre:**

During the Term, the Lighthouse Festival Theatre shall perform the following duties and have the following obligations, which it covenants and agrees to fulfil in a professional and skillful manner:

##### **4.1 Licence Fee:**

Lighthouse Festival Theatre shall pay to the City a basic licence fee for the premises at a rate of ONE DOLLAR (\$1.00) per year. The parties acknowledge and agree that the City, with or without the direction of the Council (hereby known as "Council"), may lobby Lighthouse Festival Theatre for further and other sums during the Term but Lighthouse Festival Theatre shall be under no obligation to pay any such further and other sums so lobbied during the Term.

##### **4.2 High Quality Experiences and Services:**

Lighthouse Festival Theatre shall provide high quality services and programs delivered by qualified staff and volunteers; customer service will be proactive, attentive and responsive to patron needs, as evidenced by positive and professional administration; all on a commercially reasonable basis and appreciating the not-for-profit corporate status and operations of Lighthouse Festival Theatre. Nothing in this subsection 4.3 shall qualify or minimize the discretion of Lighthouse Festival Theatre set out in Article 3 above.

##### **4.3 Performance Fees:**

Lighthouse Festival Theatre shall be responsible for all applicable Society of Composers, Authors and Music Publishers of Canada/Performing Arts and Licencing Fees as may be required during the Term.

#### **4.4 State of Repair**

Lighthouse Festival Theatre accepts the Premises in the state in which they are found as of the Commencement Date. Lighthouse Festival Theatre shall maintain the Premises in a good and reasonable state of repair consistent with the least the state of the Premises as at the Commencement Date. Lighthouse Festival Theatre shall not do, or permit to be done, anything that will tend to damage mar or in any manner deface the Premises.

#### **4.5 Security:** Lighthouse Theatre Festival shall:

- a. Oversee the proper use of the Premises and ensure keys thereto are at all times under control of a duty authorized representative of Lighthouse Festival Theatre. Lighthouse Festival Theatre will have the right to enter the premises at all times during the term of this Agreement, save and except for those times that the City has use of the Premises in accordance with section 4.18. Entrances and exits will be locked and unlocked at such times as may be required for Lighthouse Festival Theatre's use of the Premises,
- b. Accept the security arrangements with respect to the Premises in the state in which they are found as of the Commencement Date. Any changes to the security of the Premises for the purpose of improving security, shall be done by the Lighthouse Festival Theatre at its own expense, and only according to the plans submitted to and approved by the City. Lighthouse Festival Theatre shall be solely responsible for any additional security that Lighthouse Festival Theatre deems necessary for the purpose of the operation and security of the Premises.

#### **4.6 Ingress and Egress:**

Lighthouse Festival Theatre shall ensure no portions of the sidewalks, entries, passages, doorways, vestibules, halls, or ways of access to the public utilities of the Premises will be obstructed. Fire exits and aisles in the premises must be kept clear of obstructions at all times.

#### **4.7 Enquiries and Rentals:**

- a. coordinate scheduling of the Premises by user groups, and prepare and execute short-term contracts that are longer than thirty (30) days for the use of the Premises by a user group without written consent of the City in its sole discretion, which consent shall not be unreasonably withheld.
- b. ensure proper use of the Premises by all user groups, including compliance with the rules and regulations governing smoking, (including vaping, e-cigarettes, and cannabis) and the consumption of alcohol.
- c. ensure any user groups are aware of their duty to ensure areas in their care are kept in good repair, free and clear of any debris, and remain neat and tidy.

#### **4.8 Licences and Permits :**

Lighthouse Festival Theatre shall ensure all requisite licenses, permits and/or approvals from the proper authority are obtained by Lighthouse Festival Theatre, and all user groups, where and when applicable. The failure of Lighthouse Theatre Festival to obtain any requisite licences and permits shall not relieve them of their obligations under this Agreement.

#### **4.9 Bar Service:**

At its option, Lighthouse Theatre Festival may open and run a bar for the benefit and use of the patrons of events held at the Premises.

#### **4.10 Refuse Removal:**

Lighthouse Festival Theatre shall be responsible for the removal of all refuse resulting from the use of the Premises at its sole cost.

#### **4.11 Janitorial Services:**

Lighthouse Festival Theatre shall assume the cost and responsibility for the janitorial cleaning of the Premises.

#### **4.12 Information Technology**

Lighthouse Festival Theatre shall provide and maintain its own Information Technology hardware and software assets, the backup and restoration of files,

email and telephone services, staff directories, virus defence and provide internet access and online services for itself and its patrons.

#### **4.13 Programming:**

Develop, implement, advertise, promote and operate various arts and culture programming activities at the Premises that meet the shared mission and vision of Lighthouse Festival Theatre and the City, in a manner that services the diverse needs of the community.

#### **4.14 No Exiting Talent/Agent or Other Contract(s):**

The City represents and warrants that there are no talent or agent contract(s) or user group contracts or licenses had been issued in the name of the City for any programming or other events whatsoever at the Premises on or after the Commencement Date or that such talent or agent contract(s) or user group contracts or licences that may have been issued in the City for any programming or events whatsoever on or after the Commencement Date (hereinafter referred collectively as "Old Contracts") have been cancelled by the City. The City covenants and agrees that it shall solely be responsible for any Old Contracts without limitation, any costs, damages or other expenses incurred as a result of cancellation by the City, and the City shall indemnify and hold harmless Lighthouse Festival Theatre in respect of and any Old Contracts.

#### **4.15 Furniture, Fixture and Equipment:**

Lighthouse Festival Theatre shall supply sufficient furniture, fixtures, equipment and supplies to operate the Premises, except as otherwise the express obligation of the City pursuant to this Agreement. Lighthouse Festival Theatre shall supply at its own expense, and assume sole responsibility for any additional furniture, fixtures, equipment and supplies deemed necessary for the operation of the Premises that is not already included in the inventory of equipment, supplies and material at the Premises as of the Commencement Date, as outlined in Schedule "B" attached hereto and forming part of this Agreement.

Lighthouse Festival Theatre shall be under no obligation to repair or replace any Schedule "B" inventory and, provide further, any Schedule "B" inventory replaced by Lighthouse Festival Theatre at the end of the Term. Any remaining furniture, fixtures, equipment and supplies set out in Schedule "B" that has not been replaced by Lighthouse Festival Theatre shall be returned to the City at the end of the Term "as is" at that time.

**4.16 Equipment Maintenance:**

Attend to the normal maintenance, repair and replacement of all equipment, which includes, but is not limited to, speakers, cables, lights, communication system, rigging, sound equipment including soundboard and audio components, railings and seats, and be responsible for the cost of maintenance of said equipment.

**4.17 Personnel:** Lighthouse Festival Theatre shall:

- a. Provide adequate staff and volunteers to operate the Premises.  
Lighthouse Festival Theatre shall provide and supervise qualified staff to operate the Premises. Lighthouse Festival Theatre is responsible for paying the wages of its employees and making all statutory payroll deductions with respect to their employment.
- b. Provide trained technical staff to supervise the use of all Premises equipment by user groups, which training shall be the responsibility of Lighthouse Festival Theatre.

**4.18 Professional/Contract Services:** Lighthouse Festival Theatre shall Assume the responsibility and cost of related professional services that may be required from time to time for its own operations, including security.

**4.19 Advertising and Promotion:**

Lighthouse Festival Theatre shall:

- a. Assume the responsibility and cost of all advertising and promotional activities related to the operation of the Premises.
- b. Assume responsibility and cost of all the design and installation of all indoor, outdoor and common area signage.
- c. Lighthouse Festival Theatre shall recognize the financial and non-financial support of the City (e.g., in providing the parking, utilities, snow removal and landscaping of the Lighthouse Festival Theatre at no additional cost) in its advertising and promotional activities at such times, places and in such a manner as the Lighthouse Festival Theatre shall determine, in its discretion and in accordance with its policies and procedures, such promotion and recognition of the City to be subject to the approval of the City, acting reasonably.

- d. Clear and permanent recognition of the City will be reasonably displayed at the Premises in accordance with the policies and procedures of both the City and Lighthouse Festival Theatre and as the City and Lighthouse Festival Theatre may agree, acting reasonably.

#### **4.20 Rate sand Fees:**

Lighthouse Festival Theatre shall:

- a. Collect fees from the user groups contracted to use the Premises, and ensure that user groups are informed of any future annual increase in user group fees in advance of any future annual increase in user group fees in advance of entering into a rental contract.
- b. Be solely responsible for the proper taking, handling control, safe keeping, and accounting of all payments regardless of method.
- c. Ensure that rates and fees for services are fair and competitive to encourage maximum participation of the community. Provided the City acknowledges and accepts that during the anticipated Lighthouse Festival Theatre season and preparation thereof, being the months of May through October, Lighthouse Festival Theatre's own programming shall have paramountcy, and nothing in section 4.21 shall qualify or minimize the discretion of the Lighthouse Festival Theatre set out in Article 3 above.

All fees, charges and other payments received Lighthouse Festival Theatre in respect of user groups and other third parties use of the Premises during the term shall belong, in full, to Lighthouse Festival Theatre.

#### **4.21 City Use of Premises:**

Lighthouse Festival Theatre shall provide free use of the Premises to the City for Civic functions upon reasonable notice at any time, provided that during the Lighthouse Festival Theatre's season and preparation thereof, being the months May through October, inclusive, the City's right to use of the Premises shall be restricted in that it shall not unreasonably interfere with the programming of the Lighthouse Festival Theatre. The City's use of the Premises shall be at its own risk and Lighthouse Festival Theatre shall have no liability with respect to the City's use of the Premises pursuant to section|4.21|

#### **4.22 Sponsorship, Donations, Fundraising and Grants:**

**a. Pursuit of Support:**

In accordance with their respective policies and procedures, the City and Lighthouse Festival Theatre may, from time to time and as they agree, corporate to undertake sponsorship, donation, fundraising, and grant application activities in support of its own operations and improvements at the Premises.

**b. Vision Alignment:**

Seek out sponsorship opportunities with third parties who have a positive public image, reflect a high level of integrity, and who reflect the values and maintain operational policies that are not in conflict with the City's values, mandate or operating policies.

**c. In-Kind Contributions:**

Acknowledge that the City is providing an in-kind contribution by providing to it the following services at no additional cost:

- i. Non-exclusive access to parking facilities;
- ii. Utilities;
- iii. Snow removal;
- iv. Landscaping and ground maintenance

**d. City Recognition:**

The City will receive recognition of ongoing in-kind contributions and its overall financial support, in accordance with Lighthouse Festival Theatre's sponsorship policies and procedures. Clear and permanent identification of the City will be displayed in adherence to branding guidelines established by the City.

**4.23 Reporting:**

Lighthouse Festival Theatre shall:

- a. Prepare and submit a report, twice annually, to the City's Director of Museum and Culture outlining program delivery activities, including an up-to-date copy of all rates and fees, as well as listing of all user groups (name of each organization), including dates of usage, the total number of days the Premises was utilized by each user group, as well as attendance numbers, revenue, ticket sales, and event schedules for each;

- b. Annually provide the City's Treasurer, via the City's Director of Museum and Culture, with semi-annual reports regarding rental activity, fees collected, profit and loss statements for the period of January 1 to June 30 (submitted by July 30) of every year, and for the period of July 1 to December 31 (submitted by January 30) of every year. Year-end financial statements (including a detailed accounting of all revenues and expenses) prepared for Lighthouse Festival Theatre shall be submitted to the City by November 30, annually. Lighthouse Festival Theatre shall allow the City access to examine financial records pertaining to the management activities of the Premises, upon request.
- c. Annually make a presentation outlining financial performance, program delivery and quality satisfaction to the City's Council.

#### **4.24 Environmental Sustainability:**

Demonstrate a commitment to environmental stewardship and, where reasonably practicable, adopt and utilize environmentally sustainable operating practices and procurement procedures including, but not limited to, waste reduction/diversion measures, procurement of locally sourced products/materials, water and energy conservation (i.e. purchase and use of Energy STAR-qualified office equipment, electronics, appliances and energy efficient lighting).

#### **4.25 Affordability of Services:**

Develop and implement methods to provide affordable access to its events, programs and services to accommodate participation amongst all segments of the community.

#### **4.26 Healthy Food Options:**

Promote healthy eating choices, and offer healthy food options for patrons of its events, programs and services, particularly those involving children/youth.

#### **4.27 Health and Safety:**

Ensure compliance with all Health and Safety legislation as stipulated under the *Occupational Health and Safety Act*, and any other federal, provincial or municipal health and safety requirements that apply to the type of work Lighthouse Festival Theatre undertakes, and as it pertains to the safety and

security of the Premises and the employees and patrons within. This includes adherence to all City Health and Safety requirements and procedures related to the procurement and utilization of contracted services. Lighthouse Festival Theatre shall provide the City with access to training records, as it pertains to the *Occupational Health and Safety Act*, for its employees contractors and volunteers, upon written request.

#### **4.28 Accessibility:**

Ensure compliance with the *Accessibility for Ontarians with Disabilities Act, 2005*, or successor legislation.

#### **4.29 Compliance with Laws:**

Adhere to all federal, provincial or municipal legislation, regulations, by-laws or orders of all governmental authorities or courts having jurisdiction. This includes compliance with applicable City policies, all laws, by-laws, ordinances, regulations and directives of any public authority having jurisdiction affecting the Premises or the Lighthouse Festival Theatre's use and occupation thereof including, without limitation, police, fire, and health regulations, and save and except as same may be the obligations of the City as outlined herein. Lighthouse Festival Theatre shall not: do or suffer any waste or damage, disfiguration or injury to the Premises; permit any overloading of any part of the Premises; use or permit to be used any part of the Premises for any illegal or unlawful purpose.

### **5. Liens and Encumbrances:**

During the Term, the City shall covenant and agree to be responsible for:

#### **5.1 Assignment of Responsibility:**

Assign responsibility and authority for the overall scheduling and operating of the Premises to Lighthouse Festival Theatre to be carried out in accordance with this agreement. With respect to the contracts identified in Schedule "C", shall assign and direct any future payments to Lighthouse Festival Theatre; and any fee, ticket sales or other payments already received by the City in respect of any contract set out in Schedule "C" shall be forthwith paid over, in full, to Lighthouse Festival Theatre in respect of those schedule "C" contracts.

#### **5.2 Management Fee:**

Recognize that regular use, management and occupation of the Premises may have direct and indirect benefits to the City of Port Colborne, specifically, cultural

and economic development benefits. Therefore, in recognition of these potential contributions towards the cultural and economic development of the City of Port Colborne through its use and occupancy of the Premises, the City shall pay to Lighthouse Festival Theatre a total amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) per year of the lease, on the first date of December in each year of the term, or additional amount(s) as may be approved by the City's Council. The parties acknowledge and agree that Lighthouse Festival Theatre may lobby the City and its Council for further and other sums during the Term, though the City shall have no obligation whatsoever to provide any additional funding. Notwithstanding that it is responsible to fully fund the cost of its operations at the Premises except as otherwise expressly provided therein.

### **5.3 Taxes:**

Be responsible for realty taxes allocated to the Premises.

### **5.4 Recognition of Sole User:**

Recognize Lighthouse Festival Theatre as the sole user of the Premises subject to the City's use in accordance with Section 4.21.

### **5.5 Parking and Ingress and Egress:**

The City Shall:

- a. Provide non-exclusive parking of the parking facilities associated with Roselawn Centre for Lighthouse Festival Theatre, its employees, agents, contractors, licencees, subleases, invites and guests. Lighthouse Festival Theatre shall have such use of the parking facilities at no additional cost, fee or expense.
- b. The City shall not be responsible for any loss or damage to persons or property, however caused, during the course of Lighthouse Festival Theatre's use of the parking facilities. Illegally parked vehicles may be tagged and/or towed at the owner's expense, such enforcement to be the responsibility of Lighthouse Festival Theatre, at their sole expense.
- c. Lighthouse Festival Theatre may, at its discretion and at its own expense, employ parking attendants to monitor and oversee use of the parking facilities during its operation at the Premises.
- d. The City shall ensure no portions of sidewalks, entries, passages, doorways or ways of access to the premises from outside will be obstructed.

**5.6 Heating and Cooling:**

The City Shall maintain a comfortable level of heating and air conditioning for the Premises to the standard required for similar properties owned or operated by the City.

**5.7 Utilities:**

The City shall assume the responsibility of the provision of all water, gas, electricity and other utilities used in respect of the Premises and cost of usage of such services.

**5.8 Winter Control:**

The City shall assume the responsibility and cost of snow and ice removal from the parking lot and sidewalks and other access facilities serving the Premises, in accordance with regulatory minimum maintenance standards, and the policies and procedures of the City to the standard required for similar properties owned or operated by the City.

**5.9 Routine Repairs and Maintenance:** The City shall:

- a. Be responsible for any and all repairs and replacements to any and all HVAC and utility systems servicing the Premises, in whole or in part, and those parts of Roselawn Centre that may reasonably affect the Premises or the Lighthouse Festival Theatre's operations therein. Such work shall be performed to a standard, and in a timeframe similar, to that provided to other City facilities; provided that the City understands and agrees that prompt repair and replacement to all HVAC and utility systems is material to the success of operations at the Premises, which include live theatre performances and related programming, and may require attention earlier than would be expected of other City facilities.
- b. Be responsible for any and all structural repairs to and replacement to the Premises and those parts of the Roselawn Centre that may reasonably affect the Premises or the Lighthouse Festival Theatre's operations therein including, without limitation, the cost of replacement of the roof or any component thereof. Such work shall be performed to a standard, and in a timeframe similar, to that provided for other City facilities.

- c. Be responsible for maintenance, repairs and replacements of any exterior part of the Premises or Roselawn Centre or lands on which same are situated including, without limitation, landscaping and yard maintenance, to a standard similar to that provided for other City facilities.

#### **5.10 Capital Repairs and Maintenance:**

Assume responsibility for any and all capital repairs and replacement to the parking lot, driveway, accessibility infrastructure and other access facilities associated with the Premises or those parts of the Roselawn Centre that may reasonably affect the Premises or the Lighthouse Festival Theatre's operations therein. Such work shall be performed to a standard, and in a timeframe similar, to that provided to other City facilities.

#### **5.11 Repairs and Maintenance – Scheduling:**

- a. As the sole owner of Roselawn Centre, the City shall at all times have the right of access to the Premises for maintenance and repair purposes.
- b. Notwithstanding the above, the City shall take reasonable precautions and attempt to schedule any work related to its responsibilities or to such other parts of the Roselawn Centre that may reasonably affect the Lighthouse Festival Theatre's operations so as not to unreasonably interfere with the Lighthouse Festival Theatre's operations or those its licencees or subleases and to minimize interference with the Lighthouse Festival Theatre's use and enjoyment of the Premises. Save and except in the case of emergencies, the City shall provide at least three (3) days notice prior to carrying out such work related to its responsibilities or to such other parts of Roselawn Centre that may reasonably the Lighthouse Festival Theatre's operations (including, without limitation, making repairs, alterations or improvements to the Premises or those parts of the Roselawn Centre) and any such work shall not be conducted and the City shall not have access to the Premises during hours in which live performances are being conducted at the Premises. Exceptional circumstances such as those related to health and safety, security, building and equipment failure shall override the notice period.

**5.12 Repairs and Maintenance: Requests:**

The City shall respond to the normal maintenance of the Premises as may be requested by Lighthouse Festival Theatre, in writing, addressed to the attention of the City's Director of Museum and Culture. From time to time the City may appoint a person or persons as the primary representative of the City for such maintenance and repair requests by Lighthouse Festival Theatre. The City acknowledges and agrees that certain maintenance and repair requests may require prompt attention and resolution by the City given the nature of operations at the Premises. The obligation of the City to repair shall be at the City's discretion and shall be in accordance with the City's obligations to repair and provide maintenance pursuant to the terms of this Agreement.

**5.13 Prohibited Access:**

Where possible, prohibit access to the Premises from other interior parts of the Roselawn Centre, except as may be required under the *Fire Code*.

**6. Cooperation Between Parties**

The following outline areas of cooperation and coordination between the City and Lighthouse Festival Theatre:

- a. To promote and maximize arts and culture opportunities to generate positive local economic activity through the provision of programs and services to meet the needs of the community and visitors.
- b. To be mutually supportive of one another in the application for provincial and federal grants.
- c. To be mutually supportive of one another in fundraising initiatives including being sensitive to avoid overlap of campaigns.
- d. To cooperate in an extent that is reasonably possible in areas of staff expertise, equipment maintenance, and facility development to reduce direct operating costs, where possible.
- e. To work together in booking their respective spaces in Roselawn Centre to ensure that activities in one space do not negatively impact the other's operations, provided the City acknowledges and accepts the anticipated

Lighthouse Festival Theatre season and preparation thereof, being the months of May through October, have paramountcy.

- f. To not incur expenses on behalf of the other party without having first obtained expressed written permission.

## **7. Improvements to the Premises:**

### **7.1 Improvements Defined:**

In this Section, "improvements" means all fixtures, installations, alterations and additions from time to time made, erected or installed on or in the Premises including doors, hardware, partitions and carpeting but excluding trade fixtures and furniture and equipment not in the nature of fixtures and painting.

### **7.2 Improvement: Consent:**

Lighthouse Festival Theatre will not make in or on the Premises any improvements without first obtaining the City's consent, which shall not be unreasonably withheld, but such consent may require the submission of drawings and specifications to the City, unless any such improvements:

- a. does not relate to any of the City's obligations in Sections 5 above;
- b. does not affect any historical designation in respect of Roselawn Centre;
- c. does not affect the structural integrity of Roselawn Centre; and
- d. does not exceed, inclusive of labour but exclusive of any sales tax, the sum of \$5,000.

### **7.3 Improvements – Funding:**

Improvements that require the City's consent and for which consent is obtained, shall be paid for by the Lighthouse Festival Theatre. Any improvements made to the Premises shall become the property of the City upon their installation.

### **7.4 Improvements: Recommended:**

Lighthouse Festival Theatre may recommend capital equipment and Improvements to the City from time to time, and the City may consider same as part of its budget approval process, but the City is under no obligation to contribute to such capital equipment and improvements. Lighthouse Festival Theatre acknowledges that the City is not responsible for Improvements and/or repair and maintenance of improvements, intended to customize the Premises for the particular needs of Lighthouse Festival Theatre.

**8. Smoking Prohibited:**

Roselawn Centre is designated as a non-smoking facility by the City of Port Colborne and the Niagara Region. Smoking (including vaping, e-cigarettes, and cannabis) is therefore prohibited in and around the Premises. Under this Agreement, Lighthouse Festival Theatre is responsible for strictly enforcing smoking regulations. Failure on part of Lighthouse Festival Theatre to enforce these regulations with any of its patrons, staff, volunteers and or personnel will constitute a breach of this Agreement.

**9. Indemnification:**

- a. Lighthouse Festival Theatre shall defend, indemnify and save harmless the City, its elected officials, officers, employees and agents from and against any and all claims of any nature, causes of action, losses, expenses, fines, costs (including legal costs on a subsequent indemnity basis), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, to the extent of and arising out of or attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud, willful misconduct of Lighthouse Festival Theatre, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of this Agreement. This indemnity shall be in addition to, and not in lieu of, any insurance to be provided by Lighthouse Festival Theatre in accordance with this Agreement, and shall survive this Agreement.
- b. Lighthouse Festival Theatre agrees to defend, indemnify and save harmless the City from and against any and all claims of any nature, actions, causes of

action, losses, expenses, fines, costs (including legal costs on a substantial indemnity basis), interest or damages of every nature and kind whatsoever to the extent of and arising out of or related to Lighthouse Festival Theatre's status with WSIB. This indemnity shall be in addition to and not in lieu of any proof of WSIB status and compliance to be provided by Lighthouse Festival Theatre in accordance with this Agreement, and shall survive this Agreement.

**10. Insurance:**

**10.1 Insurance Held by the City:**

The City Shall carry appropriate insurance coverage for Roselawn Centre, including the Premises.

**10.2 Insurance Heald by Lighthouse Festival Theatre:**

Lighthouse Festival Theatre shall obtain and maintain in full force and effect, general liability insurance issued by an insurance company authorized by law to carry on business in the Province of Ontario for the following coverages:

- a. Commercial General Liability providing for, without limitation, coverage for personal injury including sexual abuse and harassment, public liability and property damage, data liability insurance, and non-owned automobile liability. Such policy shall:
  - i. have inclusive limits of not less than FIVE MILLION DOLLARS (\$5,000,000.00) for death, injury, loss or damage resulting from any one occurrence;
  - ii. contain a cross-liability clause endorsement and severability of interests clause of standard wording;
  - iii. name the City as an additional insured with respect to any claim arising out of the obligations under this Agreement; and
  - iv. be endorsed to provide that the policy shall not be cancelled or allowed to lapse without thirty (30) days prior written notice to the parties.
- b. Obtain and maintain in full force and effect all risks property insurance in an amount of at least one hundred percent (100%) of the full (new) replacement cost, insuring:

- i. All property owned by Lighthouse Festival Theatre, or for which Lighthouse Festival Theatre is legally liable, or installed by or on behalf of Lighthouse Festival Theatre, and located within the Premises including, but not limited to, equipment, fixtures, fittings, installations, alterations, additions, partitions, and all other leasehold improvements, and
- ii. Lighthouse Festival Theatre's inventory, furniture and moveable equipment.
- c. Lighthouse Festival Theatre will promptly furnish to the City certificates of insurance duly executed by Lighthouse Festival Theatre's insurer/insurance brokers evidencing that the required insurance is in force, upon policy updates, signing of this Agreement and on each and every renewal date of said policy.
- d. The City reserves the right to amend the required insurance coverages and limits as may be reasonable in the circumstances, at the sole cost of Lighthouse Festival Theatre.
- e. Lighthouse Festival Theatre shall immediately notify the City of any occurrences or any event which could reasonably be expected to expose the City or Lighthouse Festival Theatre to material liability of any kind whether under this Agreement or otherwise.
- f. The provisions of this section shall survive the expiration or termination of this Agreement.

**11. Objectionable People:**

**a. Ejection from the Premises:**

The City reserves the right to eject or cause to be ejected from the Premises any objectional person or persons. Neither the City nor any of its officers, agents or employees shall be liable for any damages that may be sustained by Lighthouse Festival Theatre through the City's exercise of such right.

**b. Objectional Persons Defined:**

The Term "objectionable persons" shall include but is not limited to those who by virtue of disorderly conduct, intoxication, disruptive behaviour, violation of building policy, municipal, provincial or federal law, make proper conduct of business, or an event, or the enjoyment by others of the event, difficult or impossible.

**12. Right to Extend:**

Provided that Lighthouse Festival Theatre is not in default of any terms of this Agreement, then, upon delivery of written notice exercising this right given to the City not more than eighteen (18) months and not less than nine (9) months before the expiration of the Term, Lighthouse Festival Theatre shall have the right to extend the Term of this Agreement for the whole of the Premises at the expiration of the Term for a period of five (5) years (the "Extended Term"). The Extended Term shall be on the same terms and conditions as this Agreement, save and except for provisions concerning the Management Fee and the expenses paid or responsibilities performed by the City under this Agreement. The above terms to be negotiated, shall be negotiated by the parties by taking into account the audited financial statements of Lighthouse Festival Theatre, the reports of community participation, the use of the Premises by user groups and the City's prevailing budgetary restraints.

**13. Termination**

**13.1 Termination by the City:**

In the event there is a material default by Lighthouse Festival Theatre in its performance of any of the Terms of this Agreement (a "Material Default " being a default which has the effect of depriving the City of its objectives in the entering into this Agreement), the City shall provide Lighthouse Festival Theatre with written notice of such default. Lighthouse Festival Theatre shall have twenty (20) days from delivery of the notice to cure the default to the satisfaction of the City, failing which the City may immediately terminate this Agreement and all amounts due and owing who by either party to the other shall be satisfied by the parties within thirty (30) days of the effective date of the termination.

### **13.2 Immediate Termination by the City:**

Despite any other provisions in this Agreement, the City may immediately terminate this Agreement in any of the following circumstances, and in so doing, the City shall not be liable for losses incurred by Lighthouse Festive Theatre:

- a. Lighthouse Festival Theatre becomes bankrupt, becomes insolvent, makes a proposal, assignment or arrangement with its creditors, makes an assignment in bankruptcy, a receiver is appointed to manage Lighthouse Festival Theatre or any steps are taken for the dissolution, winding up or other termination of Lighthouse Festival Theatre's existence;
- b. Lighthouse Festival Theatre is the subject of any claims or causes of action or criminal investigation relating to fraud or mismanagement of Lighthouse Festival Theatre; or
- c. The Premises are declared uninhabitable for reasons of safety by the proper authority.
- d. Lighthouse Festival Theatre or its representatives willfully cause damage to the Premises or willfully or negligently act in a way which has or may damage the reputation of the City

### **13.3 Remedies for Default:**

- a. In the event there is a default by Lighthouse Festival Theatre in its performance of any of the Terms of this Agreement and the default is continuing, the City shall have the right, in addition to any other right or remedy available at law or in this Agreement, to:
  - i. bring any proceeding in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by each of the parties hereto that damages at law may be an inadequate remedy for a default or breach of this agreement; and/or

- ii. remedy the default and be entitled upon demand to be reimbursed by Lighthouse Festival Theatre (and to bring any legal proceedings for the recovery thereof) for any monies expended to remedy any such default and any other expenses (including legal fees on a solicitor and client basis) incurred by the City together with interest at a rate of five percent (5%); and/or
  - iii. Bring any action at law as may be permitted in order to recover damages.
- b. The rights available to the parties under this Agreement shall be deemed to be separate and not dependent on each other and no such exercise shall exhaust the rights or preclude the City from exercising any one or more such rights or a combination thereof from time to time thereafter or simultaneously.

#### **13.4 Enforcement of Agreement**

Lighthouse Festival Theatre shall pay all damages, losses, expenses and costs (on a solicitor and client basis) incurred by the City in enforcing the Terms, covenants and conditions of Lighthouse Festival Theatre in this Agreement by reason of any intentional or negligent act or omission of subcontractors in executing Lighthouse Festival Theatre's covenants and obligations in this Agreement.

#### **13.5 Dispute Resolution:**

- a. A party claiming that a dispute has arisen with respect to the interpretation or operation of any part of this Agreement may give written notice to the other party specifying the nature of the dispute, the relief sought and the basis of the relief sought.
- b. Within twenty (20) business days of the receipt of the notice specified in this section 13.5 or, if the dispute relates to a claim of material default, in section 13.1, by the other party, two (2) representatives from Lighthouse Festival Theatre and two (2)

representatives from the City shall meet and use their best efforts and good faith to seek a resolution of the dispute.

- c. In the event the dispute is not resolved by representatives of the parties within twenty (20) business days from the date of delivery of the notice in either section 13.5(a) or 13.1, as the case may be, then either party may refer the dispute to mediation in accordance with and subject to the provision of any mediation legislation in force in Ontario as amended from time to time, and all decisions made pursuant to such mediation shall be final and binding up the parties hereto.

### **13.6 Termination by Lighthouse Festival Theatre:**

Lighthouse Festival Theatre may terminate this Agreement for any reason whatsoever upon providing six (6) months' written notice to the City. In the event of such termination, the parties shall conduct a full accounting of all amounts due and owing to and by each of the parties hereto for such service and such accounts shall be satisfied by the parties hereto within thirty (30) days of effective date of termination of this Agreement or part thereof. The City shall assume any user group licenses and shall cooperate with Lighthouse Festival Theatre in the completion of any programming scheduled prior to the date of such written notice.

### **13.7 Termination by the City:**

The City may terminate this Agreement for any reason whatsoever upon providing six (6) months written notice to Lighthouse Festival Theatre; provided Lighthouse Festival Theatre's scheduled programming season shall be preserved. In the event of such termination, the parties shall conduct a full accounting of all amounts due and owing to and by each of the parties hereto for such service and such accounts shall be satisfied by the parties hereto within 30 (30) days of the effective date of termination of this Agreement or part thereof. The City shall assume user group licenses and shall cooperate with Lighthouse Festival Theatre in the completion of any programming scheduled prior to the date of such written notice including, without limitation, Lighthouse Festival Theatre's own scheduled season of programming being the months of May through October.

**13.8 Uncontrollable Circumstances:**

Neither party shall be liable for breach, default or delay in performance of any of its obligations under this Agreement (except an obligation to make payment when due) in the event such party is rendered unable, wholly, or in part, to carry out its respective obligations as a result of an uncontrollable circumstance (referred to herein as an "Uncontrollable Circumstance"). Such party shall be excused from performance only during the period and to the extent that the affected party, acting with all due diligence and dispatch, is prevented from performing by Uncontrollable Circumstance.

**14. State of Repair:**

Lighthouse Festival Theatre agrees to leave the Premises undamaged and in a good state of repair and tidy condition, with all refuse gathered and all equipment, supplies and materials under its ownership and control removed from the building upon termination of this Agreement. At the end of Term, including the exercises of a Renewal or Termination, all capital improvements shall become the property of the City.

**15. Lighthouse Festival Theatre as an Independent Contractor:**

The parties hereto agree that the Lighthouse Festival Theatre is an independent contractor providing the aforesaid services to the City pursuant to this Agreement, and accordingly all rights and responsibilities or the training instruction, management and control of employees of Lighthouse Festival Theatre shall at all times remain with Lighthouse Festival Theatre. Lighthouse Festival Theatre shall be treated as independent of the City and shall be responsible at all times, including termination of this Agreement, for all costs associated with its employees, including wages and salaries, benefits, and unemployment compensation, any associated tax liabilities.

**16. Assignment Subleases:**

The provisions of this Agreement shall not be assignable by either party (except as provided herein), and no rights hereunder shall ensure to the benefit of any assignee or successor of Lighthouse Festival Theatre, without the City's consent; provided that Lighthouse Festival Theatre shall be permitted, without consent of the City, to sublease or licence all or part of the Premises during the Term of the City, to sublease or licence all or

part of the Premises during the Term and for less than the full Term to any third party for the purposes of that third party carrying out live performances and related activities within the Premises pursuant to the terms of this Agreement, provided Lighthouse Festival Theatre shall remain liable for all its obligations under this Agreement or the Lease during any and all such subleases or licences.

**17. Amendments:**

The parties agree that if an amendment to any clause of this Agreement is required and the parties are agreeable to it, the amendment shall be made by a written amending Agreement to be executed by all parties. The parties agree to negotiate reasonably and in good faith in the amendment of any clause.

**18. Notice:**

**a. Method of Notice:**

Any notice which may be or is required to be given under this Agreement shall be sufficiently given if mailed in Canada, registered and postage prepaid, delivered by prepaid courier or sent by facsimile or other electronic means as provided below:

**THE CITY**

The Corporation of the City of Port Colborne  
66 Charlotte Street  
Port Colborne, Ontario L3K 3C8

**LIGHTHOUSE FESTIVAL THEATRE**

P.O Box 1208  
247 Main Street  
Port Dover, Ontario N0A 1N0  
Attention: Executive Director

**b. Deemed Receipt**

Notice shall be deemed to have been received on the date of delivery if such is a business day (a "business day" being a day that the City's municipal offices at 66 Charlotte Street, Port Colborne are open to the

public for business) and delivery is made prior to 4p.m. local time, and otherwise on the next day that is a business day.

**c. Days Defined:**

For the purposes of this Agreement, the term "days" shall not include Saturdays, Sundays, or paid holidays.

**19. Schedule:**

The following Schedules, attached hereto, forms part of and are incorporated into this Agreement:

Schedule "A" – Depiction of the Premises

Schedule "B" – Inventory of Equipment and Supplies

**20. Binding:**

This Agreement shall ensure and be binding upon the parties hereto, their respective successors and assigns. This Agreement, including the Schedules hereto, supersedes any and all other agreements, whether oral or in writing, between the hereto, and subject to any agreement relating to specified services entered into pursuant to this Agreement, contains all the covenants and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, statement, or promise not contained in this Agreement shall be valid or binding.

**21. Severability:**

If any term, covenant or condition of this Agreement or application thereof to any person or circumstance is to any extent rendered invalid, unenforceable or illegal, the remainder of this Letter or the applicable term, covenant and condition to persons or circumstances other than those with respect to which it is held invalid, unenforceable or illegal is not affected thereby and continues to be applicable and enforceable.

**22. Freedom of Information and Protection of Privacy**

The parties hereto acknowledge that the provisions of this Agreement and all matters relating thereto may be subject to the disclosure provisions of the *Municipal Freedom of Information Act and Protection of Privacy Act*.

**23.      Counterparts:**

This Agreement may be executed in counterparts and by facsimile transmission, in .pdf format or by electronic transmission, and when each party has executed a counterpart either originally or by facsimile transmission, in .pdf format or by way of an electronically transmitted document and signature, each such counterpart shall be deemed to be an original, and all of such counterparts when taken together shall constitute one and the same document, and each such signature shall be deemed to be an original signature binding the parties to this Agreement.

**IN WITNESS WHEREOF** the parties have affixed their corporate seals attested to by their respective authorized signing officers effective this \_\_\_\_\_ day of \_\_\_\_\_ 2025.

**THE CORPORATION OF THE CITY  
OF PORT COLBORNE**

**Per:**\_\_\_\_\_

**Name: William C. Steele**

**Title: Mayor**

**Per:** \_\_\_\_\_

**Name: Charlotte Madden**

**Title: City Clerk**

I/We have authority to bind the  
Corporation

**LIGHTHOUSE FESTIVAL THEATRE  
CORPORATION**