

## **PARKING LICENSE AGREEMENT**

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, **2016**,

**BETWEEN: BOROUGH OF RED BANK**, a municipal corporation of the State of New Jersey, having its principal offices located at 90 Monmouth Street, Red Bank, New Jersey 07701 (hereinafter referred to as “Borough”);

**AND: COUNT BASIC THEATRE**, a non-profit organization, whose address is 99 Monmouth Street, Red Bank NJ 07701 (hereinafter referred to as “Theatre”).

### **W I T N E S S E T H:**

**WHEREAS**, in order to encourage theatre attendance and activity in the downtown business area, the Borough has agreed to grant a license to Theatre permitting Theatre to park up to 35 cars in the municipal parking lot located at 90 Monmouth Street, Red Bank, New Jersey 07701, solely between the hours of 6:00 p.m. and 12:00 a.m. on certain nights as approved by the Borough and during the day on Saturday, Sunday and Borough Official Holidays only.

**NOW, THEREFORE**, be it agreed between the Borough and Theatre as follows:

### **ARTICLE 1**

**1. Premises and Term.** Borough does hereby grant a license to Theatre permitting Theatre to park up to 35 cars in the municipal parking lot located at 90 Monmouth Street, Red Bank, New Jersey 07701 (“Parking Lot”), solely between the hours of 6:00 p.m. and 12:00 a.m. on certain nights and during the day on Saturday, Sunday and Borough Official Holidays only, as pre-approved by the Borough in writing, for the term of three years. Eight of the spaces to be used by Theatre on the terms set forth herein shall be located directly across from Theatre in the newly constructed section of Parking Lot. The remaining 27 parking spaces, to be used by Theatre on the terms set forth herein, will be made available located in rear of Parking Lot.

## **ARTICLE 2**

2. Theatre may pre-sell up to 25 spaces only, so as to allow for any vehicles remaining in Parking Lot after 6:00 pm. Theatre shall make an accurate accounting and documentation of remaining available spots upon arrival of Theatre staff at approximately 5:30 p.m. and any remaining available spaces, up to a maximum of 35 total spaces, may then be sold by Theatre on a first come first served basis. Borough shall use its best efforts to have any and all vehicles removed from 35 spaces for each and every agreed to scheduled event, but Theatre shall have no recourse against Borough based upon the presence of vehicles in Parking Lot at any time. Theatre usage of Parking Lot spaces shall at all times be overseen by clearly-identifiable Uniformed Security Personnel hired by, paid for and associated with Theatre. On weekdays when Theatre has events, Theatre shall take effective action to ensure that its patrons are not parking in Parking Lot through the use of temporary signage and/or the posting of personnel.

## **ARTICLE 3**

3. All nights or days the spaces in Parking Lot will be made available to Theatre will be based on a mutually agreeable schedule between the two parties. Theatre shall make all requests for Parking Lot use, in writing addressed to Borough Parking Supervisor and Borough Administrator no less than ten business days before the requested date of Parking Lot use. All Theatre use of Parking Lot must be approved, in writing by Borough Parking Supervisor or Borough Administrator prior to such use. Any Special or Emergency meeting taking place at Borough Hall and requiring the full use of Parking Lot shall take precedence over any Theatre use of Parking Lot. Borough shall notify Theatre no less than 48 hours in advance of any such Special or Emergency meeting, to the extent practicable in light of the nature of any such emergency.

#### **ARTICLE 4**

4. Theatre may charge parking rates for the use of the Parking Lot spaces. It is understood and acknowledged that such rates may vary based on demand/time/day, etc. Theatre shall clearly note all rates charged in all accounting. Theatre hereby agrees that it shall charge a minimum Per Space Per Event charge of \$20.00, of which Borough shall receive 50% but not less than \$10.00 Per Space Occupied for each Parking Lot space utilized by Theatre during every scheduled day/night of usage. Theatre shall be fully and solely responsible for all accounting measures taken to accurately invoice all monies charged and paid for the 35 available Municipal Spaces on any given date. Theatre Payments will be made net of the cost two Security Personnel for each Scheduled Event. No other charges and or costs will be considered as net expenses of Theatre for purpose of this agreement, and under no circumstances shall the Borough receive less than \$10.00 per space utilized per event.

Monies due to the Borough will be paid by Theatre via check payable to the Borough of Red Bank on the 5th of each month for parking fees stemming from Theatre's use of Parking Lot spaces in the preceding month. Theatre shall provide such check and accompanying invoice detailing Parking Lot revenue and security deduction amounts to the Borough Parking Supervisor. Once the monthly invoice is reviewed and approved, the Parking Supervisor shall forward any monies received directly to the Red Bank Finance Department for deposit. Payment by Theatre later than the tenth of each month shall be reason for Borough to suspend or terminate this Agreement and to deny Theatre further use of Parking Lot spaces.

The liaison between the Borough and Theatre shall be Parking Supervisor William Wilk, or his successor. The Parking Supervisor will review and approve all monthly payments received

from Count Basie Theatre thoroughly for accuracy. Any discrepancies will be brought to attention of all parties involved in this agreement. Any disagreement as to funds due shall, after reasonable consultation between the parties, be resolved in favor of Borough.

#### **ARTICLE 5**

**5. Use of Premises.** Theatre's rights as to use of Parking Lot are limited to those set forth herein. Said premises shall not be used for any other purpose or purposes.

#### **ARTICLE 6**

**6.** Theatre shall be solely responsible for any damage to Parking Lot arising from Theatre's use of Parking Lot. Theatre shall dispose of all refuse and garbage where and in a manner as directed by the Business Administrator at Theatre's expense and shall comply with all rules and regulations pertaining to recycling.

#### **ARTICLE 7**

**7. Termination of Agreement.** It is expressly understood and agreed between the parties that the Borough may, if it so elects, at any time hereafter, terminate this Agreement and the term hereof, upon giving seven (7) days' written notice to Theatre as provided for herein of its intention to do so, and upon the giving of such notice, this lease and the term hereof shall terminate.

#### **ARTICLE 8**

**8. Signs.** Theatre shall be responsible for all signage. All signage must be temporary in nature and removed at any time Theatre is not utilizing Parking Lot. Signage may not impede pedestrian or vehicular traffic. Any signs to be displayed on the property must be of a "professional" quality and will carry only information pertinent to Theatre's use of Parking Lot. Theatre shall also be permitted to and required to post signage as necessary to accomplish

Theatre's obligation, on weekdays when Theatre has events, to take effective action to ensure that its patrons are not parking in Parking Lot through the use of temporary signage and/or the posting of personnel.

### **ARTICLE 9**

**9. Assignment prohibited.** The Theatre shall not be permitted to assign, transfer, convey, sublet or otherwise dispose of this agreement or of its rights or interest therein.

### **ARTICLE 10**

**10. Notice.** Any notice by either party to the other shall be in writing and shall be deemed to have been duly given only if delivered personally or sent by registered mail or certified mail in a postpaid envelope addressed, if to Theatre, at the Theatre's address as set forth below. If to Borough, at Borough's address as set forth below; or to either at such other address as Theatre or Borough respectively, may designate in writing. Notice shall be deemed to have been duly-given, if delivered personally, on delivery thereof, and if mailed, upon the 10th day after the mailing thereof. In the event that either Borough or Theatre shall fail to comply with the any of the covenants contained herein, either party shall give written notice of such failure by certified mail, return receipt requested, to Borough at:

Initial Contact Person:      Parking Supervisor  
   Borough of Red Bank  
   90 Monmouth Street  
   Red Bank, NJ 07701

With a copy to:              Administrator  
   Borough of Red Bank  
   90 Monmouth Street  
   Red Bank, NJ 07701

Notices addressed to      Chief Executive Officer  
Theatre shall be sent to:      Count Basie Theatre  
   99 Monmouth Street, Red Bank NJ 07701

## **ARTICLE 11**

**11. Waiver.** The failure of either party to insist on strict performance of any of the terms and conditions hereof shall not be deemed a waiver of any subsequent breach or default in either the terms or conditions breached or in any other term or condition hereof.

## **ARTICLE 12**

**12. Insurance for Benefit of Borough.** Theatre shall not utilize the Parking Lot until Theatre has provided proof of insurance of such character and in such amounts as will provide adequate protection for the Borough, its representative employees and others lawfully on the property, against all liabilities, damages and accidents, and the Theatre shall maintain such insurance in force until Theatre has vacated the Premises. The Borough shall be the sole determinant of what type and quantity of insurance shall be required.

The Theatre, during the term of this lease, shall obtain and maintain liability insurance against all claims on account of personal injury and property damage or death to person for which the Theatre may become liable as a result of the use of the Parking Lot, and shall name the Borough as an additional insured under the said policy. Theatre shall maintain such comprehensive general liability insurance in the amount \$1,000,000 per occurrence/\$2,000,000 annual aggregate, including products liability, together with property damage insurance, all risk, for the building and personal property, if any, owned by the Borough and in the care, custody and control of the Theatre, as well as Workers' Compensation/Disability Insurance with the limits of liability as referenced in New Jersey statutory coverage.

## **ARTICLE 13**

**13. Modification.** This lease agreement may not be modified unless such modification is in writing and signed by both parties.

**ARTICLE 14**

**14. Effect of Partial Invalidity.** If any provision of this lease agreement is held to be invalid, such invalidity shall not affect the validity of the remaining provisions.

**ARTICLE 15**

**15. Integration.** This written agreement and the resolution approving the same, contain the entire agreement between the parties, and neither party has relied upon any prior or contemporaneous representation, either oral or written, that are not contained in this agreement or its incorporated parts.

**ARTICLE 16**

**16. Pronouns.** The use of the neuter singular pronoun in referring to Borough shall, nevertheless, be deemed proper reference even though Borough may be an individual, a corporation, a partnership or a group of two or more individuals or corporations.

**IN WITNESS WHEREOF**, the parties hereto have hereunto caused these presents to be signed by their proper corporate officers or representatives of the partnership, as the case may be, on the day and year set forth at the heading of the within lease agreement.

**WITNESS & ATTEST:**

**BOROUGH OF RED BANK**

\_\_\_\_\_  
**PAM BORGHI**, Borough Clerk  
(Seal)

By \_\_\_\_\_  
**PASQUALE MENNA**, Mayor

**COUNT BASIE THEATRE**

\_\_\_\_\_  
As to Count Basie theatre

By \_\_\_\_\_  
Name:  
Title: