

## CONCESSION AGREEMENT

This concession agreement, by and between the Board of Supervisors of Fauquier County on behalf of the Fauquier County Department of Parks and Recreation, and the Fauquier Community Theatre-Story Painters, Inc. (hereafter "FCT") made and dated this 12th day of June, 2008,

Whereas, the Board of Supervisors is the owner of a certain parcel of land described as Parcel 13, Vint Hill Farms Station, and the building attached thereto which is known as the Vint Hill Community Theater, building 188 and

Whereas, the Board and the Parks and Recreation Board desires to allow the theater to be used by the Fauquier Community Theatre-Story Painters, Inc, and

Whereas, the Board is the owner of the aforesaid property by virtue of a deed from the National Park Service dated March 21, 2001 and recorded in Deed Book 1048 at page 814 et seq., attached hereto as Exhibit A, which deed restricts the use of the facility to parks and recreation purposes,

Now, therefore, it is hereby agreed for good and valuable consideration as follows:

### TERM OF CONCESSION AGREEMENT

The term of this concession agreement shall be for a period of one year from the date of execution.

### DUTIES OF THE FAUQUIER COMMUNITY THEATRE

- a. The use of the theater shall be scheduled by FCT. The Fauquier County Department of Parks and Recreation shall receive at the beginning of each year a copy of the schedule.
- b. FCT shall not assign or permit other organizations to utilize the facility for activities not sponsored by FCT without the express written permission of the County.
- c. All utility costs for the use of the building shall be the responsibility of the FCT. All new services or changes to service are to be installed by FCT and will be provided underground to the appropriate junction box provided that the utility permits underground installation. FCT shall have no obligation to extend underground utilities beyond the limits of the County's property boundaries. No new utilities shall be installed without prior written authorization of the Department of Parks and Recreation. Such consent shall not be unreasonably withheld.
- d. Normal operating and preventative maintenance of the building, trailer appurtenant to the building, and equipment servicing the building and trailer including cleaning of the facilities, trash removal, care, repair and maintenance of all mechanical, roof, electrical, plumbing and HVAC equipment, and repair and maintenance of the interior and exterior of the facility and trailer sufficient to maintain the building in its condition at the commencement of use by

FCT, reasonable wear and tear excepted. FCT shall perform regular upkeep on the trailer, theater, premises, outbuildings and equipment enclosures and maintain the exterior condition and appearance of the theater and trailer in a manner consistent with the level of maintenance of the County gymnasium and pool facilities. Surfaces which require paint shall be regularly prepared and painted in a workmanlike fashion and the premises shall be kept in a neat, clean and sanitary condition, all in a manner which is acceptable to the County. No unsightly debris shall be visible on the premises. All facilities shall be maintained in a safe and habitable condition. FCT shall clean the theater regularly and after each performance and shall regularly remove trash from the facility. At the termination of this agreement or any extension thereof, the facility shall be returned to its condition at the commencement of occupancy by FCT, reasonable wear and tear excepted.

- e. FCT shall obtain such insurance as it deems necessary for equipment, supplies, costumes, etc. that are not county property. The Board of Supervisors and the Parks and Recreation Board shall have no responsibility for FCT property. FCT shall maintain acceptable liability insurance for its activities and property and casualty insurance for the building and county/parks and recreation owned contents at all times and provide the County with the certificate or certificates of insurance on an annual basis at the anniversary of this agreement in amounts to be specified by the County's risk manager. FCT shall forthwith provide proof of such insurance at any time upon the request of the County. Notwithstanding any other provision of this agreement, failure to maintain adequate liability, property and casualty insurance shall constitute a material breach of this agreement and shall entitle the cancellation of this agreement without notice or ability to cure.
- f. Security measures as deemed necessary by FCT. Locks and other physical security measures shall be selected, implemented and maintained by FCT. Inspections shall be performed by Parks and Recreation as well as any approving agencies. The County, its agents or designees may also inspect the property at any time to determine compliance with any other provision of this agreement. FCT shall be given reasonable notice of such inspection and permitted to accompany the inspector.
- g. Improvements and renovations are to be coordinated with and approved in writing by the Department of Parks and Recreation prior to construction and by all approving agencies as required.
- h. Complete an annual vendor permit form.
- i. Comply with any National Park Service requirements including any applicable restrictions contained in the deed of the property from the National Park Service to Fauquier County and any other pertinent regulations including Fauquier County Ordinances and applicable regulations of the Department of Parks and Recreation. See deed attached as Exhibit "A" which is incorporated herein.
- j. Maintain 501 (c)(3) status.

- k. Keep all activities open to the public, and comply with any access or other Americans With Disabilities Act requirements applicable to the facility, and not discriminate against any person on the basis of age, sex, race, disability or other basis.
- l. FCT shall, upon request, permit the County and the Department of Parks and Recreation to use the theater without charge at any time when the theater is available, to the maximum extent possible. A Parks and Recreation Recreation Center Attendant or other approved staff will be present at all times during use by the County. Consent to use the theater shall not be unreasonably withheld. Stage lighting, sets, costumes or props shall not be used or disturbed without prior permission of FCT. Fauquier County/the Department of Parks and Recreation shall be permitted to use the facility on Tuesday mornings from 8:00 a.m. to 12:00 noon.
- m. Unless permitted by County Ordinance or State Law, FCT shall prohibit the consumption of alcoholic beverages at the theater.
- n. All improvements to the facility become the property of the County. Property of FCT not to be considered improvements to the facility include the stage lighting and control equipment, sound equipment and trailer.
- o. FCT shall make repairs and improve conditions in the theater as noted in the May 1, 2008 letter and attachment from FCT to the Parks and Recreation Board.
- p. By July 4, 2008 FCT shall provide the Parks and Recreation Department a conceptual proposal for renovation and expansion of the theater that both parties will use to study the feasibility of such improvements.
- q. By December 31, 2008 FCT shall notify the Parks and Recreation Department of its commitment to developing a long-term agreement for use, renovation, and expansion of the theater or its desire to terminate the agreement with a time schedule for departure.

#### COUNTY AND DEPARTMENT OF PARKS AND RECREATION RESPONSIBILITIES

- a. The Department of Parks and Recreation shall waive any fee for the vendor permit as long as the use of the theater remains consistent with the purpose and intent of this Agreement and the theater is used for theatrical productions and uses incidental thereto.
- b. The Department of Parks and Recreation shall provide FCT road access at the rear of the building for loading and unloading purposes until other arrangements are made for improved access.
- c. The Department of Parks and Recreation shall maintain the grounds immediately surrounding the structure, including mowing, landscaping, and snow removal.
- d. The Department of Parks and Recreation shall provide parking near the theater if and when funding permits. Availability of funds shall be determined at the sole discretion of the County.

- e. The Department of Parks and Recreation retains the right to make improvements to the land which is affected by this agreement that it determines in its sole discretion carry out the mission of the Department of Parks and Recreation. In the event that FCT fails to properly maintain the condition of the theater in accordance with paragraph d. herein or fails to provide adequate access for ADA compliance in accordance with paragraph k. herein, the County may, in its sole discretion, either declare a material breach and terminate this agreement or make necessary repairs and improvements to the theater. The County in its discretion may bill FCT for the entire cost or a portion of any such repair, and failure to pay such bill within 30 days shall constitute a material breach of this agreement. The County shall provide reasonable notice of its intent to make such necessary repair and afford FCT the opportunity to make the repair itself, except where the failure to make the repair potentially affects health, safety and welfare or would result in increased damage to the theater.
- f. Allow use of all equipment located on the facility which is owned by the County and assigned by the County to FCT. FCT shall be responsible during the term of this agreement for care of the equipment and personal property and shall return the same to the county at the expiration of the term of this agreement or any extension thereto, reasonable wear and tear excepted.
- g. Following any use of the facility by the County or the Department of Parks and Recreation, the Department of Parks and Recreation shall clean and return the facility to its condition prior to use, reasonable wear and tear excepted.

## GENERAL PROVISIONS

**AREA OF AGREEMENT:** This agreement shall apply only to the building known as Vint Hill Community Theater, 4225 Aiken Drive.

**USE OF FUNDS:** Admission fees, user fees or other funds collected by Fauquier County and the Department of Parks and Recreation for Fauquier County events and Parks and Recreation events shall be the property of Fauquier County and FCT shall have no claim to such funds.

**AGREEMENT SUBJECT TO BOARD OF SUPERVISORS APPROPRIATION:** Any obligation of the Board of Supervisors and the Parks and Recreation Board herein shall be subject to the annual appropriation of the Board of Supervisors.

**CONCESSION FEE:** In consideration for the continued use of the facility outlined herein, FCT shall remit to the County on or before the last day of each month payment in the amount of \$250 per month. A late fee of 5% shall be assessed for any such fee not paid within 10 days of the due date. The County shall reduce this fee by a mutually agreed upon charge for utilities for the period of time the facility is used by the County or its designees.

**TERMINATION:** This agreement shall terminate in the event that any term of this agreement is in violation of the terms of the conveyance to the County from the United States, or in the event

that the County is prohibited by law, lack of funds, or non-appropriation of funds from complying with the provisions of this agreement. Failure to comply with any material provision of this agreement shall constitute grounds for termination of this agreement upon thirty days written notice, with an opportunity to cure any material breach which is curable during the thirty days. In the event the breach is not cured within 30 days, FCT shall immediately vacate the premises, and shall not be entitled to any damages or reimbursement for the cost of any improvements performed by FCT. All improvements shall remain the property of the County upon the termination of this agreement or any extension thereto.

ATTACHMENT: May 1, 2008 letter and attachment from President of Fauquier Community Theatre to Chairman Parks and Recreation Board.

NOTICES: Notices under this agreement shall be sent by regular mail to the following addresses:

Fauquier Community Theatre –Story Painters, Inc.  
P.O. Box 3046  
Warrenton, Virginia 20188

Larry Miller, Director  
Fauquier County Department of Parks and Recreation  
320 Hospital Drive, Suite 6  
Warrenton, Virginia 20186

Witness the following signatures and seals:

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Fauquier County Community Theatre-Story  
Painters, Inc.

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Fauquier County Board of Supervisors