

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) reflects the understanding and agreement of The Legacy Theatre, Inc. (“Legacy”) and James Stach, Eleanor Stach, Joan Johnson and Robert Alling (collectively “Individual Plaintiffs,”) and their friends and neighbors Linda Reed, Brian Ameche, and Amy Bloom (collectively with the Individual Plaintiffs, “Neighbors”), also referred to collectively as the “Parties” with respect to the issues described below.

RECITALS:

- A. **WHEREAS**, Legacy is a not-for-profit theater company located at 128 Thimble Islands Road in Branford, Connecticut.
- B. **WHEREAS**, Joan Johnson is the owner of real property located at 117-125 Thimble Islands Road in Branford, Connecticut.
- C. **WHEREAS**, James Stach and Eleanor Stach are the owners of real property located at 140 Thimble Islands Road in Branford, Connecticut.
- D. **WHEREAS**, Robert Alling, Jr. is the owner of real property located at 133-139 Thimble Islands Road in Branford, Connecticut.
- E. **WHEREAS**, Legacy has been pursuing approvals to rehabilitate and reopen the theatre building located on its premises at 128 Thimble Islands Road in Branford, Connecticut (hereinafter “Theatre”).
- F. **WHEREAS**, on or about November 18, 2014, the Zoning Board of Appeals of the Town of Branford (ZBA) upheld the Zoning Enforcement Officer’s (hereinafter, “ZEO”) approval of Legacy’s tenant fit-up application, which sought zoning approval for improvements to be made to the Theatre.
- G. **WHEREAS**, the Individual Plaintiffs are Plaintiffs in the action captioned, Stony Creek Association, et al. v. Branford Zoning Board of Appeals, et al., Docket # NNH-CV15-6051727-S, appealing the ZBA’s decision (hereinafter “Appeal”).
- H. **WHEREAS**, Legacy is a Defendant in the Appeal.
- I. **WHEREAS**, Legacy is also the owner of real property located at 132 Thimble Islands Road in Branford, Connecticut on which a one-bedroom residential cottage is located (hereinafter “Cottage”).
- J. **WHEREAS**, the Parties have engaged in extensive discussions with respect to the Theatre. Based on those independent discussions and with the assistance Hon. Judge Corradino in ADR sessions, the Parties have reached an agreement, the general contours of which are set forth below.

K. **WHEREAS**, the non-party Neighbors have been included by Legacy in the litigation, mediation and negotiation sessions from the outset, and accordingly the benefits and burdens of this MOU relate directly to their involvement.

NOW, therefore the Parties agree as follows:

1. THEATRE USE

Rather than being exhaustive in nature, the following list is meant to characterize and represent the types of functions which are mutually acceptable uses of the Theatre to the Parties and are consistent with both the mission and reputation of Legacy and the integrity of both the community and the immediate residential neighborhood.

All events shall be held within the Theatre building. The outside space is not to be used for events. The outside space may be used for theatrical intermissions and breaks in between classes and rehearsals.

Theatrical Productions including:

- musical theater
- straight plays
- comedies
- classics
- revues
- one acts
- cabarets
- dance presentations
- new works
- recitals
- poetry reading
- classic and silent film presentations and talk back
- lectures

Concerts including:

- choirs
- chamber orchestra
- choral music
- song cycles
- musical and vocal ensembles

Classes including:

- Adult performing arts classes
- Children's performing arts classes and camps

Uses of the Theatre such as the following are seen as inappropriate and shall not occur:

- rap concerts
- hard rock & heavy metal concerts

- raves
- open mic
- weddings
- parties (including bachelor parties, birthday parties and bridal showers)

Any event not strictly produced by Legacy, shall be scrutinized and approved by the Legacy Theater Artistic Director, bound by the same rules of the Theatre, and overseen by Legacy staff.

2. HOURS OF OPERATION

Events shall end and the Theatre shall be closed to the public by the following times:

- Sunday 5:00
- Monday 10:00
- Tuesday 5:00
- Wednesday 5:00 (10:00 on performance weeks)
- Thursday 10:00
- Friday 10:30
- Saturday 10:30

3. MONTHS AND EXTENT OF OPERATION

Months of operation and intensity of use shall be limited to a schedule similar to the appended “provisional calendar” and “provisional calendar narrative,” attached as Schedules A and B respectively. The Neighbors acknowledge that the “provisional calendar” and “provisional calendar narrative” are products of a sincere effort by Legacy to demonstrate its operational calendar and provide insight into the nature of its expected programming. The Neighbors acknowledge that the precise dates provided thereon are for illustrative purposes and subject to change, provided such changes are in general accordance with this MOU, including Schedules A and B, which shall be described with greater specificity in the stipulated judgment described below.

In addition, the following limitations shall apply:

- Evening and daytime performing arts classes for both adults and children shall consist of fourteen (14) weeks of classes meeting no more than twice a week. Classes shall be limited to fifteen (15) students.
- Two (2) one-week performing arts camps for students during July and/or August. The number of campers shall be limited to a maximum of twenty-five (25) students for each camp session.
- Camp hours shall be limited to 9:00 am – 5:00 pm with no extended after camp hours for a childcare program.
- Four (4) runs of theatrical performances each year each lasting approximately three (3) weeks with possible one (1) week extensions due to popular demand. Performances shall occur between the last week of April and the last week of September with the exception of any extension dates and of a two (2) week performance run in December.
- Four months of limited activity at the Theatre.

- The Theatre shall be open to the public no more than one hundred and fifty (150) days per year.
- It is understood that the number of patrons shall be limited to a total of one hundred and twenty-eight (128) people.

4. ALCOHOL

No alcoholic beverages shall be served, sold, or consumed on the Theater premises. No modification of this provision of the MOU, or of the attendant provision(s) of the stipulated judgment, shall be requested by Legacy until a period of at least three (3) years have passed since the Theater receives its Certificate of Occupancy.

5. THEATRE DESIGN

The Theatre shall be designed and operated in such a way that during show intermissions and down time for other functions people are not inclined to go out on the sidewalk at the front entrance. Legacy shall provide signage inside the Theatre to this effect.

6. NOISE

The Theatre shall be designed and used in accordance with the Town Noise Ordinance requirements for residential zones. Legacy's efforts to achieve that goal shall include:

- Encouraging quick dispersing of patrons following events.
- Exploring the use of landscaping where possible to damper sound.
- Providing reminders on its website and/or in the program asking patrons to respect neighbors by keeping exterior noise to a minimum and shall post signage to that effect within the Theatre.
- Keeping windows and doors closed during operating hours

Whereas the Town Noise Ordinance permits variances from the requirements of the noise ordinance in the event such requirements are stricter than DEEP standards, and whereas the current requirements are not stricter than DEEP standards, the Theater shall not apply for any such variances. This provision shall not be construed as a prohibition against the Theater applying for such a variance in the event such ordinance requirements become stricter than DEEP standards, provided the Theater would still comply with DEEP standards.

7. SEPTIC

The septic system shall be upgraded in accordance with a design approved by the East Shore Health District. The current enhanced design necessitates the merger of 128 and 132 Thimble Islands Road.

8. PARKING

To be addressed in a stand-alone document.

9. NEIGHBORHOOD TRAFFIC AND PARKING & DESIGNATED PARKING SPACES

To be addressed in a stand-alone document.

10. TRASH

Legacy shall maintain the property in a clean state. All trash from staff and patrons shall be cleaned up on a daily basis. Legacy shall hire an independent trash service to empty dumpsters on a regular basis and as needed Monday through Friday at times no earlier than 8:00 a.m. and no later than 5:00 p.m.

11. ZONING

- The Neighbors shall support and shall provide any required consent(s) for Site Plan approval by the zoning authority of the Town of Branford for the Theatre. Legacy does not anticipate a need to apply for variances of the requirements of Sections 5.8, 6.6, or 6.7 of the Town Zoning, nor should this provision be construed as consent to any such variances if applied for.
- The final Site Plan has been submitted to the Neighbors. Legacy recognizes that any SIGNAGE is required to comply with Section 6.6 of the Town Zoning ordinance.
- Legacy recognizes that Any OUTDOOR LIGHTING has to comply with Section 6.7 of the Town Zoning Ordinance in the same manner as projects for which site plan applications are required.
- Legacy recognizes that any EXTERIOR IMPROVEMENTS require a zoning permit including design review under Zoning Ordinance Section 5.8 Stony Creek Village District. While the architectural plans for the Exterior Improvements of the Theater Building have not been finalized, Legacy has committed that the Exterior Improvements shall incorporate the following parameters: the Exterior Improvements will include HardiePlank pre-stained clapboard over some sound treatments that will be applied over the existing brick. This is intended to fit into the neighborhood as there are many clapboard finishes in and around Stony Creek. The plan is to replicate the front of the building as close as possible to the original look and feel. When the architectural plans for the Exterior Improvements are completed a copy will be provided to the Neighbors' attorney. The Neighbors will have a period of five (5) business days prior to formal submission to the Town in order to review the plans and provide any comments. So long as the Exterior Improvements are consistent with the parameters in this paragraph the Neighbors shall support and provide any required consents for the applicable approvals.

12. MERGED PROPERTY

Legacy will merge the Theater and Cottage properties into one lot. Subject to Section 13 below, the existing Cottage now located at and known as 132 Thimble Islands Road in Branford, Connecticut shall be restricted to a residential use following the merger. Any and all gatherings held at the Cottage shall be limited to those if a size, scale, intensity, frequency, and nature subordinate and customarily incidental to a single-family dwelling. It is Legacy's intention to utilize the Cottage as a dwelling for an "artist in residence"

program pursuant to which an artist chosen by Legacy will be allowed to reside at the Cottage. In this manner the Cottage's use is both residential and accessory to the Theater. Notwithstanding the foregoing the Cottage shall not be used for public events associated with the Theater operations.

13. CHANGE OF OWNERSHIP

If the Theatre changes ownership, the conditions agreed upon shall remain in force for any subsequent theater use. If the use of the Theatre is abandoned and its subsequent use is changed to a permitted use under the Zoning Regulations of the Town of Branford, then the conditions and restrictions of this MOU shall no longer apply.

14. INDEMNIFICATION

The Parties recognize that the Theatre's employees, board members, agents and volunteers may utilize the parking lot located adjacent to the municipal ball field on West Point Road. The Parties also acknowledge that Theatre patrons familiar with the area may utilize the municipal ball field lot. Between the municipal ball field lot and the Theatre is real property owned by Joan Johnson (117-125 Thimble Islands Road) and Robert Alling (133-139 Thimble Islands Road). Bisecting these properties is a paved path owned by Robert Alling, which is the most direct foot path from the municipal ball field lot and the Theatre. Legacy has committed to make its best efforts to prevent any person associated with the Theatre from utilizing that path. Notwithstanding these best efforts and in recognition of that fact that on occasion someone associated with Legacy may utilize the path, Legacy shall indemnify, hold harmless, and name as an additional insured the owners of 117-125 Thimble Islands Road and 133-139 Thimble Islands Road for all claims arising out of Theatre employees, board members, agents, volunteers or patrons passing over or through such properties and/or right of way.

15. APPEAL

As soon as practicable following the execution of this MOU, the Parties shall enter into a Stipulated Judgment resolving the Appeal.

16. GOOD-FAITH EFFORTS

The Parties recognize that, despite the substantial local controversy surrounding the Appeal and the subsequent negotiations, this MOU reflects good-faith efforts by all Parties to minimize potential adverse impacts to the immediate neighborhood without unduly burdening the Theatre's operations. As symbols of such good-faith efforts, the Parties further agree that:

- The alcohol prohibition of Section 4 of this MOU shall not be construed to prohibit a champagne toast during the Theatre's grand opening gala (to which all Parties are invited), provided that such toast shall not be construed as having any precedential effect in support of any further alcohol service, sale, or consumption on the Premises; and

- To the extent the Legacy Theatre’s Facebook page(s) contain derogatory or disparaging remarks made by non-parties about the Neighbors during the heat of controversy, the Legacy Theatre shall make its best efforts to remove such remarks.

THE LEGACY THEATRE, INC.

JAMES STACH

By: Stephanie Williams, Its President
Date:

Date:

JOAN JOHNSON

ELEANOR STACH

Date:

Date:

ROBERT ALLING

LINDA REED

Date:

Date:

BRIAN AMECHE

AMY BLOOM

Date:

Date: