

RESOLUTION NO. 2022-02

**RESOLUTION APPROVING
A NEW LEASE FOR THE CO-ED THEATER**

NOW COMES CITY COUNCIL, upon consideration of a request from the current tenant and operator of the Co-Ed Theater, TAKE ONE ENTERTAINMENT, LLC, to enter into a new Lease in renewal of the existing Lease; and

WHEREAS, by Lease dated February 21, 2012, the City of Brevard leased that certain premises known as the "Co-Ed Theater" to WILD ABOUT BIRDS, LLC for a period of ten years, expiring on February 21, 2022; and

WHEREAS, at its regularly scheduled meeting on August 17, 2015 City Council approved the assignment of that Lease to the present tenant, TAKE ONE ENTERTAINMENT, LLC; and

WHEREAS, City Council has previously determined that it is in the public interest and supportive of local economic development to have a movie theater located and operating within the city limits of Brevard, and there is only one such theater presently in operation, namely the Co-Ed Theater; and

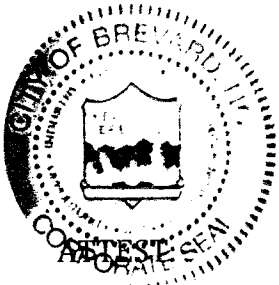
WHEREAS, City Council hereby affirms that such use of the premises continues to be in the public interest as it attracts positive attention to the downtown business area, it provides an appropriate avenue of entertainment for the public in the community, and it encourages the public to do business in Brevard as opposed to going outside of the community; and

WHEREAS, City Council has looked into the matter of the requested new Lease and is of the opinion that it should be approved, that such Lease complies with General Statutes Section 160A-272, and with certain requirements which Council has to ensure the continued operation of the subject premises as a movie theater; and

WHEREAS, City Council has no other planned use for the subject property;

NOW THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF BREVARD that the new Lease to TAKE ONE ENTERTAINMENT, LLC, a copy of which is attached hereto, be and is hereby approved.

Approved and adopted this 7th day of March, 2022.




Maureen Copelof
Mayor


Jill Murray, CMC
City Clerk



2022001480

TRANSLYVANIA CO, NC FEE \$26.00

PRESENTED & RECORDED:

03-08-2022 03:16:17 PM

CINDY M OWNBEY

REGISTER OF DEEDS

BY: BETH C LANDRETH

ASSISTANT

BK: DOC 1027

PG: 136-144

STATE OF NORTH CAROLINA

COUNTY OF TRANSLYVANIA

LEASE

THIS LEASE, made this 8 day of March, 2022 by and between THE CITY OF BREVARD, a municipal corporation, hereinafter referred to as "Landlord," and TAKE ONE ENTERTAINMENT, LLC, a North Carolina limited liability company, hereinafter referred to as "Tenant."

WITNESSETH:

That subject to the terms and conditions herein set out, Landlord does hereby let and lease unto Tenant, and Tenant does hereby accept as tenant of Landlord, that certain building known as "The Co-Ed Theater Building", said building being situated on Main Street in the City of Brevard, Transylvania County, North Carolina, together with those items of personal property described on the attached Exhibit "A" which is incorporated herein by reference.

The terms and conditions of this lease are as follows:

1. **TERM AND RENEWAL.** This lease shall begin as of the date it is executed and unless sooner terminated as herein set out, shall exist and continue until and including a ten (10) year period subject to the following condition: The lease shall be in effect for a period of five (5) years without renewal and shall be renewable annually thereafter solely by affirmative resolution of the Brevard City Council until the expiration of the ten (10) year

lease term. In the absence of an affirmative resolution enacted by the Brevard City Council in the anniversary month of this lease as set forth above, this lease shall terminate at the end of the month following the anniversary month of this lease.

2. RENTAL. The rental during the term shall be \$100.00 per annum, the first payment to be made on the date of execution hereof and all subsequent payments to be made on the same day of each and every year from and after said date.

3. LANDLORD HAS NO OBLIGATION TO MAINTAIN OR REPAIR. The Tenant agrees to accept the premises in its present condition.

4. MAINTENANCE BY TENANT. Tenant shall make any repairs, maintenance, additions or alterations to the interior of the premises which it may deem necessary for its proper use and enjoyment; provided, that:

(a) All such alterations and additions have been or shall be made at the Tenant's own cost and expense and without obligation or liability to the Landlord;

(b) No major additions or alterations shall be made without the prior written consent of the Landlord;

(c) Repairs or replacement which result in any seats, screens, equipment, personal property listed in Exhibit "A", or fixtures being replaced may only be made by Tenant provided that the repaired item or replacement is of higher quality than the item discarded or replaced, as determined by Landlord in its complete discretion. In such event, Tenant may dispose of all replaced items. All such repaired fixtures and replacements shall be and remain the property of Landlord.

5. DUTY TO NOTIFY AND REPAIR. It is agreed that the Tenant shall notify the

Landlord immediately upon the discovery of any defect in the premises of such nature that failure to promptly repair it could lead to a safety hazard or additional damage to the premises.

6. DUTY TO REPORT. The Tenant shall make a presentation annually to the Brevard City Council regarding maintenance, improvements, and plans for the theater operations. This presentation shall be in person unless Council excuses the requirement in writing and shall occur at a regularly scheduled meeting in the anniversary month of this lease.

7. CONDITION OF PREMISES UPON TERMINATION. The parties contemplate and agree that upon the termination of this lease, Landlord shall receive from Tenant possession of a motion picture theater building including all fixtures (seats, screens, curtains, etc.) but not including projections devices, ice machine, sound amplification devices, or other items of personal property listed on attached Exhibit B.

8. LANDLORD'S ACCESS. The Landlord shall at all times have keys to access all exterior doors, and shall have the right to enter upon the premises at any reasonable times for purposes of inspection, repair, maintenance, alterations and improvements.

9. NO ASSIGNMENT OR SUBLEASE. This lease shall not be transferred or assigned or the leased premises sublet without the prior written consent of the Landlord.

10. UTILITIES. During the term of this lease, the Tenant shall provide and pay for all lights, water, sewer, heat and air conditioning in connection with the use of the premises.

11. INSURANCE. The Tenant shall obtain and maintain property damage/casualty insurance in the full replacement value of the premises (including all fixtures and personal

property belonging to Landlord) and personal liability insurance in the minimum amount of \$1,000,000.00 per injury and \$1,000,000 per incident. Landlord shall be named as Primary Insured on the damage/casualty insurance policy and as Additional Insured on the liability insurance policy. Landlord shall be entitled to receive and review a Certificate of Insurance upon request.

12. WAIVER OF SUBROGATION. Each party hereby waives and relinquishes unto the other all insurance subrogation rights which might otherwise accrue.

13. TENANT'S EMPLOYEES. Tenant or any managing firm or agent in privity with Tenant shall:

- (a) Park their motor vehicles off of Main Street;
- (b) Require all employees to park their cars off of Main Street; and

Maintain standard Workers' Compensation insurance coverage for all employees, as required by the laws of the State of North Carolina.

14. INCIDENT NOTIFICATION. Tenant shall promptly notify Landlord of any occurrence or incident which could lead to a potential claim of liability against Tenant or Landlord.

15. INDEMNIFICATION. (a) Tenant hereby waives any and all claims for personal liability against Landlord which might result from injury on the premises, including but not limited to claims which might be presented by Tenant's employees, whatever the cause. Tenant shall fully indemnify and hold Landlord harmless as against such claims, including but not limited to: costs of investigation, damages paid, attorney's fees and costs of litigation;

(b) Tenant shall fully indemnify and hold Landlord harmless as against any claims of any

creditor of Tenant who supplies or has supplied any labor, utility, media or telecommunications service, inventory or materials to the subject premises.

16. DEFAULT AND LANDLORD'S ENTRY UPON PREMISES. This lease is made upon the express condition that if the Tenant shall neglect to make any payment of rent when due or neglect to keep or fulfill any of the covenants and agreements herein provided on its part to be kept and fulfilled and shall remain in default thereof for a period of ten days after notice from the Landlord of any such default, the Landlord, its successors and assigns, may thereupon enter upon the premises and expel the Tenant therefrom without prejudice to any other remedy which the Landlord, its successors or assigns, may have on account of such default.

17. The parties agree as shown on Exhibit "A" that Landlord no longer owns any personal property of value within the premises.

18. This Lease constitutes the entire agreement and understanding between the Landlord and Tenant and supersedes all prior leases and assignments between the parties, including (a) previous lease, dated October 16, 2002, and recorded in Document Book 133, Page 778, and the subsequent assignment of an interest therein, to Tenant, such assignment being dated August 31, 2015 and recorded in Document Book 752, Page 585 of the Transylvania County Registry of Deeds; and (b) previous lease between City of Brevard and Wild About Birds, LLC, dated February 21, 2012 and recorded in Document Book 605, Page 660 of the Transylvania County Registry of Deeds.

IN TESTIMONY WHEREOF, the Landlord has caused this lease to be signed in its corporate name by its Mayor and attested by its Clerk and sealed with its common seal and Tenant has signed and sealed the same, the date first written above.

THE CITY OF BREVARD

By: Maureen Copelof
Maureen Copelof, Mayor

ATTEST:

Jill Murray
Jill Murray, CMC, City Clerk

TAKE ONE ENTERTAINMENT, LLC
a North Carolina Limited Liability Company

By: [Signature]
Member/Manager

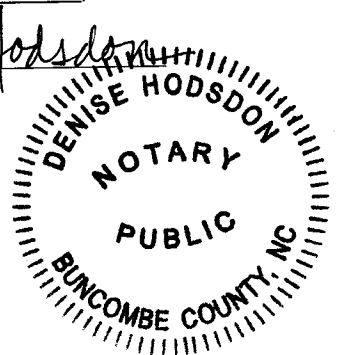
STATE OF NORTH CAROLINA,
COUNTY OF TRANSYLVANIA.

I, Denise Hodsdon, a Notary Public of said State and County, do hereby certify that JILL MURRAY personally appeared before me this day and acknowledged that she is City Clerk for THE CITY OF BREVARD, a North Carolina municipal corporation, and that by authority duly given and as the act of this corporation, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal, and attested by her as its City Clerk.

WITNESS my hand and Notarial Seal, this the 8th day of March, 2022

Denise Hodsdon
Notary Public

My Commission Expires: 10/6/2024



STATE OF NORTH CAROLINA,
COUNTY OF TRANSYLVANIA.

I, Angelica D. Shannon, a Notary Public of said State and County, do hereby certify that Alday Sted personally appeared before me this day and acknowledged that he/she is a member-manager of TAKE ONE ENTERTAINMENT, LLC, a North Carolina limited liability company, the limited liability company described in and which

executed the foregoing instrument; that he/she executed said instrument in the name of said limited liability company by subscribing his/her name thereto; and that the instrument is the act and deed of said limited liability company.

WITNESS my hand and Notarial Seal, this the 8 day of March, 2022

Angela D. Shannon

Notary Public
My Commission Expires: 8-22-26

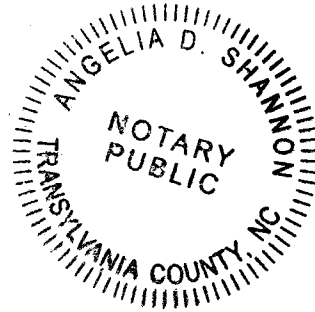



EXHIBIT A
INVENTORY TO
THE CO-ED THEATER BUILDING

After review, the parties agree that the City of Brevard has no personal property, other than fixtures, inside the premises.

This the 8 day of March, 2022.

For the Landlord:  (SEAL)


For the Tenant:  (SEAL)

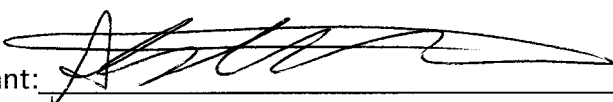
EXHIBIT B
TENANT
INVENTORY of
PERSONAL
PROPERTY IN
THE CO-ED THEATER BUILDING

After review, the parties agree that the Tenant possesses the following items of personal property inside the premises:

All equipment related to operation of the business including printers, credit card machines, backroom computers, training materials, cabinets, desks, projection and concession equipment, POS systems, and any/all non-personal equipment.

This the 8 day of March, 2022.

For the Landlord:  (SEAL)

For the Tenant:  (SEAL)