

LICENSE AGREEMENT BETWEEN THE TOWN OF LEXINGTON AND THE MUNROE CENTER FOR THE ARTS

This temporary license agreement (the "License") is entered into as of this 1st day of October, 2008 by and between the Town of Lexington, Massachusetts, a municipal corporation with a mailing address of 1625 Massachusetts Avenue, Lexington, Massachusetts 02420 ("Lexington"), and The Munroe Center for the Arts, a Massachusetts nonprofit organization with a mailing address of 1403 Massachusetts Avenue, Lexington, Massachusetts 02420 (the "Munroe Center").

Whereas, Lexington owns a number of buildings in the town that are not currently being used by Lexington;

Whereas, the town property that is located at 1403 Massachusetts Avenue, Lexington, Massachusetts (the "Premises"), including the building known as the Munroe School (the "Munroe School"), has been used by the Munroe Center for more than twenty (20) years;

Whereas, the Munroe Center is a 501(c)(3) organization that supports and sustains educational, cultural and community enrichment and service programs related to the arts, which programs provide benefits for the residents of Lexington and therefore serve an important public purpose;

Whereas, in order to ensure continued stability, the Munroe Center has requested a long term lease; however, such a lease requires a more formal public bidding process, and pending completion of such process, the parties are entering into this temporary license agreement, in which Lexington wishes to permit the Munroe Center to continue to use the Premises for itself and other Public Arts Purposes Programs.

Whereas, the Munroe Center is willing to assume the responsibilities and comply with the agreements set forth herein for operating and maintaining the Premises and managing the use of the Premises to provide studio space, classes, public performances, community meeting space and other such uses as may be permitted under this License;

Now therefore, in consideration of the foregoing and the mutual promises herein contained, Lexington and Munroe Center hereby agree as follows:

1. Premises; Permitted Uses.

- (a) During the Term (as defined in Section 2 below), the Munroe Center shall be entitled to the use and occupancy of the Premises in accordance with the terms of this License. A plan of the Premises is attached hereto as Exhibit A.
- (b) The Munroe Center and its employees, agents, representatives, and invitees may use the Premises for the following purposes, subject to the terms of this License:
 - (i) Public events, including meetings that are open to the public, staged productions, fundraising and similar events;

- (ii) Office uses;
 - (iii) Classroom instruction and studio uses; and
 - (iv) Other lawful uses as may be permitted by Lexington hereunder.
- (c) Notwithstanding anything set forth herein to the contrary, at no time shall the Premises be used for business or commercial purposes other than those approved by the Board of Selectmen.
- (d) At no time shall alcoholic beverages be served or sold for consumption on the Premises without a license by the Lexington Board of Selectmen.
- (e) The Munroe Center shall make facilities within the Munroe School available for municipal and public service uses, including but not limited to meetings of Lexington's boards and committees, as requested by Lexington and without cost to Lexington, pursuant to a schedule to be arranged from time to time between Lexington and the Munroe Center, upon reasonable advance notice and with reasonable efforts to minimize interference with the Munroe Center programs (collectively, "Municipal Co-Use").
- (f) The Munroe Center has demonstrated, to the satisfaction of Lexington, that it is a civic, charitable, cultural, historical or educational organization. The Munroe Center shall maintain such status throughout the Term.
- (g) The Munroe Center hereby accepts the Premises in its present condition, "as is", without any representations or warranties of any kind.
2. **Term and Termination.** The term of this License (the "Term") shall commence on October 1, 2008 (the "Commencement Date") and, unless sooner terminated, shall terminate on February 1, 2010 (the "Expiration Date"). Notwithstanding anything set forth herein to the contrary, (a) either party hereto may terminate this License for any cause prior to February 1, 2010 upon one-hundred and twenty (120) days written notice to the other party and (b) the Munroe Center may terminate this License immediately in the event of fire or other casualty to the Premises which causes the Munroe School to become unusable.

If no termination notice has been given under the preceding paragraph, the term of this License may be extended by Lexington on a 90 day basis for up to (18) additional months (August 1, 2011) so long as Lexington delivers written notice of each extension to the Munroe Center for the Arts at least ten (10) days before each applicable Expiration Date.

3. **License Fee.** The Munroe Center shall pay to Lexington a fixed fee (the “License Fee”) of \$24,000 per year, payable on the first day of each month in monthly installments of \$2,000.00 (monthly installments for any partial month in the Term shall be paid in advance and prorated).
4. **Hours of Operation.** For the uses permitted hereunder, the Munroe Center and its employees, agents, representatives, and invitees may use the Premises from 7:00 a.m. to 11:00 p.m. daily.
5. **Maintenance, Repair and Cleaning.** The Munroe Center agrees, at its sole cost and expense, to maintain, repair and clean the Premises and to keep the Premises in good order, repair and condition. This obligation shall include but is not limited to:
 - (a) Arranging and paying for the supply of all heat, water, gas and utilities necessary for the operation of the Premises (Lexington shall not be required to furnish to the Munroe Center any facilities or services of any kind whatsoever during the Term; Lexington makes no representation or warranty that existing sources of supply, distribution points or utilities are adequate or sufficient for the Munroe Center’s uses);
 - (b) Maintaining and repairing the Munroe School plumbing, interior walls, floors, and ceilings subject to wear and tear in the ordinary course of use; provided it being acknowledged that the Munroe Center, as short term licensee, is not obligated to make structural repairs or replacements or major capital repairs;
 - (c) Arranging for maintenance services, including but not limited to the cleaning of floors, walls and internal fixtures, rubbish removal, snow removal, pest control and kitchen and bathroom cleaning; and
 - (d) Providing for building safety and security, including but not limited to regular checking and repair or replacement as necessary of locks and other security devices and fire alarm systems; and
 - (e) Landscaping to the entire site except the playground area; and
 - (f) Snow removal from walkways and driveways.

As provided herein, the Munroe Center shall have the right, at its own expense, to make tenant improvements to the Premises, including but not limited to the replacement of floor treatments and appliances as may be desired by the Munroe Center. Any work performed by the Munroe Center during the Term shall be completed in accordance with all necessary permits and approvals and shall require the prior written approval of Lexington in Lexington’s sole discretion.

Any improvements made to the Premises prior to the Commencement Date set forth in Section 2 hereof will be reviewed by the Lexington Building Commissioner's Office upon the commencement of this License, and the Munroe Center will, as necessary, bring all improvements into compliance with applicable rules, regulations, codes and ordinances as soon as practicable; it being acknowledged that the Munroe Center, as short term licensee, is not obligated to make structural repairs or replacements or major capital repairs.

Lexington has the right, but not the responsibility unless specifically provided otherwise herein, to repair, renovate or alter the Premises during the Term. Any such repairs, renovations or alterations shall be done at Lexington's sole cost and expense, and Lexington agrees to work with the Munroe Center to minimize the impact of any such repairs, renovations or alterations on the daily operations of the Munroe Center. The Munroe Center may request a renegotiation of the monthly License Fee if the renovations have a measurable financial impact on the Munroe Center's operations.

Lexington shall be entitled to inspect the Premises periodically during the Term upon reasonable prior notice to the Munroe Center. Lexington agrees to exercise its rights under this paragraph in such a manner as to prevent, or minimize to the extent practicable, any unreasonable interference with the Munroe Center's use of the Premises.

If, in Lexington's reasonable discretion, Lexington determines that the Munroe Center has failed to keep the Premises in an acceptable state of repair, maintenance and cleanliness, Lexington may (a) require the Munroe Center to remedy any health and/or safety issues within ninety (90) days after delivering notice of those issues to the Munroe Center, (b) require the Munroe Center to address any other issues as soon as possible, or (c) perform or cause to be performed such repair, cleaning, maintenance or replacement as Lexington deems necessary, provided that it being acknowledged that the Munroe Center, as short term licensee, is not obligated to make structural repairs or replacements or major capital repairs. The Munroe Center shall reimburse Lexington for the cost of any such repair, cleaning, maintenance or replacement consistent with the foregoing within thirty (30) days of receipt of a written invoice from Lexington.

Notwithstanding anything set forth in this Section 5, the Munroe Center shall not be responsible for the upkeep, repair and/or maintenance of the playground area and the recreation field in the rear of the Premises and the parking lot. Rather, Lexington shall be responsible for this upkeep, repair and maintenance.

6. **Insurance.** The Munroe Center shall carry, throughout the Term and at its sole cost and expense, all of the insurance coverage listed below:
 - (a) *Commercial general liability insurance*, written on an occurrence basis and including contractual liability coverage to cover any liabilities assumed under this License, for bodily or personal injury or death of persons or damage to property on or about the Premises. The amount of such liability insurance shall be not less than Two Million Dollars (\$2,000,000) per occurrence.

- (b) *Worker's compensation insurance* as required by the laws of the Commonwealth of Massachusetts covering persons employed by the Munroe Center.
- (c) During the period of any construction hereunder conducted by the Munroe Center, the Munroe Center shall keep in full force and effect "*Builder's All Risk*" *insurance* against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as Lexington may reasonably require.
- (d) *Business automobile liability insurance* covering owned, non-owned and hired vehicles with a limit for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) per accident.
- (e) The Munroe Center acknowledges that all of its personal property including equipment, inventory, trade fixtures, and other personal property of the Munroe Center, or any personal property of the Public Arts Purposes Programs operating thereunder, shall be at the sole risk and expense of the Munroe Center or the Public Arts Purposes Programs. Lexington shall have no responsibility for such property.

Lexington shall carry property insurance for the Munroe School building during the Term.

The minimum coverage stated in this Section 6 may be reconsidered if such an adjustment is reasonably necessary to reflect inflation or changes in the nature or degree of risks insured or to protect against judgments from time to time being awarded in Massachusetts for injury and death.

All insurance provided for in this Section 6 shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility licensed and doing business in Massachusetts and having a so-called Best's Rating of "A" or better, or, if such rating is no longer issued, an equal or better rating by a successor insurance carrier rating service reasonably acceptable to Lexington. All such insurance shall name Lexington as an additional insured. Any deductible amounts under any insurance policies required hereunder shall not exceed Ten Thousand Dollars (\$10,000). Upon the execution of this License, and thereafter not less than twenty (20) days prior to the expiration dates from time to time of the policies required pursuant to this Section 6, binders of such insurance or, upon written request of Lexington, duplicate originals of the policies, shall be delivered by the Munroe Center to Lexington. In addition, evidence of the payment of all premiums of such policies will be delivered to Lexington. All commercial general liability and casualty policies maintained by the Munroe Center will be written as primary policies, not contributing with and not in excess of coverage that Lexington may carry. If the Munroe Center fails to maintain any of the insurance required hereunder, which failure continues for ten (10) days after Lexington gives notice to the Munroe Center of such failure, then Lexington, at its election, may procure such insurance as may be necessary to comply with the above requirements (but shall not be obligated to procure the same), and the Munroe Center shall repay to Lexington the cost of such insurance.

7. **Indemnification.** The Munroe Center hereby indemnifies and holds Lexington harmless from any injury, loss, claim or damage to any person or property resulting from (a) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof during the Term and (b) any material failure on the part of the Munroe Center to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this License on its part to be performed or complied with, except that the Munroe Center will not be required to indemnify and hold harmless Lexington from any injury, loss, claim or damage that is caused by the gross negligence or willful misconduct of Lexington (but only to the extent that such loss, claim or damage is caused by Lexington's gross negligence or willful misconduct).

If Lexington obtains separate counsel in enforcing its rights hereunder due to the requirements of M.G.L. C. 268A or due to reasonable concerns that its interests and that of the Munroe Center may be adverse or that counsel provided by the Munroe Center may have a conflict in interest or is not providing effective representation of Lexington, then the reasonable expenses of such separate counsel shall be at the Munroe Center's expense.

The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to Lexington which would exist at common law or under any other provision of this License, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Section 7. This License is made on the express condition that Lexington shall not be liable for, or suffer loss by reason of, any damage or injury to any property, fixtures, buildings or other improvements or to any person or persons at any time on the Premises, specifically including any damage or injury related to the Premises, unless caused by the gross negligence or willful misconduct of Lexington.

The provisions of this Section 7 shall survive the termination or expiration of this License.

8. **Other Conditions.**

- (a) The Munroe Center shall provide Lexington with a copy of its annual financial report no later than ninety (90) days after the close of its fiscal year on December 31. The Munroe Center shall also provide annually, on July 1st of each year of the Term, as extended, copies of all sublicenses or assignments, if any, permitted hereunder.
- (b) The Munroe Center shall pay all real estate taxes or betterment assessments assessed against the Premises during the Term and shall hold harmless Lexington from any liability for any such amounts.
- (c) Subject to ordinary wear and tear, the Munroe Center agrees not to harm the Premises, or commit or permit waste, or create any nuisance or disturbance, or

make any use of the Premises other than the permitted uses as set forth in Section 1 hereof.

- (d) During the Term, the Munroe Center shall comply in all material respects, at its own cost and expense, with (a) all applicable laws, by-laws, ordinances, codes, rules, regulations, orders, and other lawful requirements of the governmental bodies having jurisdiction over the Premises or the Munroe Center, including without limitation, the Zoning Bylaw and other ordinances of Lexington, and (b) the requirements of all policies of public liability, fire and all other types of insurance at any time in force with respect to the Premises.
9. **Force Majeure.** In no event shall Lexington be liable to the Munroe Center for any indirect or consequential damages to the Munroe Center if the Munroe Center is delayed in or prevented from using the Premises as permitted under this License by reason of any cause beyond Lexington's reasonable control, including, without limitation, acts of God, strikes, lockouts, labor troubles, failure of power or other utility services, riots, insurrection, war, or the requirements of any regulations of general application (herein "Force Majeure Events"). The failure of either party hereto to perform its obligations, covenants and agreements hereunder shall be excused if the party failing to perform is unable to so perform by reason of Force Majeure Events, provided, however, the Munroe Center shall not be excused from any monetary obligations hereunder by reason of any Force Majeure Events unless such Force Majeure Events result in the Munroe Center being prevented from using all or a material part of the Premises as permitted under this License, and provided further, however, that in each such instance of inability of either party to perform, the non-performing party shall exercise due diligence to eliminate the cause of such inability to perform, to secure alternate sources of supply and the like.
10. **Non-Assignment.** The Munroe Center shall not assign or otherwise transfer this License or any interest in this License or the Premises without the express written consent of Lexington, which consent may be withheld in Lexington's sole discretion.
11. **Surrender and Holdover.** The Munroe Center shall on the last day of the Term, or upon any earlier termination of this License, (a) quit and peacefully surrender and deliver up the Premises to the possession and use of Lexington without delay and in good order, condition and repair, including any fixtures and/or improvements installed by the Munroe Center therein. The Premises shall be surrendered free and clear of all liens and encumbrances other than those existing on the Commencement Date and those permitted under this License or created or suffered by Lexington. Upon or at any time after the expiration or earlier termination of this License, Lexington shall have, hold and enjoy the Premises and the right to receive all income from the same.

The Munroe Center shall remove from the Premises all personal property within thirty (30) days after the termination of this License and shall repair at the Munroe Center's sole cost any damage to the Premises caused by such removal, unless Lexington permits such property to remain.

If the Munroe Center or any party claiming by, through or under the Munroe Center retains possession of the Premises or any part thereof after the expiration or earlier termination of this License, then Lexington may, at its option, serve written notice upon the Munroe Center that such holding over constitutes (i) an Event of Default under the License, or (ii) a month-to-month tenancy, upon the terms and conditions set forth in this License, or (iii) the creation of a tenancy-at-sufferance, in any case upon the terms and conditions set forth in this License. The Munroe Center shall also pay to Lexington all damages actually sustained by Lexington resulting from retention of possession by the Munroe Center. The provisions of this paragraph shall not constitute a waiver by Lexington of any right of re-entry as set forth in this License, nor shall receipt of any License Fee or any other act in apparent affirmation of the Munroe Center's holdover operate as a waiver of Lexington's right to terminate this License for a breach of any of the terms, covenants, or obligations herein on the Munroe Center's part to be performed. Any personal property or equipment of the Munroe Center not removed within thirty (30) days following the expiration of this License shall, at Lexington's option, become the property of Lexington.

12. **Default.** Each of the following events shall be deemed an "Event of Default" hereunder:

- (a) If the Munroe Center shall fail to pay, as and when due, any payment of the License Fee or other sums payable under this License and such failure shall continue for a period of fifteen (15) days after notice from Lexington to the Munroe Center;
- (b) If the Munroe Center shall fail to perform or comply with any of the other agreements, terms, covenants or conditions in this License for a period of thirty (30) days after notice from Lexington to the Munroe Center specifying the items in default, or in the case of a default or a contingency which cannot with due diligence be cured within such thirty (30) day period, for such additional time reasonably necessary provided the Munroe Center commences to cure the same within such 30-day period and thereafter prosecutes the curing of such default with diligence;
- (c) If the Munroe Center shall initiate the appointment of a receiver or the Munroe Center shall make an assignment for the benefit of creditors, or the Munroe Center shall initiate voluntary proceedings under any bankruptcy or insolvency law or law for the relief of debtors, or if there shall be initiated against the Munroe Center any such proceedings which are not dismissed or stayed on appeal or otherwise within ninety (90) days, or if, within ninety (90) days after the expiration of any such stay, such appointment shall not be vacated or stayed on appeal;
- (d) If the Munroe Center vacates or abandons the Premises for a period of more than forty-five (45) consecutive days; *provided, however,* that the Munroe Center shall not be deemed to have vacated or abandoned the Premises with respect to any period during which all or any portion of the Premises may be vacant as a result

of or in connection with work being done to repair or restore the Premises in accordance with the terms hereof;

- (e) The Munroe Center makes any assignment or transfer of its rights hereunder in violation of this License; or
- (f) The Munroe Center violates any term of the License beyond the applicable grace and cure periods.

13. **Default Remedies.**

- (a) **Termination.** Upon an Event of Default, Lexington at any time thereafter may give written notice to the Munroe Center specifying such Event or Events of Default and stating that this License and the Term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least ten (10) days after the giving of such notice. Upon the date specified in such notice, this License and the Term hereby demised and all rights of the Munroe Center under this License shall expire and terminate (unless prior to the date specified for termination the Event or Events of Default shall have been cured, in which case this License shall remain in full force and effect), and the Munroe Center shall remain liable as hereinafter provided and all improvements shall become the property of Lexington without the necessity of any deed or conveyance from the Munroe Center to Lexington. The Munroe Center agrees upon request of Lexington to immediately execute and deliver to Lexington any deeds, releases or other documents deemed necessary by Lexington to evidence the vesting in Lexington of the ownership of all improvements. Upon such termination, Lexington may re-enter the Premises and dispossess the Munroe Center and anyone claiming by, through or under the Munroe Center by summary proceedings or other lawful process.
- (b) **Lexington's Right to Perform Covenants.**
 - (i) Upon an Event of Default, Lexington may, but shall be under no obligation to, cure such default. Lexington may enter upon the Premises (after five (5) days' written notice to the Munroe Center except in the event of emergency) for any such purpose and take all such action thereon as may be necessary. Lexington shall not be liable for inconvenience, annoyance, disturbance or other damage to the Munroe Center or any operator or occupant of the Premises by reason of making such repairs or the performance of any such work or on account of bringing materials, tools, supplies and equipment onto the Premises during the course thereof, and the obligations of the Munroe Center under this License shall not be affected thereby.
 - (ii) All reasonable sums so paid by Lexington and all reasonable costs and expenses incurred by Lexington, including reasonable attorneys' fees and expenses, in connection with the performance of any such act shall be paid

by the Munroe Center to Lexington within thirty (30) days of receipt of a written invoice from Lexington therefor. If Lexington shall exercise its rights under this Section 13(b) to cure a default of the Munroe Center, the Munroe Center shall not be relieved from the obligation to make such payment or perform such act in the future, and Lexington shall be entitled to exercise any remedy contained in this License if the Munroe Center shall fail to pay such obligation to Lexington. All costs incurred by Lexington hereunder shall be presumed to be reasonable in the absence of a showing of bad faith, clear error, or fraud.

- (c) Injunctive Relief. In the event of any breach or threatened breach by the Munroe Center of any of the agreements, terms, covenants or conditions contained in this License, the Munroe Center shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies that were not provided for in this License.
- (d) Remedies Cumulative. Each right and remedy provided for in this License shall be cumulative and shall be in addition to every other right or remedy provided for in this License or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lexington of any one or more of the rights or remedies provided for in this License or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lexington of any or all other rights or remedies provided for in this License or now or hereafter existing at law or in equity or by statute or otherwise.

14. **Notices**. Any notice required or permitted hereunder shall be in writing and shall be hand delivered or sent by registered or certified mail, postage prepaid, return receipt requested, and addressed:

if to Lexington, to:

Carl F. Valente
Town Manager
Town of Lexington
1625 Massachusetts Avenue
Lexington, Massachusetts 02420

and if to the Munroe School to:

Christian Herold, Director
Munroe Center for the Arts
1403 Massachusetts Avenue
Lexington, Massachusetts 02420

15. **Locks.** The Munroe Center will not change the locks on the Premises nor install any additional locks without, in each instance, first securing the prior written consent of Lexington, not to be unreasonably withheld, provided a set of keys shall be given to Lexington for all such locks.
16. **Environmental.** “Environmental Laws” means, collectively, any federal, state, or local law, rule or regulation (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time) pertaining to environmental regulations, contamination, clean-up or disclosures, and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. (“CERCLA”); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. (“RCRA”); the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq. (“SARA”); the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq. (“TSCA”); the Hazardous Materials Transportation Act, 49 U.S.C. Appx. §§ 1801 et seq.; the Massachusetts Hazardous Waste Management Act, Mass. Gen. L. c. 21C §§ 1 et seq.; the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass. Gen. L. c. 21E §§ 1 et seq.; the Massachusetts Toxic Use Reduction Act, Mass. Gen. L. c. 21I §§ 1 et seq.; the Underground Storage Tank Petroleum Product Cleanup Fund, Mass. Gen. L. c. 21J §§ 1 et seq.; or any other applicable federal or state statute or city or county ordinance regulating the generation, storage, containment or disposal of any Hazardous Material (as defined below) or providing for the protection, preservation or enhancement of the natural environment, any rules or regulations promulgated pursuant to any of the foregoing statutes or ordinances, including but not limited to laws relating to groundwater and surface water pollution, air pollution, transportation, storage and disposal of oil and hazardous wastes, substances and materials, stormwater drainage, and underground and above ground storage tanks; and any amendments, modifications or supplements of any such statutes, ordinances, rules and regulations.

The Munroe Center hereby represents, warrants and covenants that, except as may be permitted by and only in accordance with Environmental Laws, the Munroe Center shall not allow any Hazardous Materials (as defined below) to exist or be stored, located, discharged, possessed, managed, processed, or otherwise handled on the Premises, and shall strictly comply with all Environmental Laws affecting the Premises. For purposes of this License, “Hazardous Materials” shall mean, but shall not be limited to, any oil, petroleum product and any hazardous or toxic waste or substance, any substance which because of its quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitutes or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including without limitation any asbestos (whether or not friable) and any asbestos-containing materials, lead paint, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive wastes, or any other similar materials which are included under or regulated by any Environmental Law.

The agreements, representations and warranties of the Munroe Center in this section shall survive the expiration or earlier termination of this License.

17. **Miscellaneous.**

- (a) No Waiver. The failure of either Lexington or the Munroe Center to insist upon the strict performance of any provision of this License shall not constitute a waiver of compliance with the remaining provisions hereof
- (b) Sole Agreement. This License shall constitute the only agreement between Lexington and the Munroe Center relative to the use of the Premises, and no oral statements and no prior written matter not specifically incorporated herein shall be of any force and effect. In entering into this License, the Munroe Center relies solely upon the representations and agreements contained herein.
- (c) Amendments. This License may be amended only by written agreement of both Lexington and the Munroe Center.
- (d) Governing Law. This License shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.
- (e) Severability. If any term or provision of this License or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License shall be valid and be enforced to the fullest extent permitted by law.
- (f) Successors and Assigns. The covenants and agreements herein contained shall bind and inure to the benefit of Lexington, its successors and assigns, and the Munroe Center, its successors and assigns.
- (g) Lexington Liability. Anything contained in this License to the contrary notwithstanding, but without limitation of the Munroe Center's equitable rights and remedies, Lexington's liability under this License shall be enforceable only out of Lexington's interest in the Premises, and there shall be no other recourse against, or right to seek a deficiency judgment against, Lexington, nor shall there be any personal liability on the part of Lexington or any member of its Board of Selectmen, or any officer or employee of Lexington, with respect to any obligations to be performed hereunder. Without limitation of the foregoing, Lexington shall not be liable for any loss, damage or injury of whatever kind caused by, resulting from, or in connection with (i) the supply or interruption of water, gas, electric current, oil or any other utilities to the Premises, (ii) water, rain or snow which may leak or flow from any street, utility line or subsurface area or from any part of the Premises, or (iii) other leakage from pipes, appliances, sewer or plumbing works therein or from any other place; provided if any of the foregoing render the premises unusable for its intended uses for more than three (3) consecutive days, there shall be a pro rata abatement of the License

Fee payable hereunder, until the condition is corrected. In no event shall Lexington be liable to the Munroe Center for any indirect, special or consequential or punitive damages or loss of profits or business income arising out of or in connection with this License.

- (h) Captions, Exhibits, Gender, Etc. The captions of this License are for convenience and reference only and in no way define, limit or describe the scope or intent of this License nor in any way affect this License. The exhibits to this License are incorporated into this License and are a part hereof. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another.
- (i) Time of the Essence. Time shall be of the essence hereof.
- (j) Request for Consent. The Munroe Center shall reimburse Lexington for its reasonable attorneys' fees and out-of-pocket expenses incurred in connection with any request by the Munroe Center for Lexington's consent hereunder, provided, however, that Lexington shall provide the Munroe Center with an estimate of said fees and/or expenses for the Munroe Center's review and approval prior to incurring such costs.
- (k) Prevailing Party. In any litigation between the parties arising out of this License, or in connection with any other actions taken or notices delivered in relation to a default by any party to this License, the non-prevailing party shall pay to the prevailing party the prevailing party's reasonable attorneys' fees and costs incurred in connection with the enforcement of the terms of this License.
- (l) Brokers. Each of Lexington and the Munroe Center each warrants and represents to the other that it has had no dealings or negotiations with any broker or agent in connection with this License. Each agrees to pay, and shall hold the other harmless and indemnified from and against any and all costs, expenses (including without limitation counsel fees) or liability for any compensation, commissions and charges claimed by any broker or agent resulting from any such dealings by the indemnifying party with respect to this License or the negotiation thereof
- (m) Covenants Running with the Land. The Munroe Center intends, declares, and covenants, on behalf of itself and all future holders of the Munroe Center's interest hereunder, that this License and the covenants and restrictions set forth in this License regulating and restricting the use, occupancy, and transfer of the Premises (a) shall be and are covenants running with the Premises, encumbering the Premises for the term of this License, binding upon the Munroe Center and the Munroe Center's successors-in-interest; (b) are not merely personal covenants of the Munroe Center; and (c) the benefits shall inure to Lexington.
- (n) Entire Agreement. This License, including all attached exhibits, contains the entire agreement between Lexington and the Munroe Center with respect to its subject matter. Except for those which are specifically set forth in this License,

no representations, warranties or agreements have been made by Lexington or the Munroe Center to one another with respect to this License.

- (o) Cumulative Rights. Except as expressly limited by the terms of this License, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.
- (p) Counterparts. This Agreement may be executed in counterparts and all such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.
- (q) Intent and Effect. The terms and conditions of this License have been freely accepted by the Munroe Center and Lexington.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of this
_____ day of _____, 2009.

The Munroe Center for the Arts

Town of Lexington

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Per BOS vote: _____

EXHIBIT A

Premises