

See 12/11/07 min.

STATE OF NORTH CAROLINA

LEASE

COUNTY OF MECKLENBURG

COPY

THIS LEASE is made and entered into as of this 1st day of February, 2008, by and between The Town of Davidson, a North Carolina municipal corporation (hereinafter "Landlord") and Davison Community Players, a North Carolina non profit corporation (hereinafter "Tenant").

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, including, without limitation, the covenant to pay rent and other good and valuable consideration, Landlord and Tenant hereby agree as follows:

1. Premises. Landlord Leases to Tenant and Tenant Leases from Landlord that certain parcel of real estate located at 307 Armour Street, Davidson, North Carolina 28036, which is described as Lots 1 and 2 as shown on the map recorded in Map Book 47, Page 289, and Lot 3 as shown on a map recorded in Book 230 Page 52, in the Mecklenburg County Registry (the "Premises").
2. Term. The initial term of this Lease shall be for a period of ten (10) years, commencing on the 1st day of February, 2008 with the option to extend the term for two terms of five (5) years each. In order to exercise each option to extend the term Tenant shall deliver written notice of such exercise to Landlord no later than six (6) months prior to the end of the current term.
3. Rent and Other Sums Due. Tenant shall pay to Landlord as rent (a) the sum of Six Thousand Two Hundred Fifty-three and 58/100ths Dollars (\$6,253.58) per quarter commencing February 1, 2008 and running through October 31, 2008 and (b) the sum of Six Thousand Five Hundred Forty-six and 88/100ths Dollars (\$6,546.88) per quarter from November 1, 2008 through January 31, 2013. Rent shall be payable quarterly in advance commencing on the first day of February, 2008 and continuing on the first day of May, August, November and February thereafter throughout the term of this Lease. Commencing February 1, 2013 and continuing on February 1, 2018 and February 1, 2023, rent payments during each five year increment shall increase by an amount equal to five percent (5%) of the rent in effect for the prior five year increment. All rent payable by Tenant shall be without previous demand, set off or deduction. All rent shall be paid to Landlord at the address to which notices to Landlord are given as set forth in the paragraph entitled "Notices" hereunder. In addition to such remedies as may be provided under the default provisions of this Lease, Landlord shall be entitled to a late charge of five percent (5%) of the amount of the monthly rent if not received within fifteen days after the due date.
4. Tenant's Acceptance; Maintenance and Repair. Upon occupancy of the Premises, Tenant represents to the Landlord that it has examined and inspected the same, finds the Premises to be as represented by the Landlord and satisfactory for Tenant's

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7. **Destruction.** If during the term of this Lease the Premises are totally destroyed from any cause, unless Landlord and Tenant agree otherwise, all insurance proceeds shall be delivered to Landlord and this Lease shall terminate as of the date of such damage or destruction. The insurance proceeds resulting from such damage or

destruction shall be applied as follows: (1.) payment of the balance due on any and all debt on the Premises, (2.) payment to Landlord of an amount equal to the difference between Six Hundred Twenty-five Thousand Dollars (\$625,000.00) and the amount of the insurance proceeds used to pay the debt on the Premises, (3) payment to Tenant of the cost of the Tenant Improvements up to a maximum amount of One Hundred Sixty thousand Dollars (\$160,000.00), and (4) the balance shall be paid to Landlord. If during the term of this Lease the Premises are partially damaged ("Partial Damage Event") rendering the Premises partially inaccessible or unusable, Landlord shall elect by written notice to Tenant within thirty (30) days after such Partial Damage Event to either repair the damage to the Premises or to terminate this Lease. If Landlord elects to repair the damage, all insurance proceeds shall be paid to Landlord and Landlord shall use all reasonable, good faith efforts to repair such damage as soon as possible. If Landlord elects to terminate the Lease, such termination shall be effective as of the date of the Partial Damage Event and Landlord shall pay to Tenant an amount equal to \$160,000.00 multiplied by a fraction, the numerator of which is the number of full months remaining in the Lease Term as of the date of termination and the denominator of which is 231. Landlord's obligation to make such payment to Tenant shall be subject to receipt by Landlord of reasonable evidence to support the payment by Tenant of at least One Hundred Sixty Thousand Dollars (\$160,000.00) for the Tenant Improvements.

8. Insurance: Waiver of Subrogation. Throughout the term of the Lease, Tenant at its sole cost and expense shall keep for the mutual benefit of Landlord and Tenant (with appropriate cross-liability endorsements so showing) with companies acceptable to Landlord, public liability with combined single limited coverage of at least \$1,000,000.00, which policies insure against all liability of Tenant, Tenant's authorized representatives, and anyone for whom Tenant is responsible arising out of or in connection with Tenant's use of the Premises. Tenant shall deliver to Landlord copies of satisfactory certificates for the aforesaid policies. Throughout the term of the Lease, Landlord at its sole cost and expense shall keep and maintain property damage insurance for the Premises in amounts satisfactory to Landlord, but which are intended to include the value of the Tenant Improvements. Landlord releases and waives unto Tenant, its successors and assigns, and Tenant releases and waives unto Landlord, its successors and assigns, all rights to claim damages for any injury, loss, cost, or damage to persons or to the Premises which is occasioned by fire, explosion, accident, occurrence or condition in, on or about the Premises or any other casualty, as long as the amount of which injury, loss, cost or damage has been paid either to Landlord, Tenant, or any other person, firm or corporation, under the terms of any extended coverage, public liability or other policy of insurance, to the extent such releases or waivers are permitted under applicable law. All policies of insurance carried or maintained pursuant to this Lease shall contain or be endorsed to contain a provision whereby the insurer waives all rights of subrogation against either Tenant or Landlord provided that such a provision shall be obtainable. If insurance policies with such waiver of subrogation provisions shall not be obtainable or shall be obtainable only at a premium over that chargeable without such waiver, the parties seeking such policy shall pay such additional premium. If any provision relating to a waiver of subrogation contained herein shall contravene any present or future law with respect to exculpatory agreements, the liability of the party affected shall be deemed not released but shall be secondary to the other's insurer.

9. Condemnation. If, during the term of this Lease there is any taking of all or any part of the Premises rendering the Premises unusable for its intended purpose or otherwise resulting in a substantial economic deprivation to Tenant, this Lease shall terminate at the election of Landlord or Tenant.

10. Indemnity. Tenant shall hold Landlord harmless from all liability arising out of any damage or injury to any person or property occurring in, on, or about the demised Premises, except that Landlord shall be liable to Tenant for damage resulting from the acts or omissions of Landlord or its authorized representatives.

11. Assignment and Subletting. Tenant may not assign or encumber this Lease and may not sublet any part or all of the demised Premises without the prior written consent of Landlord, which may be withheld in Landlord's absolute discretion.

12. Default. The occurrence of any one of the following shall constitute a default by Tenant: a) failure to pay rent when due; b) abandonment or vacation of the Premises (it being agreed that absence from the Premises for fourteen (14) consecutive days after rent has become delinquent or the removal of substantially all of Tenant's possessions will create a conclusive presumption of abandonment); c) declaration of Tenant as incompetent or bankrupt, or an assignment made voluntarily by Tenant for the benefit of his creditors, or the appointment of a receiver, guardian or trustee for Tenant's property; or d) failure to perform any other provision of this Lease if the failure to perform is not cured within ten (10) days after notice thereof has been given to Tenant.

Notice given under "d" above shall specify the alleged default and the applicable Lease provision, and shall further demand that Tenant perform the affected provision of the Lease within the aforesaid ten (10) day cure period, or quit the Premises. No such notice shall be deemed a forfeiture or termination of this Lease unless Landlord so elects in the notice.

13. Landlord's Remedies. Landlord shall have the following remedies if Tenant commits a default: (a) Landlord shall have the right to terminate this Lease and Tenant's rights to possession of the demised Premises at any time (without notice or demand to vacate the demised Premises, which notice or demand Tenant hereby waives), and reenter the demised Premises, and (b) upon termination, Landlord shall have the right to pursue its remedies at law or in equity to recover of Tenant all amounts of rent then due or thereafter accruing and such other damages as are caused by Tenant's default.

14. Quiet Enjoyment. Provided Tenant performs all his covenants, agreements and obligations hereunder, Landlord will warrant and defend Tenant in the peaceful and quiet enjoyment of the Premises, but only against the lawful claims of all persons claiming by, through, or under Landlord.

15. Right of Entry. Landlord and his authorized representatives shall have the right to enter the demised Premises at all reasonable times and with reasonable notice to inspect the demised Premises and to access the closets containing the sewer pump and suction apparatus serving the entire Building and/or the second level office located above the Premises.

16. Property of Tenant. All property placed on the demised Premises by, at the direction of or with the consent of the Tenant, his agents, licensees or invitees, shall be at the risk of the Tenant or the owner thereof and Landlord shall not be liable for any loss of or damage to said property resulting from any cause whatsoever.

17. Surrender of Premises. Tenant will deliver up the demised Premises at the end of the term or upon termination hereof, in good order and condition, reasonable wear and tear excepted.

18. Waiver. The waiver by a Landlord of any breach of any covenant or agreement herein contained shall not be a waiver of any other default concerning the same or any other covenant or agreement herein contained. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; but shall constitute only a waiver of timely payment for the particular rent payment involved.

19. Notices. All notices provided for in this Lease agreement shall be in writing and shall be deemed to be given when delivered by hand or sent by registered or certified mail, return receipt requested, addressed: a) to Landlord at P. O. Box 579, Davidson, North Carolina 28036, Attention Town Manager, and b) to Tenant at P. O. Box 76, Davidson, North Carolina 28036, Attention Executive Director. Either party hereto may from time to time, by notice as herein provided, designate a different address to which notices to it shall be sent.

20. Subordination. Tenant agrees that this Lease will either be subordinate or superior to any mortgage heretofore or hereafter executed by Landlord covering the Premises, depending on the requirements of such mortgagee. Tenant on request will execute such agreement making this Lease superior or subordinate as Landlord's mortgagee may request, and will agree to attorn to said mortgagee providing the mortgagee agrees not to disturb Tenant's possession and quiet enjoyment hereunder. Tenant agrees to execute within ten (10) days of a request therefor, and estoppel certificates in such standard form as the Landlord or mortgagee may request.

21. Applicable Law. This Lease shall be governed by the laws of the State of North Carolina.

22. Miscellaneous. Headings of paragraphs are for convenience only and shall not be considered in construing the meanings of the contents of such paragraph. The invalidity of any portion of this Lease shall not have any effect on the balance hereof. Should Landlord institute any legal proceedings against Tenant for breach of any provision herein contained, and prevail in such action, Tenant shall in addition be liable for the costs and expenses of Landlord, including his reasonable attorneys' fees. This agreement supersedes and cancels all prior negotiations between the parties, and changes shall be in writing signed by the party affected by such change. This agreement shall be binding upon the respective parties hereto, and upon their heirs, executors, successors and assigns. This Lease may not be recorded by either party without the others prior written consent, but the parties agree to execute a memorandum hereof for recording purposes at the time the initial term is set to commence. The singular shall include the plural, and the

masculine, feminine or neuter includes the other. Unless expressly provided in this Lease that consent or approval may be made in a party's sole discretion, any consent or approval of a party required under this Lease shall not be unreasonably withheld or delayed.

23. Option to Purchase. Landlord grants to Tenant the right and option to purchase the Premises at any time during the term of the Lease. To exercise this right Tenant shall deliver notice thereof to Landlord during the term of the Lease which shall state a closing date no later than sixty (60) days after the date of the notice. The terms of sale are as follows:

(i) The purchase price for the Premises shall be the fair market value of the Premises as determined by an appraisal performed by an appraiser acceptable to Landlord and Tenant. The Tenant shall pay for the appraisal. If they cannot agree on an appraiser, then each of them shall obtain an appraisal from an MAI designated appraiser and the purchase price shall be the average of the two appraisals. Each party shall pay its appraiser. Notwithstanding the foregoing the purchase price shall be not less than the balance due on the BB&T Loan. The Tenant shall receive a credit toward the payment of the purchase price equal to \$160,000.00 multiplied by a fraction, the numerator of which is the number of full months remaining in the lease term as of the date of termination and the denominator of which is 231.

(ii) Landlord shall deliver marketable and insurable title to the Premises by means of a Special (Limited) Warranty Deed subject to those exceptions to title that existed as of the date that Landlord acquired title to the Property.

(iii) Tenant shall pay to landlord at or prior to the closing all rent and other sums due pursuant to this Lease.

(iv) Closing costs shall be allocated in accordance with the normal practice for real estate transactions of this nature in Mecklenburg County, North Carolina.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

LANDLORD:

TOWN OF DAVIDSON

By 
Leamon B. Brice, Town Manger

TENANT:

DAVIDSON COMMUNITY PLAYERS

By 
Cynthia P. Rice, Executive Director
CPR