

DOCKET NO.: NNH-CV24-6142035-S	:	SUPERIOR COURT
	:	
JOAN ARICO	:	
	:	
<i>Plaintiff,</i>	:	J.D. OF NEW HAVEN
	:	
v.	:	AT NEW HAVEN
	:	
LANDMARK COMMUNITY THEATER, INC. &	:	
TOWN OF THOMASTON	:	
	:	
<i>Defendants.</i>	:	AUGUST 12, 2025

**MEMORANDUM OF LAW IN SUPPORT OF TOWN OF THOMASTON’S  
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Practice Book §§ 17-44, *et seq.*, the defendant, the Town of Thomaston (“Thomaston” or “Defendant”) hereby moves this Court for summary judgment as to the sole count against it, sounding in negligence, in the plaintiff, Joan Arico’s (“Plaintiff”) complaint dated February 22, 2024. Thomaston cannot be held liable because Thomaston did not owe Plaintiff a duty of care.

**I. PROCEDURAL HISTORY AND BACKGROUND**

The plaintiff, Joan Arico, brings this premises liability action alleging that on December 11, 2022, she was caused to trip and fall “on a step which was covered causing the plaintiff to come into violent contact with the ground below.” (the “Incident”). See, Complaint, Second Count, ¶ 5.

The second count of the complaint alleges that Thomaston owned, possessed, operated, maintained, managed and/or controlled the property located at 158 Main Street in Thomaston, Connecticut, known as the Thomaston Opera House (the “Premises”) at the time of the Incident and that Thomaston’s negligence caused the Incident. *Id.*, at ¶¶ 2, 6. The first count makes the same allegations against Landmark Community Theater, Inc. (“Landmark”). *Id.*, at First Count, ¶¶ 1, 4. In its answer to the complaint, Thomaston admitted to owning the premises at the time of

the Incident but denied that it possessed, operated, maintained, managed, and/or controlled the Premises. See, Defendants' Answer and Special Defenses to Complaint, Second Count, ¶ 2. Landmark denied ownership of the Premises and admitted that it possessed, operated, maintained, managed, and/or controlled the Premises at the time of the Incident. *Id.*, at First Count, ¶ 1.

The plaintiff makes the following specific allegations of negligence against both Landmark and Thomaston.

The aforementioned incident was caused by the negligence of the defendant, acting through one or more of its agents, servants and/or employees in one or more of the following ways: in that it/they

- a. Knew or should have known of the covered step that caused the plaintiff to fall and failed to take reasonable measures to make the premises safe;
- b. Failed to timely and reasonably inspect the premises for defects including the covered step;
- c. Failed to place signage or other visible warnings to alert lawfully present persons, including the plaintiff, of the covered step;
- d. Failed to provide any visual cue or reflective material so as to alert those lawfully present of the covered step;
- e. Failed to verbally warn the plaintiff and other lawfully present persons of the presence of the covered step;
- f. Failed to block off or barricade that portion of the premise that contained the covered step;
- g. Failed to timely or sufficiently fix, repair or change the area containing the covered step so as to make it safe for those walking in the area of the same time.

*Id.*, at First Count, ¶ 4; Second Count, ¶ 6.

Thomaston now moves for summary judgment as to the allegations in the plaintiff's complaint because Thomaston did not owe the plaintiff a duty of care.

## **II. LEGAL STANDARD**

Practice Book § 17-49 provides that summary judgment "shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (Internal quotation marks omitted.) "The motion for summary judgment is designed to eliminate the delay

and expense of litigating an issue where there is no real issue to be tried.” *Wilson v. New Haven*, 213 Conn. 277, 279 (1989).

“The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law.” (Internal quotation marks omitted.) *Rompney v. Safeco Ins. Co. of Am.*, 310 Conn. 304, 312 (2013). Once that burden is met, however:

the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court . . . .

(Internal quotation marks omitted.) *Allstate Ins. Co. v. Barron*, 269 Conn. 394, 405-06 (2004).

**“[T]he party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . A material fact . . . [is] a fact which will make a difference in the result of the case.”** (Emphasis added; internal quotation marks omitted.) *Rompney v. Safeco Ins. Co. of Am.*, supra, 312-13.

### **III. ARGUMENT**

The undisputed facts show that Thomaston did not owe the plaintiff a duty of care. Accordingly, the court should grant the motion for summary judgment.

#### **A. Thomaston did not owe plaintiff a duty of care.**

##### **1. Applicable Law.**

“The essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury.” (Internal quotation marks omitted.) *Sturm v. Harb Development, LLC*, 298 Conn. 124, 139 (2010). “[T]he issue of whether a defendant owes a duty of care is an appropriate matter for summary judgment because the question is one of law.” (Internal quotation marks omitted.) *Mozeleski v. Thomas*, 76 Conn. App. 287, 290, cert. denied,

264 Conn. 904 (2003). “The existence of a duty is a question of law and only if such a duty is found to exist does the trier of fact then determine whether the defendant violated that duty in the particular situation at hand.” (Internal quotation marks omitted.) *Neuhaus v. Decholnoky*, 280 Conn. 190, 217 (2006).

If a plaintiff’s allegations stem from an injury caused by a dangerous condition on the premises, **liability is dependent on possession and control** of the dangerous premises. *See Sweeney v. Friends of Hammonasset*, 140 Conn. App. 40, 49 (2013). “Liability for injuries caused by defective premises . . . does not depend on who holds legal title, but rather on who has possession and control of the property.” (Internal quotation marks omitted.) *Alfano v. Randy's Wooster St. Pizza Shop II, Inc.*, 90 Conn. App. 766. (2005).

The law is clear that [a] possessor of land has a duty to an invitee to reasonably inspect and maintain the premises in order to render them reasonably safe. . . . In addition, the possessor of land must warn an invitee of dangers that the invitee could not reasonably be expected to discover.

(Internal quotation marks omitted.) *Mills v. The Solution, LLC*, 138 Conn. App. 40, 59 (2012), cert denied, 307 Conn. 928 (2012).

The Connecticut Supreme Court has defined control as “the power or authority to manage, superintend, direct or oversee.” (Internal quotation marks omitted.) *Alderman v. Hanover Ins. Group*, 169 Conn. 603, 606 (1975). Thus, one who lacks possession and control over the premises cannot be said to have a duty to a plaintiff allegedly injured by a defect on the premises. Connecticut courts have reached this conclusion repeatedly. *See, e.g., Rose v. Wintonbury Realty, LLC*, No. HHD-CV-15-6062576S, 2017 WL 961695 at \*3 (Conn. Super. Ct. Feb. 8, 2017) (granting summary judgment for the defendant as the defendant met its burden of showing that another entity possessed, controlled, and maintained the parking lot at issue); *Colon v. Autozone Ne., Inc.*, 148 Conn. App. 435, 439–40 (2014) (affirming the trial court’s order granting summary

judgment for the defendant, finding that the defendant was not in control or possession of the parking lot and owed no duty of care to the plaintiff); *Sweeney v. Friends of Hammonasset*, supra, 140 Conn. App. 50-51 (granting summary judgement where the defendant provided two affidavits to support argument that it did not have control or possession of the premises); *Pellegrino v. Jack*, No. CV065006035S, 2008 WL 5481255, at \*2–5 (Conn. Super. Ct. Dec. 2, 2008) (granting summary judgment for the defendants on the grounds that the defendants were not in possession or control of the premises at the time of the incident, and therefore owed no legal duty to the plaintiff); *Mozeleski v. Thomas*, 76 Conn. App. 287, 294–95 (2003) (affirming the trial court’s granting of the defendant’s motion for summary judgement because the defendant did not owe a legal duty to the plaintiff as the defendant did not control the premises on which the plaintiff was injured); *Bedrossian v. Benoit*, No. CV950051640S, 1996 WL 797404, at \*1–2 (Conn. Super. Ct. July 26, 1996) (granting summary judgment for the defendants, owners of the campground, on the basis that they owed no duty of care to the plaintiff because the purportedly hazardous steps were located entirely on the leased campsite and were constructed by the tenant of that campsite).

## **2. Thomaston did not possess or control the Premises.**

### **i. Plaintiff’s Allegations**

Plaintiff’s allegations of negligence clearly sound in premises liability. Plaintiff explicitly alleges that Thomaston owned, possessed, operated, maintained, managed and/or controlled the Premises. Complaint, Second Count, ¶ 2. Plaintiff makes the following specific allegations of negligence against Thomaston:

The aforementioned incident was caused by the negligence of the defendant, acting through one or more of its agents, servants and/or employees in one or more of the following ways: in that it/they

a. Knew or should have known of the covered step that caused the plaintiff to fall and failed to take reasonable measures to make the premises safe;

- b. Failed to timely and reasonably inspect the premises for defects including the covered step;
- c. Failed to place signage or other visible warnings to alert lawfully present persons, including the plaintiff, of the covered step;
- d. Failed to provide any visual cue or reflective material so as to alert those lawfully present of the covered step;
- e. Failed to verbally warn the plaintiff and other lawfully present persons of the presence of the covered step;
- f. Failed to block off or barricade that portion of the premise that contained the covered step;
- g. Failed to timely or sufficiently fix, repair or change the area containing the covered step so as to make it safe for those walking in the area of the same time.

*Id.*, at Second Count, ¶ 6.

These allegations of negligence track the duties a possessor of land owes its invitees. *See, Mills v. The Solution, LLC*, supra, 138 Conn. App. 59. Since Plaintiff asserts a premises liability claim, she cannot prevail unless she proves that Thomaston possessed or controlled the Premises at the time of the Incident. *See, Sweeney v. Friends of Hammonasset*, supra, 140 Conn. App. 49.

- ii. The undisputed evidence shows that Landmark possessed and controlled the Premises, not Thomaston.

The undisputed facts show that Thomaston did not possess or control the Premises at the time of the Incident and that Landmark did. At the time of the alleged Incident, Landmark was granted exclusive possession and control of the Premises pursuant to a Management Agreement. *See, Management Agreement, Exhibit A.* The law is clear that a landlord out of possession has no duty to someone injured on wholly demised premises under the control of the tenant. *Fiorelli v. Gorsky*, 120 Conn. App. 298, 308 (“[L]andlords [however] generally [do] not have a duty to keep in repair any portion of the premises leased to and in the exclusive possession and control of the tenant.”), appeal denied, 298 Conn. 933 (2010); *see also, Masterson v. Atherton*, 149 Conn. 302, 306 (1962); *Smith v. Housing Authority*, 144 Conn. 13, 16 (1956).

Retention of control becomes a question of law “if the issue of control is expressed definitely in the lease.” *Fiorelli v. Gorsky*, 120 Conn. App. 298, 308-09, cert. denied, 298 Conn.

933 (2010) (holding that a lessor and lessee may decide the issue of control in a lease). In this case the Management Agreement definitively gives Landmark possession and control of the Premises:

- “TOH [Thomaston Opera House Commission] hereby gives LCT [Landmark Community Theatre] permission to have full and exclusive use of the Premises known as the ‘Thomaston Opera House,’ and hereinafter referred to as the ‘Premises . . . .’ The Premises include . . . the main theatre . . . .” See, Management Agreement, Exhibit A, at § 1.
- “LCT will exclusively manage the day-to-day operations of the Opera House . . . . LCT will be responsible for day-to-day operations including but not limited to . . . janitorial and housekeeping duties, general repair and maintenance of the facility interior and fixtures therein, including repair of any damage caused by patrons, volunteers, or staff . . . .” Id., at § 2.
- “LCT shall keep and maintain the Premises in a neat, well organized, safe and sanitary condition . . . . LCT shall pay for and provide for custodial services and maintenance services at the Premises, including but not limited to cleaning the interior of the Premises as needed and removing all trash to the dumpster located at the rear of the Town Hall Complex. Cleaning includes sweeping of floors in the main theatre and stage, Arts Center studio and theatre and kitchen area, dressing rooms, work rooms, box office, gift shop, office, rest rooms, and corridors; removal of any debris or spills from floors, walls, fixtures, and furniture. Rest rooms in the main and Arts Center studio theatre areas must be cleansed and sanitized on a routine basis. LCT shall not allow any refuse or garbage to accumulate or remain in or upon the Premises.” Id., at § 4.
- “LCT may not contract with another organization to manage and operate the theatre.” Id., at § 7.
- “LCT shall purchase and maintain insurance coverage for the life of the contract . . . . Such insurance will protect and Indemnify TOH from claims which may arise out of or result from any obligation under this agreement, whether such obligations are LCT’s or by a subcontractor or any person or entity directly or indirectly employed by said LCT.” Id., at § 19.
- “LCT shall provide commercial general liability insurance policy that includes products, operations and completed operations (with no exclusion for sexual abuse or molestation). Limits should be at least: Bodily injury & property damage with an occurrence limit of \$1,000,000: Personal & advertising injury limit of \$1,000,000 per occurrence: General aggregate limit of \$2,000,000 (other than products and completed operations): Products and completed operations aggregate limit of \$2,000,000. The policy shall name the Town of Thomaston as an additional insured.” Id., at § 19(B).

- “LCT shall provide an umbrella liability policy in excess (without restriction or limitation) of those limits described in items (A) through (C). Such policy shall contain limits of liability in the amount of \$1,000,000 each occurrence and \$1,000,000 in the aggregate which may be amended during the term of the contract if deemed reasonable and customary by TOH at the sole cost and expense of LCT.” Id., at § 19(D).

The Management Agreement establishes that Landmark was responsible for the maintenance, upkeep, utilities, and provides for broad indemnification of the Thomaston by Landmark. Thus, the undisputed material facts show that Thomaston did not possess, control, or maintain the Premises. The plaintiff has presented no evidence to the contrary. Accordingly, there is no genuine issue of material fact that Thomaston did not owe plaintiff a duty of care.

#### IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Thomaston moves this Court to enter summary judgment in its favor on Count Two of Plaintiff’s complaint.

**DEFENDANT,  
TOWN OF THOMASTON**

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**CERTIFICATION OF SERVICE**

I hereby certify that a copy of the above was mailed or electronically delivered on August 12, 2025, to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were electronically served.

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# EXHIBIT A

~~Old Contract~~

**MANAGEMENT AGREEMENT**  
**Town Of Thomaston (CT)/Thomaston Opera House Commission And**  
**Landmark Community Theatre**

**THIS AGREEMENT** is made on this 23rd day of March, 2022, by and between the **TOWN OF THOMASTON [CONNECTICUT]** and the **THOMASTON OPERA HOUSE COMMISSION ("TOH")**, a Commission created and established by an ordinance adopted at a Special Town Meeting on November 29, 1989, acting herein by its First Selectman, **Edmond V. Mone**, and by the Opera House Commission Chairman, **Barbara Piscopo**, who are duly authorized to act for TOH, and **LANDMARK COMMUNITY THEATRE ("LCT")**, a 501(c)(3) corporation organized and existing under the laws of the State of Connecticut, acting herein by **Gary Kingsbury**, its duly authorized Chairman.

WHEREAS, the Town of Thomaston is the owner of a certain premises known as the Thomaston Opera House; and

WHEREAS, the Thomaston Opera House Commission was established by Ordinance on May 31, 1969, now codified as Article IV of the Town of Thomaston Code of Ordinances for the purpose of providing for entertainment, concerts, celebrations, and festivals in, or in connection with, said Opera House and for the use and enjoyment thereof by the inhabitants, and for maintaining, conducting, and operating said Opera House as a recreation place and place of public assemblage for the inhabitants; and

WHEREAS, the Ordinance establishing the Opera House Commission authorized the TOH to negotiate, enter into and execute such written leases and agreements for the use of said Opera House by others as it shall deem to be in the best interests of the inhabitants of the Town; and

WHEREAS, the TOH has determined it to be in the best interests of the inhabitants of the Town of Thomaston that it enter into a Management Agreement with LCT for the management and operation of said Opera House pursuant to the Thomaston Code of Ordinances, Article IV, Sections 10-11 through 10-14, inclusive; and

WHEREAS, the Board of Selectmen of the Town of Thomaston is authorized by the Thomaston Code of Ordinances to veto any use of the Opera House, or any plan, project or activity in connection therewith, devised or intended to be carried out by the TOH; and

WHEREAS, LCT is a not-for-profit corporation formed by community members concerned with the Thomaston Opera House and the programming it offers and who wish to

provide a management model with versatile programming that will fulfill the purpose of the Opera House Commission; and

WHEREAS, TOH desires that the Thomaston Opera House be utilized for purposes consistent with those of LCT for the benefit of the general public; and

WHEREAS, LCT desires to provide such services;

NOW, THEREFORE, the parties hereto agree as follows:

1. **PREMISES:** TOH hereby gives LCT permission to have full and exclusive use of the Premises known as the "Thomaston Opera House," and hereinafter referred to as the "Premises," except as follows: (a) TOH retains full ownership and oversight authority for the Premises at all times (the Premises must be accessible for inspection by TOH at all times), and (b) TOH reserves the right to use the Premises for at least 4 dates in a calendar year. The Premises include:
  - a. the main theatre,
  - b. the stage and stage right dressing room and storage area,
  - c. back stage stairs and corridors,
  - d. front entrance lobby, former box office, and stairwell to theatre,
  - e. rest rooms in main theatre,
  - f. gift shop,
  - g. office,
  - h. dressing rooms, costume room, and work rooms, lavatory, and shower on level 4 (Old Firehouse),
  - i. the attic storage area
  - j. box office,
  - k. the Arts Center studio theatre,
  - l. rest rooms and kitchenette by the Arts Center studio theatre, and
  - m. basement of Old Firehouse under the Arts Center studio theatre.

LCT also shall have access to the box office lobby, public rest rooms, corridors, foyers, elevator, and vestibules leading to the Premises.

LCT staff, volunteers, and patrons shall have access to the parking lot of the Town Hall complex except as follows: (a) during routine office hours for Town Hall employees, LCT staff and volunteers shall not park in spaces that are designated for visitors or town employees; and (b) during public events in the downtown area such as the Fire Department's carnival or the Annual Car Show, the Town may restrict LCT's use of the parking lot.

The Town of Thomaston shall accommodate occasional requests by LCT for temporary use of additional space within the Town Hall complex, contingent upon availability. LCT shall reserve the space in advance through the Selectman's Office. Upon departure LCT must leave the space as it was on arrival.

- 2. OPERATIONS:** LCT will exclusively manage the day-to-day operations of the Opera House and will be responsible for all costs associated with such management and operation. LCT will deliver high-quality performing arts programming, producing its own performances, booking performances, or a combination of the two. Programming should be consistent with the purpose of the Opera House Commission as stated above, be of interest to the community, be beneficial to the Town's economic well-being, and be conducive to the preservation of the history and culture of the Thomaston Opera House.

LCT will be responsible for day-to-day operations including but not limited to:

- marketing and promotions,
- office equipment including computers, telephone, internet service,
- management of ticket sales,
- technical theatre support and proper maintenance and repair of theatre equipment items entrusted to the Contractor, including repair of any damage caused by patrons, volunteers, or staff,
- hiring or contracting of personnel,
- conduct and behavior of staff, contractors, volunteers, and vendors in LCT's employ or acting on its behalf.
- financial management of the operations,
- janitorial and housekeeping duties,
- general repair and maintenance of the facility interior and fixtures therein, including repair of any damage caused by patrons, volunteers, or staff, and
- security above that reasonably provided by the Town.

TOH will be responsible for:

- utilities (excluding telephone and internet),
- structural repairs and improvements, interior and exterior,
- routine maintenance and repairs to exterior of facility,
- leaf, snow, and ice removal on sidewalks and town hall parking lot, and
- trash removal from the dumpster.

- 3. FIXTURES, EQUIPMENT, PROPS, COSTUMES:** Fixtures are attached to the building and will remain the property of TOH. Selected furniture and equipment items from the inventory of TOH shall be listed and entrusted to LCT for the use and operation of the facility. TOH will retain full ownership of the inventory. All inventory list items entrusted

by TOH to LCT shall be operated, maintained, repaired, and replaced at LCT's sole cost and expense. LCT shall assume monthly lease payments if any of the listed items are under lease to TOH.

The organ is the property of the Connecticut Valley Theatre Organ Society (CVTOS), and may not be used by LCT without authorization from CVTOS. The Yamaha Disklavier Upright Piano that connects to the organ is the property of TOH. No piano in the Premises shall be moved without authorization from TOH.

LCT's personnel shall at all times use reasonable care in the use of all fixtures, furniture, and equipment entrusted to LCT. TOH-owned equipment, furniture, props, costumes, etc. may not be removed from the Opera House without the express prior written consent of the Commission.

4. **ROUTINE MAINTENANCE AND HOUSEKEEPING:** LCT shall keep and maintain the Premises in a neat, well organized, safe and sanitary condition, excepting structural repairs or replacements, and repairs or replacements to the systems (i.e., heating, plumbing, air conditioning, electrical). LCT shall pay for and provide for custodial services and maintenance services at the Premises, including, but not limited to cleaning the interior of the Premises as needed and removing all trash to the dumpster located at the rear of the Town Hall Complex. Cleaning includes sweeping of floors in the main theatre and stage, Arts Center studio theatre and kitchen area, dressing rooms, work rooms, box office, gift shop, office, rest rooms, and corridors; removal of any debris or spills from floors, walls, fixtures, and furniture. Rest rooms in the main and Arts Center studio theatre areas must be cleansed and sanitized on a routine basis. LCT shall not allow any refuse or garbage to accumulate or remain in or upon the Premises.

After each use of the Opera House or Arts Center studio theatre by the public, regardless of the sponsoring organization, rest rooms in the Premises and other rest rooms in the Town Hall complex on levels 3 and 4 that are used by theatre patrons must be cleansed and sanitized. LCT is responsible for the replenishment of all paper products and soap in the rest rooms in the main and studio theatre areas and, after performances, rest rooms on levels 3 and 4. Also after each use of the Opera House or Arts Center studio theatre by the public, LCT is responsible for removing any litter on the grounds and sidewalks including cigarette butts.

LCT shall promptly inform the Opera House Commission or the Town of any needed repairs or replacements of structure or systems.

LCT is expected to use all measures necessary to protect the Premises when moving equipment, staging, sets, props, etc, into, within, or out of the Premises. Special attention shall be given to areas that have undergone recent restoration or repair.

TOH reserves the right to inspect the Premises at anytime; however, TOH will make every effort to invite a representative of LCT to accompany TOH on any inspection. If TOH determines that the Premises have not been properly maintained, LCT will have 24 hours to address the situation to the satisfaction of TOH. If needed to protect the health and safety of town employees, patrons, and the public, TOH retains the right to address cleaning or maintenance issues immediately and bill LCT for such service. After two such occurrences within a 12-month period, LCT will pay a fine of \$100 for each subsequent occurrence within that 12-month period.

Thomaston town officials such as the Fire Marshal, Town Hall Maintenance Coordinator, and Chairman of the Town Hall Building Committee may enter the Premises to conduct their responsibilities as necessary.

5. **SAFETY AND SECURITY:** LCT shall not do or permit to be done in the Premises, or bring or keep therein, and shall as quickly as practicable correct or cause to be corrected, anything which will in any way increase the rate of fire insurance or other hazard insurance on the Premises, or which shall conflict with the requirements of the Connecticut Bureau of Fire Underwriters, or be in violation of any of the terms of any insurance policy affecting the Premises or any part thereof, or which shall conflict with any ordinances, orders, requirements, rules or regulations of the Thomaston Fire Marshal or Torrington Area Health District or any other governmental department, commission, board, officer or agency having jurisdiction. LCT shall not tamper with the heating, plumbing, fire alarms, electrical systems, or any systems serviced by such systems.

LCT shall bear the sole responsibility and all costs related thereto for all security arrangements, police and fire watch and/or protection, and insurance, as deemed necessary by TOH solely or as required by the Town of Thomaston, the State of Connecticut, or any other applicable governmental authority. TOH shall have sole discretion to determine whether professional security must be hired for any production and proof of such hiring shall be shown to TOH at TOH's request. TOH may also require that, in addition to LCT staff, a specified number of trained volunteers be present at an event.

**Smoking is not permitted anywhere inside the Premises. Candles or any other open flames are not permitted anywhere inside the Premises.**

LCT shall maintain and enforce a Safe Child Policy, a copy of which shall be provided to TOH.

*Closing:* Upon beginning operation, LCT agrees to provide TOH with the names and phone numbers of four individuals who will be responsible for ensuring that the Premises are secure and all lights and equipment are turned off after every use. If the Premises are not secure or lights/equipment are found to have been left on, a warning will be issued to LCT. After two warnings, a fine of \$50.00 will be assessed for each subsequent occurrence.

- 6. IMPROVEMENTS TO THE PREMISES:** LCT agrees to notify immediately TOH in writing of any major structural repairs that must be performed on the Premises during the Term of this Agreement. Major structural repairs shall include, but not be limited to boiler repair or replacement, air conditioner repair or replacement, and structural repairs to the building. LCT agrees to obtain written permission from TOH before changing or altering the Premises or any part thereof. This shall include, but not be limited to painting of interior surfaces.

Any restoration or repairs require the approval of the Opera House Commission, Town Hall Building Committee, and the Board of Selectmen. Some projects may also require the approval of the Town Building Department and the State of Connecticut Historical Commission.

Any improvements or alterations to the Premises, whether funded by LCT or TOH, shall be considered a fixture when attached to the Premises and shall become the property of TOH upon the termination of this Agreement unless TOH requires LCT to remove any fixture.

Any improvements not attached to the Premises and purchased by LCT, including equipment, props, and costumes, are the sole property of LCT. Any improvements not attached to the Premises and purchased by TOH, including equipment, props, and costumes, are the sole property of TOH. In the event of the termination of this Agreement, two representatives of LCT and two representatives of TOH will inspect all items designated to leave the Premises as property of LCT.

- 7. USAGE OF THE PREMISES:** LCT may permit other organizations or individuals to use the Premises for a reasonable fee provided at least 1 LCT staff or board member is present at all times while the other organization is in the Premises. LCT may not contract with another organization to manage and operate the theatre.

*Local organizations:* LCT is encouraged to allow local organizations to use the Opera House at times when other productions are not scheduled, with the understanding that LCT is responsible for all necessary arrangements and will act as the liaison with the local organization. A reasonable fee may be charged to these local organizations to cover costs for staff, cleaning, and any other services provided by LCT. Policies and procedures, including fees, and any changes to such policies and procedures, for the use of the theatre by local organizations must be reviewed and approved by the Commission.

*Connecticut Valley Theatre Organ Society (CVTOS):* TOH has a contract with CVTOS and LCT will fulfill the remaining obligations of the existing agreement and enter into a similar agreement for the future. The CVTOS is a non-profit organization and is the Connecticut chapter of the American Theatre Organ Society, a nationwide organization committed to the perpetuation of theatre pipe organs as an important musical medium. It is dedicated to preserving and presenting the music and excitement of the theatre pipe organ in the Connecticut Valley. The CVTOS owns and maintains the historic 1926 Marr-Colton organ in the Opera House and has access to the Opera House to present performances on four weekends a year, to maintain the organ, and for "free-play time" on the first Sunday of the month. The contract also provides resources to promote CVTOS productions. Use of the organ by LCT requires authorization from CVTOS.

*Workshops, Instructions, Classes:* LCT may offer workshops, instruction, lessons, classes, development sessions, etc. at the Premises for a fee. All proceeds will be for the benefit of LCT's operating, improvement, expansion and development costs.

8. **FEES:** LCT shall pay TOH \$1.00 for each ticket sold. The \$1.00 fee per ticket issued shall apply to any performance where tickets are issued through LCT or other auditable ticketing system.

*Complimentary tickets:* The \$1.00 per ticket fee will be waived for complimentary tickets up to a maximum of 10% of the capacity of the house (50 tickets for the main theatre and 5 tickets in the Arts Center studio theatre).

*Non-ticketed usage:* When LCT charges a fee for another organization or individual to use the Premises and that organization or individual does not issue tickets through an auditable ticketing system, LCT will give 10% of the fee to the TOH.

*Payment terms:* The appropriate payment (\$1.00 per ticket sold for the previous month) shall be paid on the first day of the month. If payment is not received by the 11<sup>th</sup> day of the month, a late fee of 3% will be charged.

- 9. RESTORATION FUNDS:** LCT will contribute 50 cents per every ticket sold to the "Thomaston Opera House Restoration Fund". LCT's contribution to the Restoration Fund is payable annually on January 31 of the following calendar year. TOH will maintain an account with a local bank for the "Thomaston Opera House Restoration Fund".

Any donations or gifts made directly to the Thomaston Opera House or the Thomaston Opera House Commission will be deposited in "The Thomaston Opera House Restoration Fund" unless otherwise specified.

A committee will be established called the "Thomaston Opera House Restoration Committee." This committee will advise the Commission on the management and dispersal of funds in the "Thomaston Opera House Restoration Fund" and advise LCT and Friends of the Thomaston Opera House on the management and dispersal of funds either organization has raised for restoration. The Committee will be comprised of 2 members of the Thomaston Opera House Commission, 2 members of LCT, 2 members of the Friends of The Thomaston Opera House, and 2 members of the Town of Thomaston Building Committee. The Restoration Committee may recommend to the Board of Selectmen the appointment of additional members from the general public. Such recommendations must be endorsed by the LCT Board of Trustees and the Commission. The Committee will follow all requirements of the Town of Thomaston for approval and implementation of any and all projects.

- 10. DEFAULT:** In the event that LCT shall fail to pay the monthly fee within 90 days after the same shall become due and payable, LCT shall be considered in default. If LCT fails to cure such default within 30 days (120 days from due date) TOH may terminate this agreement forthwith.

Also, in the event that LCT shall fail to cure any default in the performance of its non-monetary obligations hereunder within 5 days of written receipt of notice from TOH specifying the default (or within a reasonable time if such default cannot reasonably be cured within 5 days), TOH may terminate this agreement forthwith.

Upon termination for default, TOH may enter upon the Premises and remove all persons and property there from, and LCT shall not be entitled to any money paid hereunder or any part thereof. In the event TOH shall bring a legal action to enforce any of the terms hereof, or to obtain possession of said Premises by reason of default of LCT or otherwise, LCT agrees to pay TOH all reasonable costs of such legal action, including but not limited to reasonable attorney's fees.

**11. QUARTERLY REVIEW:** In an effort to continually provide the best management and working relationship between LCT and the Thomaston Opera House Commission, LCT will prepare quarterly reports for TOH review. These reports are due at the scheduled meeting of the Opera House Commission in the months of April, July, October, and January. Reports will include, but not necessarily be limited to:

- Current (as of end of quarter) and anticipated ticket sales.
- Current (as of end of quarter) and anticipated revenue.
- Status of restoration funds and projected funds and activities.
- Status of any pending grants and anticipated grant activity that pertain to repairs to the Premises.
- Overall status of management, programming, and facility maintenance including efforts made to protect restored or renovated areas.
- Other pertinent issues.

TOH will provide to LCT quarterly reports on the status of the Thomaston Opera House Restoration Funds.

**12. ADVERTISING:** LCT shall have the right to display written advertisements and promotional materials on the Premises:

- externally in the two display cases in front of the Premises and in the three display cases along the sidewalk leading to the box office entrance.
- internally in the display case on the Level 3 stairwell and in the lobby and corridors near the box office.

Any additional signage vehicles or changes to existing display cases require approval by TOH.

Advertising of programming shall be the sole responsibility of LCT. LCT has the sole responsibility and discretion to secure sponsors of performances. LCT shall reserve space in any programs, brochure(s), or other advertising materials in written or electronic format for TOH and the Friends of the Opera House to publicize fund-raising or other activities they may sponsor at no cost to TOH or Friends of the Opera House. TOH and LCT shall each include the link to the other organization's website on their website.

TOH retains the right to review any written or electronic advertising or promotional materials representing the Thomaston Opera House and shall have the authority to deny the dissemination any public information that TOH deems not to represent the image of the Opera House and Community.

**13. BRANDING:** In all written, electronic, and oral communications, LCT shall refer to the location of the event at the Thomaston Opera House. LCT is fully responsible for

ensuring that this branding policy is adhered to for all productions and events at the Premises. LCT may use photographic or graphic images of the interior and exterior of the Thomaston Opera House in written and electronic communications.

- 14. REFRESHMENTS, GIFT SHOP, SOUVENIRS:** LCT may offer both alcoholic and non-alcoholic beverages and food items for events held in the TOH. LCT has the sole responsibility to ensure adherence to all local and state requirements for sale or giveaway of beverages and food. All proceeds of sales of beverages and food items will be for the benefit of LCT's operating, improvement, expansion, and development costs.

LCT may offer alcoholic beverages provided it receives all the necessary permits and approvals, including but not limited to the TOH, Board of Selectmen, Planning and Zoning Commission, Fire Marshal, Building Official, and State of Connecticut Department of Consumer Protection Division of Liquor Control; provides proof of the necessary insurance to cover the sale or service of alcoholic beverages to the public in order to protect the Town of Thomaston and its public officials and its employees from any and all liability arising from such sale or service on the premises; and complies with all requirements of the State Liquor Control Act and the regulations adopted thereunder and the Code of Ordinances and zoning regulations of the Town of Thomaston. The permittee shall be on the premises at all times when such beverages are being sold or served; and all servers and bartenders must be 21 years of age or older and have successfully completed the Training for Intervention Procedures (TIPS) certification program for serving alcoholic beverages.

LCT may offer merchandise for sale at events held in the TOH. LCT has the sole responsibility to ensure adherence to all local and state requirements for sale or giveaway of merchandise. All proceeds will be for the benefit of LCT's operating, improvement, expansion and development costs.

- 15. FUNDRAISING:** LCT may solicit donations and gifts, and sponsor fundraising events, in the name of the "Thomaston Opera House." LCT may use funds received for operating expenses associated with the management of the Opera House and the production of performances at the Opera House, including the purchase of equipment, costumes, or props, or for restoration of the Premises. Any donations or gifts received specifically for Restoration of the Premises must be used for that purpose, following all requirements of TOH and the Town of Thomaston for approval and implementation of any and all projects (see **9 RESTORATION FUNDS**).

- 16. REVENUE FROM SPONSORSHIPS FROM INDIVIDUALS, BUSINESSES, OR COMMUNITY ORGANIZATIONS:** LCT will retain all revenues and proceeds from sponsorships from Individuals, Businesses, and Community Organizations. Such

revenue may be used for LCT's operating, improvement, expansion and development costs. Revenue specifically designated for the Restoration of the Opera House must be used for that purpose, following all requirements of TOH and the Town of Thomaston for approval and implementation of any and all projects (see **9 RESTORATION FUNDS**).

**17. ADVERTISING SALES:** LCT may solicit the sale of advertising space, such as in programs and on websites, on behalf of LCT and TOH. LCT will retain all revenues, and the proceeds will be for LCT's operating, improvement, expansion and development costs.

**18. GRANTS:** LCT may apply for any Grant it deems appropriate in the joint name of LCT and TOH. LCT will copy the Opera House Commission on all correspondence related to such grant applications. LCT will provide the Commission with a draft of such grant requests or applications at least 5 business days before the grant application is submitted and a copy of the final grant application within 2 business days of its submission.

LCT shall inform the Commission before applying for grants in its name alone if the grant application relates directly to repairs and improvements of the Premises. LCT shall also provide status reports to the Commission after application and acceptance of such grants.

Any grants received specifically for the "Restoration" of the Thomaston Opera House must be used for that purpose, following all requirements of TOH and the Town of Thomaston for approval and implementation of any and all projects (see **9 RESTORATION FUNDS**).

**19. INSURANCE:** LCT shall purchase and maintain insurance coverage for the life of the contract from a company or companies with an A.M. Best rating of A- (VII) or better. Such insurance will protect and indemnify TOH from claims which may arise out of or result from any obligation under this agreement, whether such obligations are LCT's or by a subcontractor or any person or entity directly or indirectly employed by said LCT.

A. *Workers Compensation:* LCT shall provide workers compensation and employers liability insurance that complies with the regulations of the State of Connecticut with limits no less than \$100,000 each accident by bodily injury; \$100,000 each accident by disease and a policy limit of \$500,000.

B. *Commercial General Liability Insurance:* LCT shall provide commercial general liability insurance policy that includes products, operations and completed operations (with no exclusion for sexual abuse or molestation). Limits should be at least: Bodily injury & property damage with an occurrence limit of \$1,000,000: Personal &

advertising injury limit of \$1,000,000 per occurrence: General aggregate limit of \$2,000,000 (other than products and completed operations): Products and completed operations aggregate limit of \$2,000,000. The policy shall name the Town of Thomaston as an additional insured.

- Such coverage will be provided on an occurrence basis and will be primary and shall not contribute in any way to any insurance or self insured retention carried by the Town.
- Such coverage shall contain a broad form contractual liability endorsement or similar wording within the policy form.

C. *Commercial Automobile Insurance*: LCT shall provide commercial automobile insurance for any owned autos (symbol 1 or equivalent) in the amount of \$1,000,000 each accident covering bodily injury and property damage on a combined single limit basis. Such coverage shall also include hired and non-owned automobile coverage.

D. *Umbrella Liability Insurance*: LCT shall provide an umbrella liability policy in excess (without restriction or limitation) of those limits described in items (A) through (C). Such policy shall contain limits of liability in the amount of \$1,000,000 each occurrence and \$1,000,000 in the aggregate which may be amended during the term of the contract if deemed reasonable and customary by TOH at the sole cost and expense of LCT.

E. *Liquor Liability/Dram Shop Insurance*: LCT shall provide liquor liability/dram shop insurance in an amount no less than \$1,000,000 each occurrence and \$1,000,000 in aggregate whether or not required by the Connecticut Liquor Control Act and regulations adopted thereunder to protect the Town of Thomaston and its public officials and employees from any and all liability arising from the sale or serving of alcoholic beverages on the premises by LCT.

*Alcoholic Beverages Permit Insurance*: LCT shall provide proof of alcoholic beverages sale and service insurance as required by the Connecticut Liquor Control Act and regulations adopted thereunder, in an amount sufficient to protect the Town of Thomaston and its public officials and employees from any and all liability arising from the sale or service of alcoholic beverages on the premises by LCT.

As to the insurance required, the insurer(s) and/or their authorized agents shall provide TOH with certificates of insurance prior to execution of the agreement by TOH.

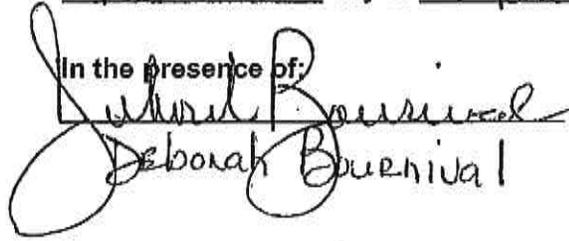
**INDEMNIFICATION**. LCT shall defend, indemnify and hold the Town, its officials, and its employees harmless from any and all claims, injuries, damages, losses or suits, including attorneys' fees, arising out of or in connection with the performance of LCT's services under this Agreement, except for injuries and damages caused by the sole negligence of the Town.

**INDEPENDENT CONTRACTOR**. All activities performed by LCT and its agents, employees or representatives are, for all purposes under this Agreement, performed as

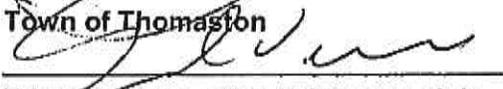
an independent contractor and not as an employee of the Town, and neither LCT nor its employees shall be entitled to any benefits to which employees of the Town are entitled including, but not limited to, workers compensation, overtime, retirement benefits, health care benefits, vacation pay or sick leave.

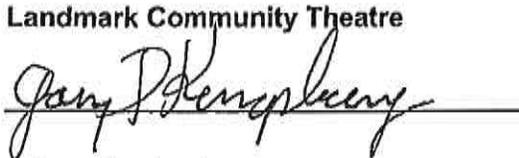
**20. TERM:** Except as otherwise provided in this agreement, the term of this agreement shall be one year commencing on January 1, 2022 and ending on December 31, 2022. At the end of the term, upon mutual agreement, the contract may be extended for an agreed-upon term. Parties will begin negotiations on the new contract on July 1, 2022.

In witness thereof, the parties hereto have hereunto set their signatures this 23<sup>rd</sup> day of March 2022.

In the presence of:  
  
Deborah Bueniva

Thomaston Opera House Commission  
  
Barbara Piscopo, Chairwoman,  
duly authorized

Town of Thomaston  
  
Edmond Mone, First Selectman, duly  
authorized

Landmark Community Theatre  
  
duly authorized

duly authorized

