

ORDINANCE 2014 - 108

**AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT TO COMMISSION THE PERFORMANCE OF A PLAY AS PART OF THE CITY OF MASON BICENTENNIAL CELEBRATION**

WHEREAS, certain individuals have written a play, including an original music score, related to the history of the City of Mason, Ohio; and

WHEREAS, the City of Mason wishes to enter into an agreement with said individuals to commission a performance of said play at the Bicentennial Celebration.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mason, Ohio, five members elected thereto concurring:

Section 1. That the City Manager is hereby authorized to enter into an Agreement substantially in the form of the Agreement attached hereto as Exhibit "A" and incorporated herein by reference.

Section 2. That the Finance Director is hereby authorized to make payments pursuant to the terms of said Agreement.

Section 3. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed this 10<sup>th</sup> day of November, 2014.

Attest:

  
Clerk of Council

  
Vice Mayor

11/5/14  
1966712.1

## LICENSE AGREEMENT

This License Agreement ("**Agreement**") is entered into on this 17<sup>th</sup> day of November, 2014 ("**Effective Date**"), by and between John Miller, an Ohio resident, with an address of 668 Canal Road Dr. Hanover Miller") and the City of Mason, an Ohio political subdivision with an address of 6000 Mason-Montgomery Road, Mason, Ohio 45040 ("**Mason**"). Owner and Mason are referred to individually as a "**Party**" and collectively as "**Parties.**"

- 1. Background.** Miller is the sole and exclusive owner and author of that certain original literary work known as the script or stage play – "Imagine! Mason" set forth in **Exhibit A ("Imagine! Mason")** and registered under Copyright Number 1-1839762821 in the Office of the United States Register of Copyrights of the United States Copyright Office within the Library of Congress. Miller is also the sole and exclusive owner and author of, or has secured all rights, whether by assignment or license, as needed for the exercise of the license granted to Mason in this Agreement to, the certain musical scores set forth in **Exhibit B ("Musical Scores")**. Miller is licensing Imagine! Mason and the Musical Scores to Mason for the bicentennial celebrations in the City of Mason.
- 2. Term.** The term of this Agreement shall commence on the Effective Date and shall expire on December 31, 2015 ("**Term**"). The Parties may agree to extend the Term.
- 3. License Grant.** Commencing on the Effective Date and for the Term of this Agreement, Miller hereby grants to Mason on an irrevocable, sublicensable and worldwide basis: (a) the non-exclusive right and license to use the names, characters, likenesses, visual representations, plots, themes, ideas, title contained in Imagine! Mason and to perform Imagine! Mason and the Musical Scores or adaptations and modifications thereof on spoken stage with actors appearing in person in the immediate presence of the audience; (b) sole and exclusive rights to audio and video recording, photography and other reproduction of such performances, in all media, by all means or technical processes, throughout the world; (c) sole and exclusive rights to distribute the reproductions of such performances, in all media, by all means or technical processes, throughout the world; (d) sole and exclusive rights to make, produce, adapt, market, advertise, sell, distribute, use and exploit merchandise of any sort and nature arising out of or connected with such performance, in all media, by all means or technical processes, throughout the world and (e) any rights reasonably required for exercise of any of the foregoing. All rights, licenses, privileges and property herein granted by Miller shall be cumulative and Mason, in its sole and absolute discretion, may or may not exercise or use any or all said rights, licenses, privileges or property simultaneously with or in connection with or separately and apart from the exercise of any other of said rights, licenses, privileges and property or any at all.
- 4. Consideration.**

As full, final and complete consideration for all rights granted herein, Mason agrees to pay Miller and Miller agrees to accept Sixteen Thousand United States Dollars (\$16,000.00). Except as otherwise expressly provided in this Agreement, each Party is responsible for all of its own costs and expenses in performing its obligations under this Agreement and neither Party is obligated to reimburse the other Party for any costs or expenses that a Party incurs in performing its obligations under this Agreement. Miller hereby agrees that any fees, charges, expenses, costs, penalties and

taxes payable for the consideration and transaction related to this Agreement imposed by a governmental or regulatory body will be the sole responsibility and liability of and payable by Miller.

**5. Responsibilities of Respective Parties.**

5.1. Simultaneously with the execution of this Agreement, Miller shall provide to Mason, a final version of Imagine! Mason and the Musical Scores in mutually agreed upon formats. Mason shall have the right, but not the obligation, to incorporate any changes made by Miller after the Effective Date.

**6. Representations, Warranties and Covenants of Miller.** Miller represents, warrants and covenants to Mason as follows:

6.1. Miller is the sole and exclusive owner of all right, title and interest in and to, Imagine! Mason, throughout the world, and to all intellectual property rights therein;

6.2. Except with respect to parts of the Musical Scores that are in the public domain, Miller is the legal and beneficial owner and has control by ownership, license or otherwise, of the entire right, title, and interest in and to the Musical Scores, including those of Stephanie Taylor and Sean Patrick Hannifin;

6.3. Miller has the right to grant to Mason the licenses to Imagine! Mason and the Musical Scores as set forth in this Agreement;

6.4. Imagine! Mason and the Musical Scores do not infringe upon, misappropriate or otherwise violate, the intellectual property rights, privacy rights, publicity rights or any other proprietary or contractual right of any third-party;

6.5. Miller has not granted and will not grant any licenses or other contingent or non-contingent right, title or interest under or relating to Imagine! Mason, or will not be under any obligation, that does or will conflict with or otherwise affect this Agreement, including any of Miller's representations, warranties or obligations or Mason's rights or licenses hereunder;

6.6. When executed and delivered by Miller, this Agreement will constitute the legal, valid and binding obligation of Miller, enforceable against him, in accordance with its terms and will not cause Miller or Mason to be in contravention or breach of his obligations to, or agreements with, any third-party, including, without limitation, any organizations, unions, or guilds of which Miller is a member;

6.7. Miller was, is and will continue to act in compliance, in all respects, with all applicable laws, rules and regulations in the performance of this Agreement;

**7. Indemnification.** Miller shall indemnify, defend and hold harmless the Mason and its elected officials, officers, employees, agents, successors and assigns against all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or

expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder, at all levels of appeal, and the cost of pursuing any insurance providers, arising out of or resulting from any third-party claim, suit, action or proceeding related to or arising out of or resulting from (a) Miller's breach of any representation, warranty, covenant or obligation under this Agreement; or (b) use by Mason and/or Mason Community Players of Imagine! Mason and the Musical Scores. Miller shall not settle any action or claim in a manner that adversely affects the Mason's rights without the Mason's prior written consent. Mason may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

8. **Further Cooperation.** Miller agrees to execute, acknowledge and deliver to Mason, such further instruments as Mason may reasonably require in order to confirm the rights, licenses, privileges and property which are the subject of this Agreement and to give full effect thereto.
9. **Rights Upon Expiration of this Agreement.** Upon expiration of this Agreement, all licenses granted under this Agreement shall automatically terminate. Notwithstanding the foregoing, Mason shall continue to have the right to retain and publicly display the recording of the licensed performances, and to continue to sell the recordings until its inventory is exhausted. Additionally, nothing herein shall be construed to restrict, diminish or impair the rights of Mason and Mason Community Players to use freely, in any work or media, any story, idea, pilot, theme, sequence, scene, episode, incident, name, characterization, music, score or dialogue which may be in the public domain from whatever source derived.
10. **Independent Contractors.** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
11. **Miscellaneous.**
  - 11.1. **Survival.** The rights and obligations of the parties set forth in Sections 6, 7, 9, 10 and 11 and any right, obligation or required performance of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, shall survive any such termination or expiration.
  - 11.2. **Entire Agreement.** This Agreement, together with the Exhibits incorporated herein by reference, constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto.
  - 11.3. **Assignment.** Miller shall not assign or otherwise transfer any of his rights, or delegate or otherwise transfer any of his obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Mason's prior written consent. Any purported assignment, delegation or transfer in violation of this Section

is void. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.

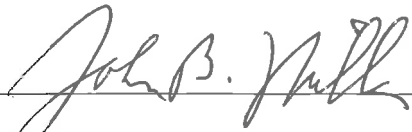
- 11.4. No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.
- 11.5. Waiver.** No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the waiving Party. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 11.6. Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 11.7. Governing Law, Jurisdiction and Venue.** This Agreement and all related Exhibits, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of Ohio, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Ohio. Any Dispute for which a Party is permitted to bring a court proceeding shall be instituted exclusively in the federal courts of the United States or the courts of the State of Ohio in each case located in the City of Mason and County of Warren, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

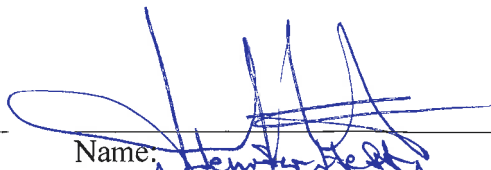
[SIGNATURE PAGE FOLLOWS]

WHEREFORE, the Parties have entered into this Agreement as of the date first above written.

John Miller ("Miller")

City of Mason ("Mason")

  
Name: \_\_\_\_\_  
Title: OWNER  
Date: NOVEMBER 17, 2014

  
Name: \_\_\_\_\_  
Title: Assistant City Manager  
Date: 11/17/14

**EXHIBIT A  
SCRIPT OF IMAGINE! MASON**

ATTACHED

**EXHIBIT B  
MUSICAL SCORES**

ATTACHED