

**PERFORMANCE AGREEMENT & FEES (NON-EQUITY PLAY)**

In order to protect both our authors' rights and our producers' interests Samuel French has adopted a policy to void performance licenses that have not been paid in full two (2) weeks prior to the first performance date. If full payment of this performance license fee, as set forth in the agreement below, or any other unpaid invoice for performance licenses or materials has not been received two (2) weeks before the first performance date this agreement shall be cancelled. On behalf of our authors, we thank you for your cooperation. If you have any questions, please contact our licensing department at (866) 598-8449.

Your Performance Agreement was drawn up based on the information from the application that you submitted. If there is a discrepancy, or if a change is required, we must be notified in writing (email is acceptable) as soon as possible. Failure to inform us of any change may constitute a violation of your Agreement. If you have any questions, please contact our licensing department at (866) 598-8449.

**PERFORMANCE AGREEMENT**

Dated as of ("the Effective Date") **11/26/2018**

This Performance Agreement ("Agreement") is entered into as of the Effective Date by and between Samuel French, Inc., 235 Park Avenue South, Fifth Floor, New York, NY 10003 ("Samuel French") and Theater / Production Co. ("Licensee"): **Brick Township Board of Education**

**Producing Organization Details:**

[Customer #] **PENDING**  
 [Address] **101 Hendrickson Avenue**  
 [City] **Brick**  
 [State] **NJ**  
 [ZIP] **08724**  
 [Country] **United States**  
 [Website]

**Applicant / Contact:**

[Contact] **Jessica O'Brien**  
 [Email] **brickmemtheatre@gmail.com**  
 [Phone] **609-709-7816**

regarding amateur production of the Play titled ("the Property"):

Property Title: <b>"Lost in Yonkers"</b>	By ("Author(s"): <b>Neil Simon</b>
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Venue: **Brick Memorial High School**

Total Number of Seats Per Performance: **200**

Ticket Prices from: **\$5.00 to \$12.00.**

Performance Dates: **1/24/2019 – 1/26/2019** for a total of **3** performances.

Restrictions:

The total period during which Licensee is authorized to present its production, including the initial Performance Dates given above and any additional performances that may be available under the Option set forth above, is referred to as the "Production Dates."

**FEES**

The following fees will be charged for this production:

Type	Category	Description	Fee
Music	Music Fee		\$45.00
Amateur	Performance Fee - Full Minimum Payment		\$375.00
<b>Scripts are not included – purchase separately at <a href="http://samuelfrench.com">samuelfrench.com</a></b>			

<b>TOTAL</b>	<b>\$420.00</b>
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Total fees (as detailed above) are due in full prior to the first Production Date (as stated above). Any and all payments under this Agreement shall be made in U.S. dollars. Exchange rate has been taken into account for our customers outside the U.S. All checks must be made in U.S. funds and drawn from a U.S. bank. If paying by wire transfer, you must include a wire transfer fee of \$35 USD.

**A PO does not constitute payment. Until check, credit card, or ACH payment is received you do not have license to perform or advertise the show.**

\*\*\*A copy of the invoice has been emailed to you separately, and *must* accompany all check payments\*\*\*

## TERMS AND CONDITIONS

1. **Grant.** Samuel French grants Licensee the non-exclusive and non-transferable right to present a live stage production of the Property at the Venue and during the Production Dates stipulated above and on the other terms and conditions set forth in this Agreement. The said rights are valid only through the final performance date as indicated above. No change by Licensee in the production dates, the number of performances, the number of seats per performance, the ticket prices, and/or any other particulars of this Agreement shall be made without the prior written consent of Samuel French, which may be withheld in Samuel French's sole and absolute discretion. Samuel French has the right to revoke this Agreement if Licensee fails to secure such consent and/or if Licensee is in breach or default of any other term or condition of this Agreement. No other rights are herein granted, and Samuel French (on behalf of the owner(s) of the Property) reserves any and all other rights in the Property, whether such rights are now known or shall hereafter come into existence. The reserved rights shall include, without limiting the generality of the foregoing, all motion picture rights, television and cable rights, radio rights, stage rights other than those licensed hereunder, electronic and digital rights, mechanical rights, recording rights and the publication rights of all kinds.

2. **Licensee Warranties.** Licensee represents, warrants and covenants that the Property will be presented in its entirety as it appears in published form authorized by the Author(s) and that the Author(s)'s intent will be respected in the Licensee's production. No changes, interpolations, additions, or deletions will be made in the Property for the purpose of the Licensee's production or otherwise.

2.1 **Samuel French Credit.** All programs, publicity, and advertising in connection with performances of the Work, in all media (including print and electronic), shall carry a program note as follows (unless an additional or different notice is specified in writing by Samuel French) in not less than 12-point type:

"Lost in Yonkers" is presented by special arrangement with SAMUEL FRENCH, INC.

2.2 **Author(s) Credit.** The Author(s)'s name (including composer(s) and lyricist(s) and, as applicable, translator/adaptor's name) will appear in all instances in which the title of the Work appears, including all programs, house boards, and publicity and advertising in all media (including all print and electronic media) within the control of Licensee. The name of the Author(s) will appear on a separate line on which no other name appears as set forth below: immediately following the title of the Work and will appear in size of type not less than fifty percent (50%) of the size of the title type, as follows:

Title:	Author Credits:
"Lost in Yonkers"	LOST IN YONKERS by Neil Simon

2.3 **Additional Production Credit.** The following credits will be included on the title page of all programs and playbills distributed in connection with performances of the Work. If supplied, the following bio will also be included in the program.

Title:	Production Credits:
"Lost in Yonkers"	BE CAREFUL, IT'S MY HEART Music and Lyrics by Irving Berlin Used by Special Arrangement with Rodgers and Hammerstein: An Imagem Company, on behalf of the Estate of Irving Berlin, www.irvingberlin.com

Title:	Bio Requirement:
"Lost in Yonkers"	

2.4 **Production Date Changes/Cancellation.** Licensee will PROMPTLY notify Samuel French in writing, of any and all proposed changes in Production Dates whatsoever, including, but not limited to, additional performances, rescheduled performances, cancellations, postponements, etc., all of which are subject to the prior written approval of Samuel French. Please note that additional fees may be applied for any changes made.

The following additional guidelines will apply in cancelling a licensed production:

- 2.4.1 All cancellations must be notified in writing (email acceptable) within 24 hours of the cancelled performance to your licensing representative, stating the reason or reasons for the cancellation.
- 2.4.2 If cancellation notification is given before the first performance date, there is no cancellation fee and a full refund or transfer of licensing fees for the cancelled performances is granted.
- 2.4.3 If cancellation notification is given after the first licensed performance and within 24 hours after the final licensed

performance date, then a full refund or transfer is granted less a cancellation processing fee of \$30.

**2.4.4** Cancellation notifications sent 24 hours after the final licensed performance date will not be refunded.

**3. Execution of Agreement.** This Agreement shall be effective upon receipt by Samuel French of the stated Licensing fees. Due to demand and area restrictions, Performance Agreements are time sensitive. Therefore, this Agreement shall be null and void if it is not executed as described above prior to the first performance date as stated above.

**4. Payment.** The latest date by which all licensing fees are due is 2 weeks before the first performance date. Payment for all performances must be received in full. Payment may be made by check, credit card or echeck/ACH payment. Please refer to attached invoice for fee details.

**5. General Terms and Conditions.**

**5.1** No auditions, casting, rehearsals, advertising, publicity or performance of the Property may commence unless and until this Agreement is executed and all monies owing to Samuel French as set forth in this Agreement are paid in full.

**5.2** Licensee may not create merchandise of any kind based on the Property, whether for sale, promotional use, or free distribution, without prior written permission from Samuel French.

**5.3** Licensed productions of the Property are to be performed in front of a live audience only. Auditions, rehearsals, and/or performances may not be recorded, broadcast or posted at any time, in any manner or for any purpose. These restrictions apply to both audio-only and audio-visual recordings, broadcasts and postings. By way of example only, no posting of audio or audio-visual recordings to YouTube or any other social networking sites is permitted. Any such recording, broadcasting, posting or other use of a performance of the Property is a copyright infringement and will expose Licensee to serious legal consequences.

**5.4** Any announcements, advertisements, publicity, promotional materials, and marketing materials, whether on the Internet or in any other media, must be in strict compliance with the terms of this Agreement, including the number and dates of performances, the number of seats, and the ticket prices

**5.5** Licensee represents and warrants that all of the information provided to Samuel French, both orally and in writing, in connection with the production and/or otherwise is accurate and correct. Licensee takes sole and complete responsibility for its actions or omissions under this Agreement. To the extent permitted by law, and without waiving Licensee's preexisting state sovereign immunity, Licensee shall pay an award made by a court of competent jurisdiction of any claim arising out of (a) the breach or alleged breach by Licensee of any of Licensee's representations, warranties, obligations, terms and/or conditions under this Agreement and/or (b) Licensee's production of the Property.

**5.6** This Agreement does not include the right to original choreography, costume designs, staging, direction or scenery designs of the Property. Neither Samuel French nor the Authors or owners of the Property shall be obliged at any time to make any payment or offer rights participation to any person(s) whom Licensee may hire to direct, choreograph, stage, design or otherwise participate creatively in Licensee's production.

**5.7** Licenses are available only for complete performances of the Property. Performances of various scenes and/or songs apart from the Property in its entirety (e.g., recitals, contests, festivals, etc.) require special permission, which must be submitted in writing in advance of any such performances. Unless the transaction is granted in writing, no such performances may take place.

**5.8** No abridgement or enlargement of the Property, no changes in music, lyrics, dialogue, period, setting, characters (including their gender), and/or characterizations in the Property, and no changes in running time, placement of intermission, number or order of scenes, etc., may be made without prior written permission from Samuel French.

**5.9** If applicable and available, Licensee is permitted and encouraged to use the approved logo and other promotional and marketing materials that may be provided by Samuel French.

**5.10** This Agreement is not transferable to any other production other than the one licensed. The rights licensed under this Agreement may not be sublicensed and/or otherwise conveyed by Licensee to any other person.

**5.11** The Play is licensed for live stage performances by living actors in front of a live audience only, and may not be recorded, broadcast or distributed at any time, in any manner, or for any purpose. In no event may any audio or audio-visual recordings of

readings, rehearsals or performances of the Play be posted to the internet or distributed through any digital means, including by way of streaming, downloading or copying, including without limitation, in video or audio recordings posted to YouTube, Facebook or any similar or other social networking site, or posted to the website of the theater or any personal or public website of whatsoever kind. No audio or audio-visual footage may be used in connection with any online, mobile or digital advertising or promotion of the Play.

5.12 PLEASE NOTE: You must include in prominent fashion in every program for your production of the Play the following warning in text no smaller than 12pt type:

**THE VIDEOTAPING OR MAKING OF ELECTRONIC OR OTHER AUDIO AND/OR VISUAL RECORDINGS OF THIS PRODUCTION OR DISTRIBUTING RECORDINGS ON ANY MEDIUM, INCLUDING THE INTERNET, IS STRICTLY PROHIBITED, A VIOLATION OF THE AUTHOR'S RIGHTS AND ACTIONABLE UNDER UNITED STATES COPYRIGHT LAW. FOR MORE INFORMATION, PLEASE VISIT: [WWW.SAMUELFRENCH.COM/WHITEPAPER](http://WWW.SAMUELFRENCH.COM/WHITEPAPER)**

5.13 Licensee may not create merchandise of any kind based on the Play, whether for sale, promotional use or free distribution, without the prior written permission of Samuel French. The grant of rights hereunder does not include any rights to use any artwork, advertising, names of actors or actresses or other personnel associated with any other production of the Play in any artwork, advertising or promotional materials hereunder.

5.14 Licensees are solely responsible for obtaining formal written permission from copyright owners to use copyrighted music in the performance of this play and are strongly cautioned to do so. If no such permission is obtained by the licensee, then the licensee must use only original music that the licensee owns and controls. Licensees are solely responsible and liable for all music clearances and shall, to the extent permitted by law, and without waiving Licensee's preexisting state sovereign immunity, indemnify the copyright owners of the play and their licensing agent, Samuel French Inc., against any costs, expenses, losses and liabilities arising from the use of music by licensees.

5.15 The rights licensed under this Agreement may not be sublicensed or otherwise conveyed by the Licensee to any other party.

5.16 Samuel French is entitled to four (4) complimentary tickets per production

5.17 **Approved Production Script** is defined as the version or draft of the script to be used at the time of production. It is understood that the Approved Production Script will be made available for producers via [www.SamuelFrench.com](http://www.SamuelFrench.com) as the "Acting Edition." No earlier manuscript or any other versions of the play are permitted for production without prior approval. In the event that a published Acting Edition is not available for public purchase, the Licensee should contact their representative for the most up-to-date version of the script prior to the start of pre-production and rehearsals.

6. **Termination.** Failure to strictly comply with any of the terms and conditions of this Agreement, including but not limited to the provisions of Sections 2 and/or any other agreement between Samuel French and Licensee, may result in the immediate termination of this Agreement and/or any such other agreements by Samuel French in its sole and absolute discretion. In the event of termination, all amounts owing under this Agreement remain payable in full and shall be retained by Samuel French in addition to any other rights or remedies that Samuel French may be entitled to assert for breach of contract.

7. **Default.** If Licensee defaults in the performance of any of the representations, warranties, indemnities, obligations, terms and/or conditions of this Agreement, then in addition to any and all other remedies which Samuel French, the authors and/or the owners of the Property might have at law or equity, Licensee agrees that Samuel French shall have the right to a temporary restraining order and a preliminary injunction to enjoin any performances of the Property.

8. Samuel French reserves the right to revoke any and all licenses upon written notice to the Licensee. In the event that Licensee has paid for their license prior to such revocation, a full refund will be given to the Licensee within 45 business days of written notice of license termination.

9. **Modifications.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and shall be binding upon the parties hereto, their respective heirs, executors, administrators, legal representatives, successors and assigns and may not be altered, modified or cancelled (except as herein specifically provided), except by written instrument signed by both parties hereto. This Agreement supersedes all prior or contemporaneous agreements, undertakings, warranties, representations and negotiations between the parties with respect to the subject matter hereof. No waiver shall be deemed a continuing waiver or deemed a waiver of any assignment or similar breach.

10. **Riders and Exhibits.** This Agreement consists of Sections 1 through 9 and the following additional Exhibits and Riders, if any:

Additional Riders

Title:	Additional Riders
Lost in Yonkers	Please be advised that non-professional producers are required to use not more than twenty (20) seconds of "BE CAREFUL, IT'S MY HEART" by Irving Berlin.

The music royalty for such use is \$15.00 per performance.  
The Licensee acknowledges that the Play is intended for an adult audience and it may contain adult language and situations. As a material condition to this license, the Licensee represents and warrants that it will not permit any language in the Play to be softened or omitted for the purpose of the Licensee's production.

**ACCEPTED AND AGREED TO:**

This Agreement and all conditions and terms contained herein are wholly binding upon the issuance of this license agreement and the remittance of payment in full.