



DATE: October 8, 2008

TO: Honorable Mayor and City Councilmembers

FROM: Economic and Community Development Department

SUBJECT: **AMENDMENT 1 TO THE AGREEMENT WITH NEW VISION THEATRE COMPANY FOR THE MANAGEMENT AND USE OF THE SUNSHINE BROOKS THEATER**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 to the Management and Operation Use Agreement with New Vision Theatre Company for the management and use of the Sunshine Brooks Theater, restating the date on which gross revenues are to be calculated, adding a joint-use clause to allow for the Oceanside Unified School District's use of the theater, and modifying the theater's goals and objectives in Exhibit B of the agreement; and authorize the City Manager to execute the amendment.

BACKGROUND

The Community Development Commission (CDC) acquired the building that houses the Sunshine Brooks Theater (Premises) and other commercial spaces, from Hattie Brooks, et al, in 1993. The CDC in turn conveyed the building to the City. In 2005, the City and New Vision Theatre Company (Operator) entered into an Agreement for the management and use of the Premises, a community theater which is part of the City's Parks and Recreation Division program.

ANALYSIS

This amendment to the Agreement with the Operator is for the purpose of restating the date upon which the Operator will calculate gross revenues from January 4th of each year to December 31st of each year, updating the goals and objectives of the theater, and adding a joint-use clause to allow use of the theater by the Oceanside Unified School District (OUSD) to provide legitimate theatrical productions that are produced, co-produced, managed, presented and/or arranged by OUSD for public enjoyment. The initial term of the Agreement was for a period of five years, terminating on January 4, 2010; this amendment will not alter the existing term.

FISCAL IMPACT

There is no monetary payment for the use of the Premises. The programs, services and activities provided by Operator and OUSD are considered valuable consideration received by the City for the use and occupation of the Premises. The Operator is required to make an annual capital improvement contribution of one percent of all gross revenues generated from the use of the Premises, which will now be calculated at the end of each calendar year. This date change will not affect the revenue calculation.

INSURANCE REQUIREMENTS

The City's standard insurance requirements are part of the Agreement.

COMMISSION OR COMMITTEE REPORT

The Parks and Recreation Commission has approved of the use by OUSD.

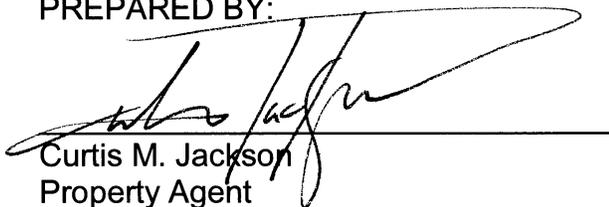
CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

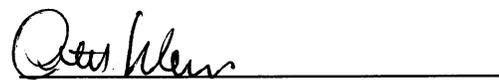
RECOMMENDATION

Staff recommends that the City Council approve Amendment 1 to the Management and Operation Use Agreement with New Vision Theatre Company for the management and use of the Sunshine Brooks Theater, restating the date on which gross revenues are to be calculated, adding a joint-use clause to allow for the Oceanside Unified School District's use of the theater and modifying the theater's goals and objectives in Exhibit B of the agreement; and authorize the City Manager to execute the amendment.

PREPARED BY:

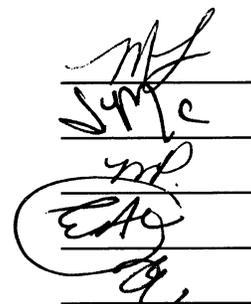

Curtis M. Jackson
Property Agent

SUBMITTED BY:


Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager
Jane McVey, Economic & Community Development Director
Margery Pierce, Neighborhood Services Director
Eileen Turk, Parks & Recreation Division Manager
Douglas E. Eddow, Real Property Manager



**AMENDMENT NO. 1 TO MANAGEMENT AND OPERATION USE AGREEMENT BETWEEN
THE CITY OF OCEANSIDE AND NEW VISION THEATRE**

THIS AMENDMENT TO MANAGEMENT AND OPERATION USE AGREEMENT, hereinafter called "Amendment", is made this ____ day of _____, 2008, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter called "City", and NEW VISION THEATRE, hereinafter called "Operator".

RECITALS

WHEREAS, City and Operator are the parties to that certain Management and Operation Use Agreement, dated January 5, 2005, ("the Agreement"), wherein City, as landlord, permits Operator to use and occupy that certain real property, which is located at 217 North Coast Highway, City of Oceanside, State of California, known as Sunshine Brooks Theater (the "Premises");

WHEREAS, City and Operator mutually desire to amend and modify certain terms and conditions of the Agreement as more particularly set forth in this Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of which and other valuable consideration set forth herein, the parties hereto do mutually agree that the Management And Operation Use Agreement be modified as follows:

1. The Agreement shall be amended to read as follows:

SECTION 4: CONSIDERATION

Section 4.04b **Gross Revenue**, of Subsection 4.04 **Capital Improvement Contribution**, of **SECTION 4: CONSIDERATION** is deleted in its entirety and replaced with the following language:

b. Gross Revenue. Gross revenue as used herein shall mean all revenue received by Operator from the sale of services and/or goods and all items incidental or related thereto on or from the Premises or any other revenue received by Operator as a result of use of the Premises. Gross revenue shall not include federal, state or municipal taxes collected from the Premises. Operator shall not deduct possessory interest taxes or other taxes in computing gross revenue. Gross revenue shall not include refunds for goods returned for resale on the Premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of Operator. Gross revenue shall include revenue received by Operator or by any lessee or licensee, or their agents, and all gross revenue received by any lessee, licensee, or other party as a result

of the use of the Premises or the operation therein. The annual gross revenue shall be calculated at the end of each calendar year.

SECTION 11: COMMUNITY USE

Subsection **11.03 Oceanside Unified School District and City Use** is added as a new subsection to **SECTION 11: COMMUNITY USE**

11.03 Oceanside Unified School District and City Use

Operator agrees that Oceanside Unified School District, hereinafter called "School District" shall be given second priority (after the City which has first priority) in scheduling use of the Premises for school district meetings and other school sponsored activities, subject to the guidelines set forth in Section 11.02. The School District's use of the Premises shall be in accordance with the City's Joint Use Agreement with the School District. The School District's use of the Premises is contingent upon its timely submittal of an Application Request for Use of Sunshine Brooks Theater, shown as Exhibit "H", and proof of insurance naming the City as additionally insured.

2. Exhibit "B" of the Agreement shall be and hereby is amended and modified in its entirety by replacing it with a modified Exhibit "B" dated July 1, 2008, attached to this Amendment.
3. All other terms, conditions, covenants and provisions of the Agreement shall remain in full force and effect. In the event of any conflict between the terms of the original Agreement and this Amendment No. 1 to the Agreement, the terms of this Amendment No. 1 shall control.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY
[Signatures on Next Page]

4. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective entities of the City and Operator.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the Agreement as of the day and year first written hereinabove.

“City”
CITY OF OCEANSIDE
a municipal corporation

“Operator”
NEW VISION THEATRE COMPANY
a California non-profit corporation

By: _____
City Manager

By: John Kalk

Name: John KALB

Title: President

Date: 9/24/2008

APPROVED AS TO FORM:
CITY ATTORNEY’S OFFICE

By: Christina Smith, ASST.
City Attorney

By: Yolanda Kalk

Name: Yolanda Kalk

Title: Secy + Treasury

Date: 9/24/2008

**OPERATOR’S SIGNATURES MUST BE NOTARIZED
(Notary, Use California All-Purpose Acknowledgement Form)**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

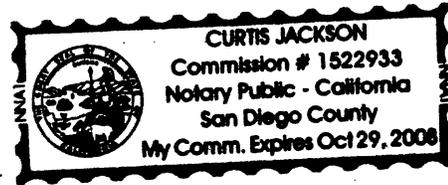
State of California)
County of San Diego)ss.

On 9/24/08 before me, Curtis Jackson, Notary Public
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Yolanda Kalb & John Kalb
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable for persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Management & Operating Agreement

Document Date: 9/24/08 Number of Pages: _____

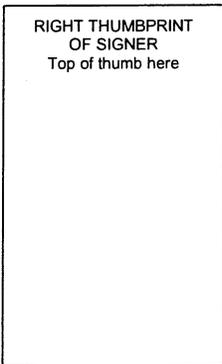
Signer(s) Other Than Named Above: NA

Capacity(ies) Claimed by Signer

Signer's Name: Yolanda Kalb & John Kalb

- Individual
- Corporate Officer – Title(s): President & Secretary
- Partner – Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



New Vision Theatre Company Goals and Objectives at the Sunshine Brooks Theater in Oceanside, CA

Exhibit B – Updated July 1, 2008

Goals and Objectives have been established as stated in Section 2: Performance of the Management and Operation Agreement between The City of Oceanside and New Vision Theatre Company. These goals and objectives are intended to meet the needs of the Oceanside community and to create a tool for review by the City of Oceanside for the management and operation of the Sunshine Brooks Theater. Goals and objectives are established separately for years one, two and three to future years and will be subject to bi-annual review by an adhoc committee formed by the Parks & Recreation Commission.

Year One

Facility

Assist the City of Oceanside in the evaluation of the current lighting and sound system and assist in the repair and/or replacement of any needed equipment.

Re-open, clean and upgrade the Facility to be ready for scheduling and implementation of productions within four (4) weeks upon completion of renovation.

Set up ticket and administrative areas in the Sunshine Brooks Theater to support its programs.

Create new lobby decorations to accent the "new" Sunshine Brooks Theater.

Maintain on-site, staffed ticket and administrative areas in the Sunshine Brooks Theater to support its programs

Maintain all theatrical equipment and furnishings in good working order.

Programming

Schedule and coordinate an "opening" event that introduces New Vision Theatre Company to the Oceanside Community with the participation of elected officials, Star Theatre and downtown/business community.

Produce a minimum of 4 shows with the first production opening 5-weeks after completion of renovation.

Develop a play-writing contest as stated in proposal.

Research other entertainment opportunities for stage such as a comedy series.

Promote and begin classes and workshops for both children and adults.

Coordinate with the Friends of the Oceanside Public Library to schedule monthly concert series at the Sunshine Brooks Theater.

Create a theater use application and fee schedule providing access to Sunshine Brooks Theater to community groups.

Accommodate community service groups for a commitment of 12 community uses of the theater.

Community and City of Oceanside Relations

New Vision Theatre Company shall offer discounted rates to Oceanside residents, seniors and students as reflected in Exhibit G.

New Vision Theatre Company shall start bi-annual reports to the Director, Parks & Recreation Commission, Arts Commission and Oceanside City Council on Sunshine Brooks Theater activity.

New Vision Theatre Company shall offer Oceanside residents free of charge admission to dress rehearsal showings.

New Vision Theatre Company shall assure the creation of positive civic image in the press and public through programming at the Sunshine Brooks Theater.

New Vision Theatre Company Goals and Objectives at the Sunshine Brooks Theater in Oceanside, CA

Exhibit B – updated July 1, 2008

Year Two

Facility

Maintain an on-site, staffed ticket and administrative areas in the Sunshine Brooks Theater to support its programs.

Maintain all theatrical equipment and furnishings in good working order.

Programming

Present seven (7) New Vision Theatre Co. productions.

Find two (2) outside companies to produce at Sunshine Brooks Theater.

Begin a late night live-entertainment series.

Continue coordination with Friends of the Oceanside Public Library for a monthly concert series.

Continue classes and workshops for children and adults as well as provide an opportunity for a class/workshop production.

Continue an annual play-write contest.

Continue to provide access to the Sunshine Brooks Theater through a theater use application process for 15 community uses for service groups.

Begin an annual fundraising event for the development of the Sunshine Brooks Theater.

Community and City of Oceanside Relations

New Vision Theatre Company shall offer discounted rates to Oceanside residents, seniors and students as reflected in Exhibit G.

New Vision Theatre Company shall continue bi-annual reports to the Director, Parks & Recreation Commission, Arts Commission and Oceanside City Council on Sunshine Brooks Theater activity.

New Vision Theatre Company shall offer free of charge admission for Oceanside residents to dress rehearsal showings.

New Vision Theatre shall assure the creation of positive civic image in the press and public through programming at the Sunshine Brooks Theater.

New Vision Theatre Company shall recruit one (1) Oceanside resident to serve on New Vision Theatre Company Board of Directors.

New Vision Theatre Company Goals and Objectives at the Sunshine Brooks Theater in Oceanside, CA

Exhibit B – updated July 1, 2008

Year Three and All Future Years

Facility

Maintain on-site, staffed ticket and administrative areas in the Sunshine Brooks Theater to support its programs.

Maintain all theatrical equipment and furnishings in good working order.

Programming

Present four (4) New Vision Theatre Co. productions.

Find two (2) outside companies to produce at Sunshine Brooks Theater.

Present a minimum of ten (10) concerts annually, above and beyond the Library Concert Series.

Continue coordination with Friends of the Oceanside Public Library for a monthly concert series.

Continue classes and workshops for children and adults as well as provide an opportunity for a class/workshop production.

Continue an annual play-write contest.

Continue to provide access to the Sunshine Brooks Theater through a theater use application process for 18 community uses for service groups.

Begin an annual fundraising event for the development of the Sunshine Brooks Theater.

Community and City of Oceanside Relations

New Vision Theatre Company shall offer discounted rates to Oceanside residents, seniors and students as reflected in Exhibit G.

Continue regular bi-annual reports to the Director, Parks & Recreation Commission, Arts Commission and Oceanside City Council on Sunshine Brooks Theater activity.

New Vision Theatre Company shall offer free of charge admission for Oceanside residents to dress rehearsal showings.

New Vision Theatre Company shall assure the creation of positive civic image in the press and public through programming at the Sunshine Brooks Theater.

New Vision Theatre Company shall maintain one (1) Oceanside resident to serve on New Vision Theatre Company Board of Directors.

EXHIBIT "H"

MANAGEMENT AND OPERATION AGREEMENT
between
THE CITY OF OCEANSIDE and NEW VISION THEATRE COMPANY

THIS MANAGEMENT AND OPERATION USE AGREEMENT, hereinafter called "Agreement", entered into this 5th day of January, 2005, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter called "City", and the NEW VISION THEATRE COMPANY, a California non-profit corporation, hereinafter called "Operator".

RECITALS

WHEREAS, the City owns and controls certain real property, located at 217 North Coast Highway, City of Oceanside, State of California, known as the Sunshine Brooks Theater, as more particularly shown on Exhibit "A", which is attached hereto and incorporated herein by this reference ("Premises"); and

WHEREAS, Operator is an established theater production and management company with experience operating city-owned facilities; and

WHEREAS, the City is interested in having an operator utilize the Premises as a live-performance theater open to the general public; and

WHEREAS, the City and Operator are desirous of entering into an agreement whereby Operator manages and uses the Premises as a live-performance theater open to the general public.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants, conditions and provisions contained herein, each of the parties hereto mutually agree as follows:

SECTION 1: PURPOSE, USE AND OPERATIONS

1.01 Purpose. The City hereby engages Operator and Operator hereby agrees, to manage and operate the Premises as a community (non-equity house) theater for the purpose of providing legitimate theatrical productions produced, co-produced, managed, presented and/or arranged by Operator for public enjoyment as permitted by the City of Oceanside Zoning Ordinance, Article 11. Operator's programming may include, but will not necessarily be limited to, live theater productions, cabaret, readings, workshops, seminars, children's theater, benefits, musical concerts, classes, lectures, stand-up comedy, and improvisational comedy, and will entail extensive use of the Premises.

1.02 Uses. It is expressly agreed that the Premises shall be used by Operator

MANAGEMENT AND OPERATION AGREEMENT
between
THE CITY OF OCEANSIDE and NEW VISION THEATRE COMPANY

solely and exclusively for the purposes as set forth in Section 1.01 above, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

Operator covenants and agrees to use the Premises for the above specified purposes and to diligently pursue said purposes throughout the term hereof. In the event that Operator fails to continuously use the Premises for said purposes, or uses the Premises for purposes not expressly authorized herein, the Operator shall be deemed in default under this Agreement.

1.03 Operator Management. A major consideration for this Agreement is the unique expertise of Operator in the management of a theater operation at a municipally owned facility. Accordingly, notwithstanding anything herein to the contrary, Operator shall not assign to, contract for and/or allow another individual or entity to manage the theater operations at the Premises, without first obtaining the written approval of the City.

1.04 Operations of Premises. City agrees that any admission fees or other charges and income generated through Operator from the use of the Premises shall remain the sole property of Operator subject to the provisions of Sections 4 and 11 herein below. City acknowledges and agrees that in connection with the operation of the Premises as a theater, Operator may engage in related income generating activities in support of its primary purpose, pursuant to which Operator may operate or cause to be operated a concession operation for the sale of coffee, cookies, pre-packaged sandwiches, and other food items, as well as T-shirts, memorabilia, and other items. Notwithstanding anything contained herein to the contrary, Operator is prohibited from selling alcoholic beverages on the Premises; provided, however, where permissible pursuant to Section 9.09 herein below, Operator may provide for alcoholic beverages as part of an engagement purpose.

1.05 Additional Operations and Uses. City acknowledges and agrees that Operator's plan for operating the Premises includes producing its own events, co-producing and/or presenting other groups, and permitting the use of the Premises to outside groups, the financial arrangements of which may include, without limitations, that of joint venturing. City agrees that any charges and income received by Operator shall remain the sole property of Operator, subject to the provisions of Sections 4 and 11 herein below.

1.06 Parking. Operator acknowledges that there are no specific parking spaces assigned to and/or designated for the Premises.

1.07 Condition of Premises. Operator hereby accepts the Premises in an "as is" "where is" condition and agrees to act in accordance with and abide by the

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THE CITY OF OCEANSIDE and NEW VISION THEATRE COMPANY

terms, covenants, conditions and provisions of this Agreement. Provided, however, City agrees to make the interior repairs to the Premises as described in Section 8 herein below.

SECTION 2: PERFORMANCE

2.01 Goals and Objectives. Operator agrees to manage and operate the Premises in furtherance of the Goals and Objectives set forth on Exhibit "B", which is attached hereto and incorporated herein by this reference. City and Operator agree that the Goals and Objectives shall be subject to bi-annual review to occur no later than six (6) months following the Opening Date, and continuing on or about that time period throughout the term of this Agreement. Such bi-annual review shall take place at a meeting between one or more representatives of Operator and the Director of Parks & Recreation for the City ("Director"), the Ad Hoc Parks & Recreation Committee and such other persons as the parties consider necessary. The Director will provide written notice of noncompliance with any goal or objective, with a reasonable period in which to cure such noncompliance. As a result of this review and with the approval of the members of the Parks and Recreation Commission and the City Council, the parties may mutually agree to amend, modify, or eliminate any of the goals or objectives in light of changing conditions and in furtherance of the best interests of the community. The failure to satisfy and/or cure Operator's goals and objectives as herein described shall be deemed a default under this Agreement.

SECTION 3: TERM

3.01 Commencement. The term of this Agreement shall be for a period of five (5) years commencing on the earlier of July 1, 2005 or the date the City substantially completes the improvements to the Premises ("Commencement Date") as more particularly described in Section 8.01 below. Upon determination of the Commencement Date, Operator shall execute a Commencement Date Memorandum confirming the actual date the Agreement commences and terminates. A copy of the Commencement Date Memorandum is shown in Exhibit "C" attached hereto and by this reference made a part of this Agreement.

3.02 Improvement Period; Opening Date. Operator shall be given up to twelve (12) weeks to complete the improvements and upgrade the equipment in the Premises as more particularly described in Section 8.03 herein below, and an additional four (4) weeks to prepare its first play production for the "Opening Date". Therefore, the Opening Date shall occur no more than sixteen (16) weeks after the commencement date set forth in Section 3.01 above.

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THE CITY OF OCEANSIDE and NEW VISION THEATRE COMPANY

3.03 Extension of Term. The Operator may request an extension of the term of this Agreement for the Premises for an additional five (5) year period under the terms and conditions of this Agreement at the City's calculated fair market property payment rate for similar uses of City property, provided that the Operator is not in default or breach of any term, condition, or covenant of this Agreement.

The Operator may request an additional five - (5) year extension of the term by providing the City Manager with its written request no later than ninety - (90) days prior to the expiration of the term of this Agreement. The City Manager or City Manager's designee shall notify the Operator not later than thirty - (30) days after receipt of such request whether such request will be recommended to the City Council for approval. Upon notification that the request will be recommended for approval, the City Manager shall provide Operator with City's calculated fair market payment rate amount which the City is willing to accept for Operator's use and occupation of the Premises during the extension term. City Manager's failure to provide the new payment rate amount within said timeframe shall not defeat City's ability to make adjustments to the payment rate. Recommendation by the City Manager does not constitute City approval of the extension request. The City Manager in his capacity as the City's authorized representative, shall, in his sole discretion, have the authority to deny any such request. Any such denial shall be sent to Operator not later than thirty - (30) days from receipt of the request for extension.

The City Council, at its sole discretion, may approve or deny the extension of the term of this Agreement. In the event the City Council is unable to consider the renewal request in sufficient time as to provide Operator with thirty - (30) days notice of termination in the case of denial, the Agreement shall be extended for a period not to exceed thirty - (30) days, to allow for such thirty - (30) day notice of termination.

SECTION 4: CONSIDERATION

4.01 Premises Consideration. CITY hereby agrees that the programs, services and activities provided by Operator at the Premises are valuable consideration received from Operator, that the provision of such programs, services and activities shall constitute all the consideration to be paid by Operator for its use of the Premises in accordance with the terms, covenants, conditions and provisions of this Agreement, and that Operator shall not be required to pay any monetary payments to City for its use and occupation of the Premises except as hereinafter set forth.

4.02 Utilities. City agrees to provide and pay for utilities (e.g. electricity and water) and refuse collection to and for the Premises, which shall exclude telephone and cable television, necessary for Operator's management, operations, general maintenance and upkeep of the Premises. Provided, however, if in City's sole

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THE CITY OF OCEANSIDE and NEW VISION THEATRE COMPANY

discretion City determines that Operator is using utilities and refuse services in an amount that is disproportionate to utilities and refuse service normally used in similar theater operations in Southern California, City shall have the right to charge and invoice Operator for said additional charges. Operator acknowledges that there is no natural gas service to Premises.

4.03 Telephone and Cable Television. Operator shall be obligated to order, obtain and pay for telephone, cable television and telecommunications service and installation charges in connection with the use, occupation and operation of the Premises.

4.04 Capital Improvement Contribution. Operator shall pay, as a capital improvement contribution to the City, a sum equal to one percent (1%) of all gross revenues generated from the use of the Premises, without setoffs or deductions, during the first year of the term, and increasing an additional one percent (1%) per year thereafter for the remaining term of the Agreement. City agrees to match the amount of the capital improvement contribution annually paid by Operator. Said amounts shall be used by the City for the replacement of items of a capital nature, as reasonably determined by the City.

a. Time and Place of Payment. The capital improvement contribution shall be payable to City within thirty (30) days following the end of each anniversary of the Commencement Date of this Agreement, and adjusted annually thereafter. Checks shall be made payable to the City of Oceanside and delivered to the City at the address set forth in Section 9.03 of this Agreement. At any time, the City upon a thirty - (30) day written notice to the Operator may change the payment time and place. Operator assumes all risk of loss and responsibility for late payment charges.

b. Gross Revenue. Gross revenue as used herein shall mean all revenue received by Operator from the sale of services and/or goods and all items incidental or related thereto on or from the Premises or any other revenue received by Operator as a result of use of the Premises. Gross revenue shall not include federal, state or municipal taxes collected from the Premises. Operator shall not deduct possessory interest taxes or other taxes in computing gross revenue. Gross revenue shall not include refunds for goods returned for resale on the Premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of Operator. Gross revenue shall include revenue received by Operator or by any lessee or licensee, or their agents, and all gross revenue received by any lessee, licensee, or other party as a result of the use of the Premises or the operation therein. The annual gross revenue shall be calculated at the end of each year of the term of this Agreement.

c. Delinquent Payment. If Operator fails to pay the payment when due,

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THE CITY OF OCEANSIDE and NEW VISION THEATRE COMPANY

Operator shall pay in addition to the unpaid payments, five percent (5%) of the delinquent payment. If the payment is still unpaid at the end of fifteen - (15) days, Operator shall pay an additional five percent (5%) [for a total of ten percent (10%)]. Said additional five percent (5%) is hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from payment delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

SECTION 5: ANNUAL REVIEW AND REPORTING

5.01 Annual Reporting. Operator shall be required to provide City with a written annual financial and operations report, prepared in a form satisfactory to the City, regarding all phases of Operator's management, occupation and use of the Premises. Operator shall submit said report to City within sixty - (60) days of each anniversary date of this Agreement.

5.02 Inspection of Records. Operator agrees to make any and all records and accounts available to City for inspection at all reasonable times, so that City can determine Operator's compliance with this Agreement. These records and accounts will be made available by Operator at the Premises and will be complete and accurate showing all income and receipts from the use of the Premises. Operator's failure to keep and maintain such records and make them available for inspection by City shall be deemed a default of this Agreement. Operator shall maintain all such records and accounts for a minimum period of five - (5) years.

SECTION 6: INSURANCE/INDEMNITY

6.01 Insurance. Operator shall take out and maintain at all times during the term of this Agreement the following insurance at its sole expense:

a. Operator shall maintain the following minimum limits:

General Liability

Combined Single Limit Per Occurrence	\$1,000,000
General Aggregate	\$2,000,000

b. All insurance companies affording coverage to the Operator shall add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Agreement. Insurance coverage provided to the City as an additional insured shall be primary insurance and other insurance maintained by the

MANAGEMENT AND OPERATION AGREEMENT
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THE CITY OF OCEANSIDE and NEW VISION THEATRE COMPANY

City, its officers, agents and employees shall be excess only and not contributing with the insurance provided pursuant to this Agreement.

c. All insurance companies affording coverage to the Operator shall be insurance organizations acceptable to the City, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide thirty - (30) days written notice to the City of Oceanside should the policy be canceled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. Operator shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

f. Operator shall provide a substitute certificate of insurance no later than thirty - (30) days prior to the policy expiration date. Failure by the Operator to provide such a substitution and extend the policy expiration date shall be considered a default by Operator and may subject the Operator to a termination of this Agreement.

g. Maintenance of insurance by the Operator as specified in this Agreement shall in no way be interpreted as relieving the Operator of any responsibility whatever and the Operator may carry, at its own expense, such additional insurance as it deems necessary.

h. If Operator fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. Operator shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within thirty - (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Operator shall pay said reimbursement and interest on the first (1st) day of the month following the notice of payment by City.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by Operator to take out or maintain insurance as required in this Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Agreement.

i. City, at its discretion, may require the revision of amounts and coverage at any time during the term of this Agreement by giving Operator sixty - (60) days prior written notice. City's requirements shall be designed to assure protection from and against the

MANAGEMENT AND OPERATION AGREEMENT
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THE CITY OF OCEANSIDE and NEW VISION THEATRE COMPANY

kind and extent of risk existing on the Premises. Operator also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Agreement.

6.02 Indemnity. Operator shall indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the Operator or its employees, agents, or others in connection with its use and occupation of the Premises under this Agreement, except only for those claims arising from the sole negligence or sole willful conduct of the City, its officers, agents, or employees. Operator's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Operator at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees.

6.03 Accident Reports. Operator shall, within seventy-two - (72) hours after occurrence, report to City any accident causing property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

SECTION 7: MAINTENANCE AND REPAIRS

7.01 Maintenance by City. City shall be responsible for the maintenance and repair of the Premises, which shall be limited to the maintenance and repair of: the exterior of the building of which the Premises are a part, the exterior painting, the exterior signage, the exterior lighting, the air-conditioning system, the structural components of the building (e.g. roof, walls) and the plumbing and electrical lines and conduit to the Premises. Provided, however, City shall not be responsible for the day to day operation and maintenance of the marquee (e.g. change of event lettering, replacement of light bulbs).

7.02 Maintenance by Operator. Operator shall be responsible for the regular maintenance and repair of the interior of the Premises, including, but not limited to, furniture, equipment, fixtures, seating, carpeting, interior walls, bathrooms and the stage area together with all related equipment (e.g. lighting, curtains, etc.), including those items described in Section 8 below. Operator shall also be responsible for the day to day operation and maintenance of the marquee (e.g. change of event lettering, replacement of light bulbs). Operator shall paint the interior of the Premises at least once during the term. In addition, Operator shall be responsible for all janitorial services for the Premises. All maintenance and repairs by Operator shall be such so as

MANAGEMENT AND OPERATION AGREEMENT
between
THE CITY OF OCEANSIDE and NEW VISION THEATRE COMPANY

to keep the Premises in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with all applicable laws.

7.03 Failure to Maintain by Operator. In the event that the Premises are not in a decent, safe, healthy, and sanitary condition, City shall have the right, upon written notice to Operator, to have any necessary maintenance work done at the expense of Operator, and Operator shall promptly pay any and all costs incurred by City in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Operator shall make payment no later than thirty - (30) days after written notice from the City. Further, if at any time City determines that said Premises are not in a decent, safe, healthy, and sanitary condition, City may at its sole option, upon written notice, require Operator to file with City a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of City to correct the said unsatisfactory condition. Operator shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on City or increase obligations elsewhere in this Agreement imposed on City.

SECTION 8: IMPROVEMENTS

8.01 Improvements by City. City shall perform all work in the Premises as set forth in Exhibit "D" attached hereto and by this reference made a part of this Agreement. It is understood and agreed that City may not have completed all items of City's work as specified in Exhibit "D" until Operator has provided specifications required of Operator and/or commenced/completed construction of Operator's initial improvements (as set forth in Subsection 8.03 below) to a point where City can re-enter the Premises and complete City's improvements. Provided, however, in no event shall said period of time be longer than sixty (60) days from the Commencement Date. Thereafter, City shall have the right to enter the Premises and perform the work as set forth herein. All improvements to the Premises provided by City shall remain the property of the City.

8.02 Fixtures and Equipment. The City shall also furnish and equip the Premises with those items set forth on the inventory of fixtures and equipment list, which is attached hereto as Exhibit "E" and is incorporated herein by this reference. All items of fixtures and equipment provided by City shall remain the property of the City subject to Operator's rights to use said items. No fixtures or equipment provided by City shall be removed or replaced by Operator without the prior written consent of the City. Once the fixtures and equipment as set forth in Exhibit "E" are furnished by the City, the maintenance, repair and replacement thereof, during the term of this Agreement shall be the sole responsibility of Operator. Said fixtures and equipment shall be returned to City at the expiration and/or termination of the Agreement, subject

MAINTENANCE AND OPERATION AGREEMENT
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to reasonable wear and tear.

8.03 Initial Improvements by Operator. Operator shall have the option to perform all work in the Premises as set forth in Exhibit "F" attached hereto and by this reference made a part of this Agreement. City agrees to deliver to Operator, and Operator agrees to accept from City, possession of the Premises when the Premises are sufficiently completed to permit Operator to begin Operator's improvements, subject to the improvements to be performed by City as set forth in Subsection 8.01 above. In the event Operator performs any of the work as described in Exhibit "F", Operator agrees to comply with all applicable rules, regulations and ordinances with respect to any work that can be classified as a "public works" project as defined by any state and/or local law, regulation or ordinance.

8.04 Improvements, Alterations and/or Modifications. Except as set forth in Section 8.03 above, Operator shall not perform any improvements, alterations and/or modifications to the Premises during the term or make or cause to be made any penetration through any roof, wall or floor, without the prior written consent of City. Operator shall be responsible for all damage resulting from any such work, whether or not City's consent therefore was obtained.

SECTION 9: GENERAL PROVISIONS

9.01 Signs. Other than the advertising on the exterior marquees or the interior of the Premises, Operator shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of City. If any such unauthorized item is found on the Premises, Operator shall remove the item at its expense within twenty-four - (24) hours of written notice thereof by City, or City may thereupon remove the item at Operator's cost.

9.02 Taxes. Operator shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Operator or the Premises, including, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Operator or levied by reason of the business or other Operator activities related to the Premises, including any licenses or permits.

Operator recognizes and agrees that this Agreement may create a possessory interest subject to property taxation, and that Operator may be subject to the payment of taxes levied on such interest, and that Operator shall pay all such possessory interest taxes.

MANAGEMENT AND OPERATION AGREEMENT
between
THE CITY OF OCEANSIDE and NEW VISION THEATRE COMPANY

9.03 Notices. All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To City:

City of Oceanside
Property Management
300 North Coast Highway
Oceanside, CA 92054

To Operator:

New Vision Theatre Company
61900 Yucca Rd. # 247
Pinyon Crest, Mountain Center, CA 92561
Attention: John Kalb

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

9.04 City Approval. The City Manager shall be the City's authorized representative in the interpretation and enforcement of all services performed in connection with this Agreement. The City Manager may delegate authority in connection with this Agreement to the City Manager's designee(s). For the purposes of directing Operator in accordance with this Agreement, which does not result in a change to this Agreement, the City Manager delegates authority to the ~~Parks and Recreation~~ Director of the Parks and Recreation Department.

9.05 Entire Agreement. This Agreement comprises the entire integrated understanding between City and Operator concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself.

MANAGEMENT AND OPERATION AGREEMENT
between
THE CITY OF OCEANSIDE and NEW VISION THEATRE COMPANY

The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to City.

The Operator shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

9.06 Agreement Modification. This Agreement may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

9.07 Assignment and Subletting-No Encumbrance. This Agreement and any portion thereof shall not be assigned, transferred, or delegated, nor shall any of the Operator's duties be delegated, without the express written consent of City. Any attempt to assign or delegate this Agreement without the express written consent of City shall be void and of no force or effect. Consent by City to one assignment, transfer, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, or delegation.

9.08 Defaults and Termination. If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within thirty - (30) days of the notice.

If the defaulting party is actually in default of this Agreement and fails to cure the default within thirty - (30) days of the notice, or, if more than thirty - (30) days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within ten - (10) days of the notice, the demanding party may terminate this Agreement upon written notice to the defaulting party.

City may also terminate this Agreement upon written notice to Operator in the event that:

- Operator has previously been notified by City of Operator's default under this Agreement and Operator, after beginning to cure the default, fails to diligently

MANAGEMENT AND OPERATION AGREEMENT
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pursue the cure of the default to completion, or

- Operator shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, or
- Operator shall be adjudicated a bankruptcy, or
- Operator shall make a general assignment for the benefit of creditors.

Upon termination, City may immediately enter and take possession of the Premises.

9.09 Other Regulations. All operation and use of the Premises under this Agreement shall be in accordance with the laws of the United States of America, the State of California and in accordance with all applicable rules and regulations and ordinances of the City of Oceanside now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by State or Federal law. In the event that, subsequent to occupancy of the Premises by Operator, any applicable building code, law or ordinance ("Regulations") requires additional improvements to the Premises as a result of Operator's use of the Premises, as opposed to a change in the Regulations, the Operator shall be solely responsible for said additional improvements. The City shall be responsible for improvements that are required by a change in the Regulations, provided, however, City shall have the option to terminate the Agreement in lieu of making said additional improvements.

9.10 Business License. Operator agrees to obtain and maintain, at its sole cost and expense, a current Business License issued from the City of Oceanside during the full term of this Agreement, provided such a license is required for Operator's purposes under this Agreement.

SECTION 10: SPECIAL PROVISIONS

10.01 Ancillary Uses and Services. Operator shall provide no additional and/or other operations or uses from the Premises, other than the operations and uses provided for under Section 1.02 of this Agreement.

10.02 Standards of Operation. Operator agrees that it shall operate and manage the services and facilities offered upon or from the Premises in a first class manner and comparable to other similar facilities within the San Diego County and Southern California areas which provide like products and services.

MANAGEMENT AND OPERATION AGREEMENT
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THE CITY OF OCEANSIDE and NEW VISION THEATRE COMPANY

10.03 Artistic Responsibility. Operator shall have full responsibility for the content and quality of its own programming and the outside groups to which it may allow the use of the Premises.

10.04 Displays, Customization, Alteration. Operator may display its production photos, awards, and other decorative items that illustrate its history, in the Premises. Operator may also have rotating art, craft, and photography exhibits in suitable public places in the Premises and, when appropriate, sell these items. Additionally, Operator shall have the exclusive right to solicit donations for plaques to be affixed to various walls and fixtures of the facility. Such plaques may be affixed to seats, doors, rooms, the stage, etc., in recognition of these donations provided, however, that this shall in no event actually confer any possessory rights, removal rights or other rights with respect to such items or the Premises. Further, Operator may modify the existing stage by adding to or removing any parts thereof and Operator may at its sole discretion supplement the existing stage lighting system by the addition of gridwork, pipes, etc. to support stage lighting instruments in accordance with applicable building codes and this Agreement.

10.05 Operator's Employees. Operator shall provide an experienced, well-qualified "on-site" supervisor to oversee all operations conducted by Operator on the Premises. Operator shall ensure that its employees will at all times conduct themselves in a creditable manner, and they shall conform to all rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the City, provided that such rules, regulations and requirements are not in conflict with the terms of this Agreement. Operator shall maintain a staff in adequate size and number, to City's reasonable satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the Premises.

10.06 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the Premises which are in any way explosive or hazardous, except that ordinary business materials that may be classified as hazardous may be kept in or on the Premises if such materials are stored and disposed of in accordance with all applicable laws; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon the demised Premises or other premises and the improvements thereon; provided, however, that if anything done by Operator causes an increase in the rate of insurance on the Premises, Operator may, at its option, pay such increase and Operator shall not thereafter be considered in default under this Agreement.

No machinery or apparatus shall be used or operated on or about the Premises which will in any way injure the Premises or improvements thereon, or adjacent or other Premises, or improvements thereon, or to persons; provided, however, that nothing

MANAGEMENT AND OPERATION AGREEMENT
between
THE CITY OF OCEANSIDE and NEW VISION THEATRE COMPANY

contained in this section shall preclude Operator from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame welding or burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the City.

10.07 Merchandise and Equipment. City retains the right to require the Operator to discontinue the sale or use of those items that are of a quality unacceptable to the City.

10.08 Continued Occupancy. Operator covenants and agrees to, and it is the intent of this Agreement that the Operator shall, continuously and uninterruptedly during the term of the Agreement, occupy and use the Premises for the purposes hereinabove specified, except while Premises are untenable by reason of fire, flood, or other unavoidable casualty, and, in that event, City shall be promptly notified by Operator.

10.09 Controlled Prices. Operator shall at all times maintain a complete list or schedule of the prices and charges for all goods or services, or combinations thereof, supplied to the public on or from the Premises whether the same are supplied by Operator or by Operator's, assignees, concessionaires, permittees or licensees.

SECTION 11: COMMUNITY USE

11.01 Community Use of the Premises. Operator acknowledges that the paramount use of Premises is for public services and civic activities. The City reserves the right to schedule and use the Premises for community meetings and other City sponsored activities subject to the guidelines set forth in Section 11.02 below.

11.02 Community Use Guidelines. City agrees to coordinate such use of the Premises with Operator so as not to conflict with Operator's programs and activities. Use of the Premises by the community shall include use of the theater operations (e.g. center stage productions) when not in use by the Operator. Use of the Premises shall include the rental thereof and Operator shall also provide any necessary basic technical support services. The priority of community users (e.g. City, non-profit, for profit, etc.), rental rates and the technical support fee (e.g. to cover costs) are set forth in Exhibit "G", which is attached hereto and incorporated herein by this reference.

MANAGEMENT AND OPERATION AGREEMENT
between
THE CITY OF OCEANSIDE and NEW VISION THEATRE COMPANY

SECTION 12: SIGNATURES

12.01 Signature Page. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Operator and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Management and Operation Agreement to be executed by setting hereunto their signatures on the day and year respectively written hereinabove.

City

THE CITY OF OCEANSIDE

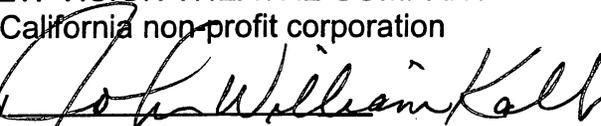
By 
City Manager

APPROVED AS TO FORM:

By , DEPUTY
City Attorney

Operator

NEW VISION THEATRE COMPANY
a California non-profit corporation

By 

Name John William Kalb

Title President

By 

Name Yolanda Kalb

Title sect.

NOTARY ACKNOWLEDGMENTS OF OPERATOR'S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of San Diego } ss.
On Dec 21, 2004 before me, Joan C Barry
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Yolanda Galt
Name(s) of Signer(s)

personally known to me
 proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
Joan C Barry
Signature of Notary Public

OPTIONAL

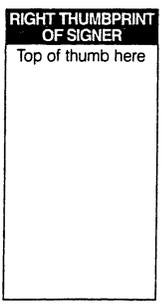
Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____
Document Date: 12-21-04 Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____
 Individual
 Corporate Officer — Title(s): Secretary
 Partner — Limited General
 Attorney-in-Fact
 Trustee
 Guardian or Conservator
 Other: _____
Signer Is Representing: New Vision Theatre Co.



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN DIEGO

} ss.

On December 9, 2004, before me, Holly Trobaugh, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared John William Kalb,
Name(s) of Signer(s)

personally known to me

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Holly J. Trobaugh
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Management and Operation Agreement

Document Date: January 5, 2005 Number of Pages: 30

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

MANAGEMENT AND OPERATION AGREEMENT
between
THE CITY OF OCEANSIDE and NEW VISION THEATRE COMPANY

EXHIBITS

Exhibit "A" – A sketch of the Premises

Exhibit "B" – Operator's Goals and Objectives

Exhibit "C" – Form Copy of Commencement Date Memorandum

Exhibit "D" – Improvements to Premises to be performed by City

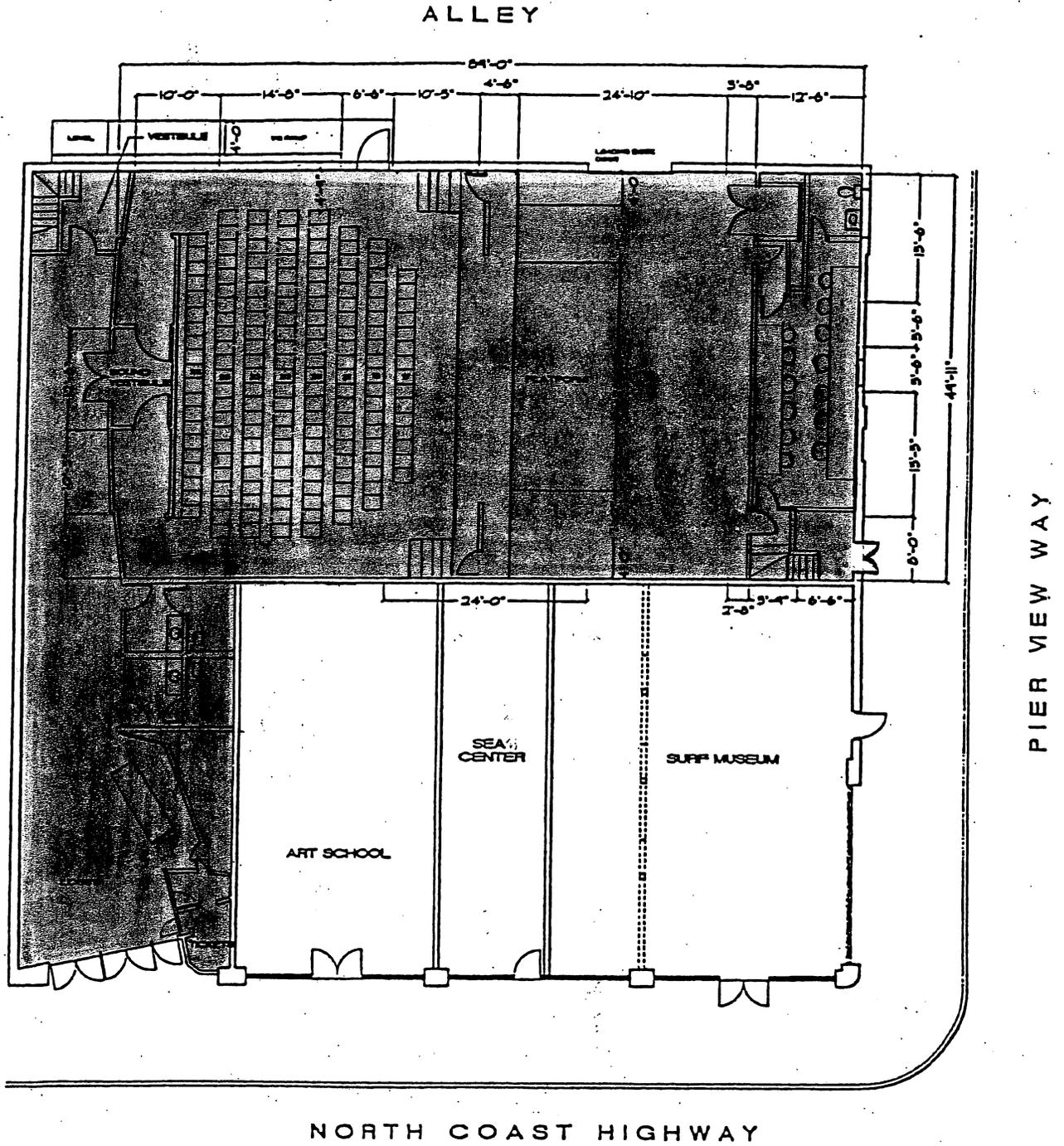
Exhibit "E" – Inventory of Fixtures and Equipment to be provided by City

Exhibit "F" – Improvements to Premises to be performed by Operator

Exhibit "G" – List of Rental Rates, Technical Service Fees and Priority List

SUNSHINE
BROOKS THEATER

217 NORTH COAST HIGHWAY
OCEANSIDE, CA 92054



FLOOR PLAN

SCALE: 1/8" = 1'-0"

EXHIBIT "A"

New Vision Theatre Company Goals and Objectives at the Sunshine Brooks Theater in Oceanside, CA

Exhibit B

Goals and Objectives have been established as stated in Section 2: Performance of the Management and Operation Agreement between The City of Oceanside and New Vision Theatre Company. These goals and objectives are intended to meet the needs of the Oceanside community and to create a tool for review by the City of Oceanside for the management and operation of the Sunshine Brooks Theater. Goals and objectives are established separately for years one, two and three to future years and will be subject to bi-annual review by an ad hoc committee formed by the Parks & Recreation Commission.

Year One

Facility

- Assist the City of Oceanside in the evaluation of the current lighting and sound system and assist in the repair and/or replacement of any needed equipment.
- Re-open, clean and upgrade the Facility to be ready for scheduling and implementation of productions within four (4) weeks upon completion of renovation.
- Set up ticket and administrative areas in the Sunshine Brooks Theater to support its programs.
- Create new lobby decorations to accent the "new" Sunshine Brooks Theater.
- Maintain on-site, staffed ticket and administrative areas in the Sunshine Brooks Theater to support its programs
- Maintain all theatrical equipment and furnishings in good working order.

Programming

- Schedule and coordinate an "opening" event that introduces New Vision Theatre Co. to the Oceanside Community with the participation of elected officials, Star Theatre and downtown/business community.
- Produce a minimum of 4 shows with the first production opening 5-weeks after completion of renovation.
- Develop a play-writing contest as stated in proposal.
- Research other entertainment opportunities for stage such as a comedy series.
- Promote and begin classes and workshops for both children and adults.
- Coordinate with the Friends of the Oceanside Public Library to schedule monthly concert series at the Sunshine Brooks Theater.
- Create a theater use application and fee schedule providing access to Sunshine Brooks Theater to community groups.
- Accommodate community service groups for a commitment of 12 community uses of the theater.

Community and City of Oceanside Relations

- Offer discounts of at least 30% for Preview tickets to senior groups.
- Offer discounts of at least 20% for regular performance to seniors.
- If subscriptions are offered, discounts of at least 20% for subscriptions to seniors.
- Start bi-annual reports to the Director, Parks & Recreation Commission, Arts Commission and Oceanside City Council on Sunshine Brooks Theater activity.
- Offer discounts of at least 20% and minimum of 4 special free performances to Oceanside residents.
- Assure the creation of positive civic image in the press and public through programming at the Sunshine Brooks Theater.

New Vision Theatre Company Goals and Objectives at the Sunshine Brooks Theater in Oceanside, CA

Exhibit B

Year Two

Facility

Maintain an on-site, staffed ticket and administrative areas in the Sunshine Brooks Theater to support its programs.

Maintain all theatrical equipment and furnishings in good working order.

Programming

Present seven (7) New Vision Theatre Co. productions.

Find two (2) outside companies to produce at Sunshine Brooks Theater.

Begin a late night live-entertainment series.

Continue coordination with Friends of the Oceanside Public Library for a monthly concert series.

Continue classes and workshops for children and adults as well as provide an opportunity for a class/workshop production.

Continue an annual play-write contest.

Continue to provide access to the Sunshine Brooks Theater through a theater use application process for 15 community uses for service groups.

Begin an annual fundraising event for the development of the Sunshine Brooks Theater.

Community and City of Oceanside Relations

Offer discounts of at least 30% for Preview tickets to youth groups.

Offer discounts of at least 10% for regular performances to students (under 18).

If subscriptions are offered, offer discounts of at least 20% on subscriptions to students (under 18) and seniors.

Offer discounts of at least 30% for Preview tickets to senior groups.

Offer discounts of at least 20% for regular performance to seniors.

Continue bi-annual reports to the Director, Parks & Recreation Commission, Arts Commission and Oceanside City Council on Sunshine Brooks Theater activity.

Offer discounts of at least 20% and minimum of 4 special free performances to Oceanside residents.

Assure the creation of positive civic image in the press and public through programming at the Sunshine Brooks Theater.

Recruit one (1) Oceanside resident to serve on New Vision Theatre Co. Board of Directors.

New Vision Theatre Company Goals and Objectives at the Sunshine Brooks Theater in Oceanside, CA

Exhibit B

Year Three and All Future Years

Facility

Maintain on-site, staffed ticket and administrative areas in the Sunshine Brooks Theater to support its programs.

Maintain all theatrical equipment and furnishings in good working order.

Programming

Present seven (7) New Vision Theatre Co. productions.

Find two (2) outside companies to produce at Sunshine Brooks Theater.

Continue a late night live-entertainment series.

Continue coordination with Friends of the Oceanside Public Library for a monthly concert series.

Continue classes and workshops for children and adults as well as provide an opportunity for a class/workshop production.

Continue an annual play-write contest.

Continue to provide access to the Sunshine Brooks Theater through a theater use application process for 18 community uses for service groups.

Begin an annual fundraising event for the development of the Sunshine Brooks Theater.

Community and City of Oceanside Relations

Offer discounts of at least 30% for Preview tickets to youth groups.

Offer discounts of at least 10% for regular performances to students (under 18).

If subscriptions are offered, offer discounts of at least 20% on subscriptions to students (under 18) and seniors.

Offer discounts of at least 30% for Preview tickets to senior groups.

Offer discounts of at least 20% for regular performance to seniors.

Continue regular bi-annual reports to the Director, Parks & Recreation Commission, Arts Commission and Oceanside City Council on Sunshine Brooks Theater activity.

Offer at least 20% off discounts and a minimum of 4 special free performances to Oceanside residents.

Assure the creation of positive civic image in the press and public through programming at the Sunshine Brooks Theater.

Maintain one (1) Oceanside resident to serve on New Vision Theatre Co. Board of Directors.

EXHIBIT "C"

COMMENCEMENT DATE MEMORANDUM

This Commencement Date Memorandum, dated as of _____, 2004 is executed between the **City of Oceanside**, a municipal corporation ("CITY") and **New Vision Theatre Company**, a California non-profit corporation ("OPERATOR").

RECITALS

WHEREAS, CITY and OPERATOR have entered into that certain Management and Operation Agreement ("Agreement") dated _____, 2004 for the premises at 217 North Coast Highway, in the City of Oceanside, County of San Diego, State of California, more commonly referred to as the Sunshine Brooks Theater; and

WHEREAS, pursuant to the terms of the Agreement the parties are to execute a memorandum to confirm the commencement date of the Agreement.

NOW, THEREFORE, in consideration of the conditions and covenants contained herein, the parties hereto mutually agree as follows:

1. The CITY and OPERATOR agree that the commencement date of the Agreement is _____, ____ and the termination date is _____, ____.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the above, as of the day and year first written above.

"CITY"
City of Oceanside,
a municipal corporation

By: _____
Steven R. Jepsen

Title: City Manager

"OPERATOR"
New Vision Theatre Company,
a California non-profit corporation

By: _____

Name: _____

Title: _____

Sunshine Brooks Theater

Improvements to be made by the City of Oceanside

Exhibit D

The following phase-I improvements are to be made by the City of Oceanside upon approval of the City Council. Additional improvements will be made on a phased schedule following phase-I. The below listed improvements are to be made on a one-time basis and become the responsibility of the Operator to maintain to City standards. The City at any time may choose to make additional improvements as the City deems necessary.

Phase I:

1. Fire Suppression within stage area installation
2. Exterior stage exit stairs installation
3. Provide proscenium curtain that meets fire retardant standard
4. Conduct an electrical inspection and repairs as needed per inspection
5. Repair one speaker
6. Conduct a mold inspection underneath stage and in the vestibule storage area
7. Install drywall in vestibule storage area
8. Install any and all burned out lights
9. Repair neon-sign
10. Install any and all burned out lights

Phase II:

1. Install barrier-free access to stage
2. Install barrier-free access to seating area

Phase III:

1. Improvements to the street-front façade and marquee

Sunshine Brooks Theater Inventory
Technical Equipment and Furnishings

Exhibit E

LIGHTING:

Instruments

- 12 ETC "Source Four" 26° ESR (750)
- 12 ETC "Source Four" jr Zoom (750)
- 24 Par 64s (1000)
- 5 Scoops (750)
- 2 "Barkley Beam" ESR (1000)*
- 4 Altman ESR (1000)*

**Antiquated and seldom used, Sunshine Brooks Theater is a stage pin theatre*

Dimmers

- 3 Dove Systems "Dimmermaster 1224D"
 - 12x2.4KW, DMX/Analog, TB
 - 2400 watts per channel

Controller

- Dove Systems "TechProll" Manual Controller
 - 18 channels, DMX output, bumps, master, single scene hold, and crossfade
 - runs on "Starport" computer programming
- "Starport" Memory Controller
- Compaq Computer (for memory controller) Intel Pentium Processor
- Compaq P50 Monitor

Follow Spot

Lycian "The Midget" 1206 240V

Extensions

Variety; count available on request

Shine Brooks Theater Inventory
Technical Equipment and Furnishings

SOUND:

Mixing Console

Mackie SR Series 24•4•2 4-Bus mixing console

CD Player

Dennon PCM Audion Technology Compact Disc Player

- Model #: DCD-425
- Advanced Multilevel Noise Shaping (A.M.N.S.)

Cassette Deck

Sony stereo dual cassett deck

Model #: TC-WE 305

Amplifier, Equalizers, and Controllers

- 2 QSC CX502 Personal Amplifiers
- 1 QSC "Series One" Model 1400 Personal Stereo Amplifier
- 1 Rane "micrographic EQUALIZER" ME 30B
- 1 Tannoy TX2 System Controller

Speakers

- 3 Tannoy i5 AW Suspended Speakers (50/100W)
- 2 JBL EON 1500 (average 225W/peak900W)
- 2 JBL TR225 (average 450W/peak1800W)

Microphones

- 2 Superlux Pro-248 solo mic
- 3 Superlix Pro-258 wide frequency mic
- 1 Shure SM58 vocal mic
- 1 Audio-technica Pro 37R condenser mic
- 1 Audix OM5 Dynamic Vocal Microphone"
- 1 Radio Shack Unidirectional Dynamic Microphone for Vocals

Floor Mics

- 2 audio-technica PRO 44 floor mic

Shine Brooks Theater Inventory
Technical Equipment and Furnishings

Wireless Mic System (receivers, transmitters, and microphones) – poor condition

- 8 ATW-R10 Receiver*
 - includes two whip antennas for the entire system
- 4 ATW-132 handheld mic/transmitter*
- 8 ATW-T31 "UniPak" Transmitter body pack*
- 4 MT830R Subminiature Omnidirectional Condenser Microphone
- 6 PRO 7a Miniature Cardioid Condenser Microphone

** Part of the audio –technica 1000 Series Systems*

Accessories & Misc

- 1 Mic Stand
- 3 Boom Stands
- 1 Imp 2 Direct Box

COMMUNICATIONS:

- 5 Walkie Talkies

FURNISHINGS:

- 198 Fixed Theater Seats
- 1 Set Procenium Curtains
- Stage Drapes
- 2 Office Desks
- 1 Office 2-Drawer File Cabinet
- 1 Office Desk Chair
- 2 Office Guest Chairs
- 4 Technician Chair/Stools
- 2 Technician Lights
- 6 Storage Shelf Units
- 2 Tables 6-foot
- 20 Folding Chairs
- 12 Stacking Chairs
- 7 Dressing Room Benches
- 2 Coat Racks
- 2 Iron Boards
- 1 Refrigerator
- 1 Microwave
- 1 Old Fashioned Popcorn Machine

Shine Brooks Theater Inventory
Technical Equipment and Furnishings

MISCELLANEOUS TOOLS, EQUIPMENT, SUPPLIES:

Complete Marquee Lettering Set

- 5 Concession Line Stands/Straps
- 4 Small Waste Baskets
- 2 Large Waste Baskets
- 5 Trash Cans
- 5 Power Strips
- 10 Extension Cords
- 1 Ladder 8-foot
- 1 Ladder 20-foot
- 1 Extension Ladder 40-foot
- 2 Work Spot Lights

Other Various Tools & Supplies

Sunshine Brooks Theater
Improvements to be made by the Operator

Exhibit F

The following improvements are to become the responsibility of the Operator on an as needed basis or as the City or Operator deems necessary. Operator shall work with the Parks & Recreation Department and obtain proper City approval when making improvements and/or alterations to the property and/or removal of items from the property that will create a permanently fixed alteration to the property. Additionally, Operator shall comply with the color scheme chosen by the City.

Improvements by Operator

Installation of additional storage

Any permanent or temporary structural alteration

Additional stage lighting/sound equipment that is fixed to the building structure

Improvements to the lobby, box-office, entrance area.

Alterations or changes to the overall appearance/look of the property.

**NEW VISION THEATRE PRICE LIST FOR
THEATRE PRODUCTIONS
2005 SEASON**

**GENERAL ADMISSION \$15.00
PRICE FOR MUSICAL \$20.00**

**SENIORS GENERAL ADMISSION \$12.00
STUDENT PRICE AT THE DOOR \$10.00**

**CHILDREN UNDER AGE 12 - \$7.50 MUSICAL \$10.00
HALF PRICE**

**SEASON TICKETS
7 SHOWS INCLUDES 2 MUSICALS**

**GENERAL ADMISSION \$100.00
CITY OF OCEANSIDE RESIDENT \$90.00
SENIORS \$75.00
CHILDREN \$45.00**

SPECIAL 4 PACK SEASON TICKET

**4 TICKETS GENERAL ADMISSION
\$300.00**

**4 TICKETS SENIORS
\$260.00**

2005 / 2006 SEASON 7 SHOWS FLEX TICKET

GRAND OPENING SPECIAL

**PREMIERE SHOW PACKAGE
\$40.00 - GENERAL ADMISSION
\$30.00 - SENIORS**

THREE SHOWS - SPRING 2005

**ADDITIONAL CHARGE FOR OPENING NIGHT GALA PERFORMANCE AND
CELEBRATION**

EXHIBIT "G-1"

SUNSHINE BROOKS THEATER USER FEE SCHEDULE

Rehearsal / Set up fees are per hour – minimum 1 hour. Production Fees are per hour except where noted* - minimum 3 hours. A Facility Supervisor is included in all rentals. Additional technical or support staff may be supplied, or required, at \$35.00 per hour per person (minimum 2 hours). Rehearsal fees do not include use of theatrical lighting or sound. Technical rehearsals with lighting and sound will be charged the production fee. Bookings may not be made more than 6 months in advance (unless other arrangements are made with New Vision Theatre Co.). Should more than 1 request for the same day(s) be received, priority will be given in the same order as it appears on this list. A non-refundable deposit will be required to secure the dates selected.

User Classification	Rehearsal/Set-up Fee	Production Fee	Available Times	Example of User Event
Citizen Event	\$25.00 hr.	\$25.00 hr - \$75 Min.	M,T,W,Th, S-days only, Su-night only.	Eagle Scout and Gold Award Ceremonies, Service Club lectures and awards
Oceanside Public School Event	\$30.00 hr.	\$30.00 hr \$90 Min.	M,T,W,Th, S-days only, Su-night only.	School Sponsored event subject to use agreement between the City and the School District.
Oceanside Area Private School Events	\$45.00 hr.	\$45.00 hr \$135 Min.	M,T,W,Th, S-days only, Su-night only.	Private Schools, Music, Dance, Martial Arts academies
Community Theater (501(c)(3))	\$45.00 hr.	* \$200.00 per performance	Open	Amateur theater groups without 501(c)(3) documentation are considered to be commercial users
Reader's Theater	\$35.00 hr.	* \$75.00 per performance	M,T,W,Th, S-days only, Su-night only.	Reader's theater and private lectures without sets or use of theatrical lights and sound.
Commercial	100.00 hr	\$100.00 hr \$300 Min.	Open	For profit pageants, theatrical and musical productions
Lobby Only	\$20.00 hr	* \$50.00 per event	Open	Art exhibits and other appropriate events

COMMENCEMENT DATE MEMORANDUM

This Commencement Date Memorandum, dated as of June 30, 2005, is executed between the **City of Oceanside**, a municipal corporation ("CITY") and **New Vision Theatre Company**, a California non-profit corporation ("OPERATOR").

RECITALS

WHEREAS, CITY and OPERATOR have entered into that certain Management and Operation Agreement ("Agreement") dated January 5, 2005, for the premises at 217 North Coast Highway, in the City of Oceanside, County of San Diego, State of California, more commonly referred to as the Sunshine Brooks Theater; and

WHEREAS, pursuant to the terms of the Agreement the parties are to execute a memorandum to confirm the commencement date of the Agreement.

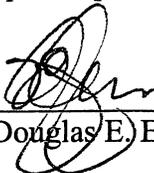
NOW, THEREFORE, in consideration of the conditions and covenants contained herein, the parties hereto mutually agree as follows:

- 1. The CITY and OPERATOR agree that the commencement date of the Agreement is **July 1, 2005**, and the termination date is **June 30, 2010**.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the above, as of the day and year first written above.

"CITY"

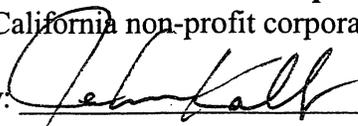
City of Oceanside,
a municipal corporation

By: 
Douglas E. Eddow

Title: Real Property Manager

"OPERATOR"

New Vision Theatre Company,
a California non-profit corporation

By: 
Name: John W KACB

Title: President

By: 
Name: Yolanda Hall

Title: Secy & Treasure

ACORD CERTIFICATE OF INSURANCE

DATE (MM/DD/YY)

01/03/08

PRODUCER

BLISS & GLENNON, INC.
 C/O JOHNSON & WOOD INSURANCE SERVI
 5731 PALMER WAY, SUITE D
 CARLSBAD CA 92010

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY
A NAUTILUS INSURANCE COMPANY

INSURED

NEW VISION THEATRE COMPANY
 217 N. PACIFIC COAST HIGHWAY
 OCEANSIDE, CA 92054

COMPANY
B

COMPANY
C

COMPANY
D

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	NC752932	01/01/08	01/01/09	GENERAL AGGREGATE \$ 2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				PRODUCTS - COMP/OP AGG \$ INCLUDED
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				PERSONAL & ADV INJURY \$ 1,000,000
	<input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE \$ 1,000,000
					FIRE DAMAGE (Any one fire) \$ 100,000
					MED EXP (Any one person) \$ 5,000
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT \$
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE \$
	<input type="checkbox"/> HIRED AUTOS				
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY: \$
					EACH ACCIDENT \$
					AGGREGATE \$
	EXCESS LIABILITY				EACH OCCURRENCE \$
	<input type="checkbox"/> UMBRELLA FORM				AGGREGATE \$
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM				\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				STATUTORY LIMITS \$
	THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL				EACH ACCIDENT \$
					DISEASE - POLICY LIMIT \$
					DISEASE - EACH EMPLOYEE \$
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

10 DAY NOTICE FOR NON PAY. CERTIFICATE HOLDER IS NAMED AS ADDITIONAL INSURED/LANDLORD.

CERTIFICATE HOLDER

CITY OF OCEANSIDE
 PROPERTY MANAGEMENT
 300 N. PACIFIC COAST HIGHWAY
 OCEANSIDE, CA 92054

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Robert P. Abraham

CHRISSEY 1

NAUTILUS INSURANCE COMPANY

POLICY NUMBER: NC458608

LIABILITY ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:	CITY OF OCEANSIDE	Premium \$	300.00
	PROPERTY MANAGEMENT		
	300 N PACIFIC COAST HIGHWAY		
	OCEANSIDE, CA 92054		

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule and only for liability arising out of your negligence and only for occurrences or coverages not otherwise excluded in the policy to which this endorsement applies.

Your policy is primary in the event of an occurrence caused by your sole negligence as respects the job described below:
(MUST BE COMPLETED)

Job Description: LANDLORD

All other Terms and Conditions of this Insurance remain unchanged.