

# STAFF REPORT



ITEM NO. 11

CITY OF OCEANSIDE

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DATE: June 23, 2010

TO: Honorable Mayor and City Councilmembers

FROM: Neighborhood Services Department and  
Economic and Community Development – Property Management Division

SUBJECT: **PROPERTY USE AGREEMENT WITH NEW VISION THEATRE  
COMPANY FOR THE SUNSHINE BROOKS THEATER LOCATED AT  
217 N. COAST HIGHWAY AND THE SPACE AT 219 N. COAST  
HIGHWAY**

## SYNOPSIS

Staff recommends that the City Council approve a one-year property use agreement with New Vision Theatre Company for the use of the Sunshine Brooks Theater located at 217 N. Coast Highway and the space at 219 N. Coast Highway, with revenue to the City in the amount of \$14,400, and authorize the City Manager to execute the agreement.

## BACKGROUND

In January 2005, the City entered into a management and operation use agreement with New vision Theatre Company (NVT) for a term of five-years. The agreement was a collaborative effort between the City and NVT to operate and maintain a community theater open to the general public. Throughout the five-year term, NVT met all of the goals and objectives set forth through the agreement and made efforts to recruit volunteers and coordinate with other agencies such as the Oceanside Cultural Arts Foundation (OCAF) and the Surf Museum. The City of Oceanside provided support to NVT through a no-rent contract, paid utilities, and provided deferred maintenance assistance on a case-by-case basis. On March 24, 2010, the City received a request to extend the agreement for an additional five-year term.

## **ANALYSIS**

As part of the Neighborhood Services budget reductions, the subsidy of utilities payments and maintenance budget were eliminated. In addition, the Public Works Department has received significant budget cuts and reduced maintenance support of facilities. No other nonprofit agency receives subsidy for utilities payment or facility maintenance as part of its property use agreement.

In addition to budgetary cuts, staff has been directed to increase revenues where feasible and more particularly for City real properties as leases come to a term end. Considering the financial burden that operating a theater facility has, staff has found that the elimination of City support with no addition of a rent requirement is justified for the short term. A one-year Property Use Agreement enables NVT to explore the feasibility of operating the theater on its own to its fullest extent. The Property Use Agreement will also permit NVT to use the space at 219 N. Coast Highway as part of its theater operation. Said adjacent space consists of approximately 1,200 square feet and is currently vacant. NVT will pay a rate of \$1,200 per month during the one-year term of the Property Use Agreement plus pay for all other expenses.

In light of the City's priority need to generate additional revenues while cutting costs, staff will be issuing a Request For Proposal (RFP) simultaneous to this one-year agreement. NVT is eligible to submit a competitive proposal along with any other qualified agency. The RFP process will enable the City to ensure that every step is taken to increase revenues to the City while also allowing a transition for NVT from a financially supported contract by the City to a revenue-generating proposal.

## **FISCAL IMPACT**

The Property Use Agreement will result in total revenue of \$14,400 over the one-year term (Account No. 1101.4351.0009).

## **COMMISSION OR COMMITTEE REPORT**

The Arts Commission unanimously recommended City Council to approve the Property Use Agreement at its regularly scheduled meeting on Monday, June 7, 2010. The Parks & Recreation Commission also voted on the item at its regularly scheduled meeting on Thursday, June 10, 2010.

## **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 a one-year property use agreement with New Vision Theatre Company for the use of the Sunshine Brooks Theater located at 217 N. Coast Highway and the space at 219 N. Coast Highway, with revenue to the City in the amount of \$14,400, and authorize the City Manager to execute the agreement.

PREPARED BY:

SUBMITTED BY:

Megan Crooks  
Megan Crooks  
Management Analyst

Peter A. Weiss  
Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager

Margery Pierce, Neighborhood Services Director

Jane McVey, Economic & Community Development Director

Doug Eddow, Real Estate Manager

Teri Ferro, Financial Services Director

MP  
JMc  
DW  
TF

Attachments:      Property Use Agreement



# PROPERTY USE AGREEMENT

THIS PROPERTY USE AGREEMENT, hereinafter called "AGREEMENT", is executed between the CITY OF OCEANSIDE, a municipal corporation, hereinafter called "CITY", and the NEW VISION THEATRE COMPANY, INC., a California non-profit corporation, hereinafter called "PERMITTEE".

## RECITALS

WHEREAS, CITY is owner of the real property described herein below, more commonly known as the "Sunshine Brooks Theater Building"; and

WHEREAS, PERMITTEE is a California non-profit corporation established as a theater production and management company with experience operating a city-owned facility as a community theater open to the general public; and

WHEREAS, CITY and PERMITTEE entered into a Management and Operation Agreement on January 5, 2005, and amended on October 8, 2008, for the management and operation of the Sunshine Brooks Theater Building, which agreement expires on June 30, 2010; and

WHEREAS, PERMITTEE is desirous of continuing to use the Sunshine Brooks Theater Building and the CITY is interested in having PERMITTEE use the Sunshine Brooks Theater Building to operate a community theater open to the general public.

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

## AGREEMENT

### SECTION 1: USES

**1.01 Premises.** CITY hereby authorizes PERMITTEE, in accordance with the covenants, conditions, terms and provisions of this Agreement, the exclusive use of that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as "Sunshine Brooks Theater Building" located at 217 North Coast Highway ("Theater Space"), and the adjacent space consisting of approximately 1,200 square feet located at 219 North Coast Highway ("Adjacent Space"), as more particularly illustrated in Exhibits "A" and "B", attached hereto and by this reference made part of this Agreement. Said real property is hereinafter collectively called the "Premises". In return for this permission, PERMITTEE hereby agrees to act in accordance with and abide by the terms, covenants, conditions and provisions of this Agreement.

**1.02 Uses.** It is expressly agreed that the Premises shall be used by PERMITTEE solely and exclusively for the purpose of a community theater for live theater and music productions open to the general public and for such other related or incidental purposes as may be first approved in writing by CITY, and for no other purpose whatsoever. It is further agreed that PERMITTEE shall not use the Adjacent Space for storage.

PERMITTEE 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 PERMITTEE fails to continuously use the Premises for said purposes, or uses the Premises for purposes not expressly authorized herein, the PERMITTEE shall be deemed in default under this Agreement.

## **SECTION 2: TERM**

**2.01 Commencement.** The term of this Agreement shall be for a period of one (1) year commencing on July 1, 2010, and terminating June 30, 2011.

**2.02 Business License.** PERMITTEE 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 PERMITTEE's operations under this Agreement.

## **SECTION 3: CONSIDERATION**

**3.01 Theater Space.** CITY hereby agrees that the programs, services and activities provided by PERMITTEE at the Theater Space portion of the Premises are valuable consideration received from PERMITTEE, that the provision of such programs, services and activities shall constitute all the property use payment to be paid by PERMITTEE for its use of the premises in accordance with the terms, covenants, conditions and provisions of this Agreement, and that PERMITTEE shall not be required to pay any monetary payments to CITY for its use and occupation of the Premises.

**3.02 Adjacent Space Payment.** PERMITTEE agrees to pay CITY, on or before the first (1<sup>st</sup>) day of each month, the sum of **One Thousand Two Hundred and No/100 Dollars (\$1,200.00)** per month for its use and occupation of the Adjacent Space portion of the Premises in accordance with the covenants, conditions, terms and provisions of this Agreement.

**3.03 Time and Place of Payment.** The PERMITTEE shall make all payments monthly in advance on or before the first day of each new month. Checks should be made payable to the City of Oceanside and delivered to the CITY at the address set forth in Subsection 6.04 of this Agreement. The place and time of payment may be changed at any time by CITY upon thirty (30) days written notice to PERMITTEE. PERMITTEE assumes all risk of loss and responsibility for late payment charges.

**3.04 Delinquent Payment.** If PERMITTEE fails to pay the payment when due, PERMITTEE 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, PERMITTEE shall pay an additional five percent (5%) [being a total of ten percent (10%)] which 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.

**3.05 Utilities.** PERMITTEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development, occupation and operation of the Premises.

**3.06 Program Reports.** PERMITTEE shall be required to provide CITY with a written semi-annual theater and operations report regarding all phases of PERMITTEE use and occupation of the Premises. PERMITTEE shall submit said report to CITY within thirty (30) days after December 31, 2010 and June 30, 2011.

## **SECTION 4: RECORDS**

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

**4.02 Financial Reports.** PERMITTEE shall keep accurate and complete financial records of any monies expended in relation to the performance of the services pursuant this Agreement according to generally accepted accounting principles. PERMITTEE shall be required to provide CITY with a written semi-annual financial report. PERMITTEE shall submit said report to CITY within thirty (30) days after December 31, 2010 and June 30, 2011.

Such Agreement and such financial reports and information shall be deemed to be public records. Failure to comply with this requirement shall be a material breach and will subject this Agreement to termination by the CITY.

## **SECTION 5: INSURANCE RISKS/SECURITY**

**5.01 Indemnity.** PERMITTEE 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 PERMITTEE 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 misconduct of the CITY, its officers, agents,

or employees. PERMITTEE'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, PERMITTEE 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.

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

a. PERMITTEE shall maintain the following minimum limits:

**General Liability**

<b>Combined Single Limit Per Occurrence</b>	\$1,000,000
<b>General Aggregate</b>	\$2,000,000

b. All insurance companies affording coverage to the PERMITTEE shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Agreement.

c. All insurance companies affording coverage to the PERMITTEE 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 should the policy be cancelled 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. PERMITTEE shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the CITY's City Attorney, concurrently with the submittal of this Agreement.

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

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

h. If PERMITTEE 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. PERMITTEE 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. Said reimbursement and interest shall be paid by PERMITTEE 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 PERMITTEE 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 PERMITTEE sixty (60) days prior written notice. CITY's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. PERMITTEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Agreement.

**5.03 Accident Reports.** PERMITTEE shall, within seventy (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 6: GENERAL PROVISIONS**

**6.01 Acceptance of Premises.** PERMITTEE accepts the Premises in an "AS IS", "WHERE IS" condition, subject to all faults and conditions without warranty as to quality, character, performance or condition and with full knowledge of the physical condition of the Premises. Further, the parties acknowledge that it is the intention of CITY to replace the HVAC unit to the Premises, provided, however, the CITY makes no representation as to when and if during the term of the Agreement said HVAC unit will be replaced at the Premises.

**6.02 Maintenance by Permittee.** With respect to PERMITTEE's use and/or operations at or on the Premises, PERMITTEE shall make any and all repairs and replacements necessary to maintain and preserve the Premises except as to those items set forth in Subsection 6.03 Maintenance by City. PERMITTEE shall further maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws.

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 PERMITTEE, to have any necessary maintenance work done at the expense of PERMITTEE, and PERMITTEE 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. PERMITTEE

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 PERMITTEE 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. PERMITTEE 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.

**6.03 Maintenance by City.** CITY shall be responsible only to repair and replace the structural components of the roof, building walls and the foundation of the Premises. CITY shall also be responsible for the repair and replacement of the HVAC unit (excluding duct work and interior electrical within the Premises), unless the need for such repair and replacement is caused by PERMITTEE's negligence or intentional misconduct.

**6.04 Sign.** PERMITTEE 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, PERMITTEE 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 PERMITTEE's cost.

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

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

**6.04 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 PERMITTEE:**

New Vision Theatre Company, Inc.  
Attention: John and Yolanda Kalb  
217 North Coast Highway  
Oceanside, CA 92054

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.

**6.05 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 PERMITTEE in accordance with this Agreement, which does not result in a change to this Agreement, the City Manager delegates authority to the Real Estate Manager of the Property Management Division.

**6.06 Entire Agreement.** This Agreement comprises the entire integrated understanding between CITY and PERMITTEE 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.

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 PERMITTEE 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.

**6.07 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.

**6.08 Assignment and Subletting-No Encumbrance.** This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the PERMITTEE'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. The consent by CITY to one assignment, transfer, sublease, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, sublease, or delegation.

**6.09 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 PERMITTEE in the event that:

PERMITTEE has previously been notified by CITY of PERMITTEE's default under this Agreement and PERMITTEE, after beginning to cure the default, fails to diligently pursue the cure of the default to completion, or

PERMITTEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, or

PERMITTEE shall be adjudicated bankrupt, or

PERMITTEE shall make a general assignment for the benefit of creditors.

Upon termination, CITY may immediately enter and take possession of the Premises. Further, CITY shall also have any other available legal and/or equitable remedies permitted by law.

**6.10 Other Regulations.** All 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 applicative 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.

## SECTION 7: SPECIAL PROVISIONS

**7.01 Ancillary Uses and Services.** No additional uses or services, other than those provided for under Section 1.02 of this Agreement, shall be provided by PERMITTEE from or at the demised Premises.

No retail food service and/or the sale of alcoholic beverage operations shall be provided on or from the Premises.

**7.02 Standards of Operation.** PERMITTEE 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.

**7.03 PERMITTEE's Employees.** PERMITTEE shall provide an experienced and well qualified "on-site" supervisor to oversee all operations conducted by PERMITTEE on the Premises. PERMITTEE shall ensure that its employees shall 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. PERMITTEE 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.

**7.04 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 PERMITTEE causes an increase in the rate of insurance on the Premises, PERMITTEE may, at its option, pay such increase and PERMITTEE 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 contained in this section shall preclude PERMITTEE 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.

**7.05 Merchandise and Equipment.** CITY retains the right to require the PERMITTEE to discontinue the sale or use of those items that are of a quality unacceptable to the CITY.

**7.06 Continued Occupancy.** PERMITTEE covenants and agrees to, and it is the intent of this Agreement that the PERMITTEE shall, continuously and uninterrupted 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 PERMITTEE.

**7.07 City Right to Show Premises.** During the term of the Agreement, CITY reserves the right, without the presence of PERMITTEE to show the Premises to prospective user should the CITY elect to issue a Request for Proposals for the future use of the Premises upon termination of the Agreement. Provided, however, the CITY shall provide reasonable notice and agrees to coordinate such showing with PERMITTEE's use of the Premises so as not to conflict with PERMITTEE's programs and activities.

**7.08 Community Use of the Premises.** PERMITTEE 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. CITY agrees to coordinate such use of the Premises with PERMITTEE so as not to conflict with PERMITTEE's programs and activities.

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**SECTION 8: SIGNATURES**

**8.01 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 PERMITTEE 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 Property Use Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

**CITY**

THE CITY OF OCEANSIDE

APPROVED AS TO FORM

By \_\_\_\_\_  
City Manager

By  ASST.  
City Attorney

Date \_\_\_\_\_

**PERMITTEE**

NEW VISION THEATRE COMPANY, INC.  
a California non-profit corporation

By 

Name John W. Kalb

Title DIRECTOR

By 

Name Yolanda M. Kalb

Title President

Date 6/10/2010

**NOTARY ACKNOWLEDGMENTS OF PERMITTEE'S SIGNATURE(S) MUST BE ATTACHED**

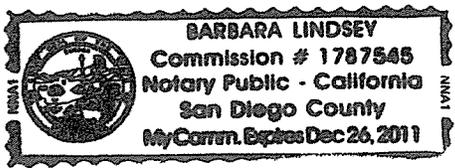
# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On June 10, 2010 before me, BARBARA LINDSEY, Notary Public

personally appeared JOHN W. KALB, & YOLANDA M. KALB



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: Barbara Lindsey  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

## 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: PROPERTY USE AGREEMENT

Document Date: June 10, 2010 Number of Pages: 14

Signer(s) Other Than Named Above: PETER A. WEISS & BARBARA HAMILTON (City Atty.)

Capacity(ies) Claimed by Signer(s) (City Atty.)

Signer's Name: JOHN W. KALB Signer's Name: YOLANDA M. KALB

- |  |  |
|--|--|
| <input type="checkbox"/> Corporate Officer — Title(s): _____   | <input type="checkbox"/> Corporate Officer — Title(s): _____   |
| <input type="checkbox"/> Individual  | <input type="checkbox"/> Individual  |
| <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General | <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General |
| <input type="checkbox"/> Attorney in Fact  | <input type="checkbox"/> Attorney in Fact  |
| <input type="checkbox"/> Trustee   | <input type="checkbox"/> Trustee   |
| <input type="checkbox"/> Guardian or Conservator   | <input type="checkbox"/> Guardian or Conservator   |
| <input checked="" type="checkbox"/> Other: <u>DIRECTOR</u>   | <input checked="" type="checkbox"/> Other: <u>PRESIDENT</u>  |



Signer Is Representing: NEW VISION THEATER CO

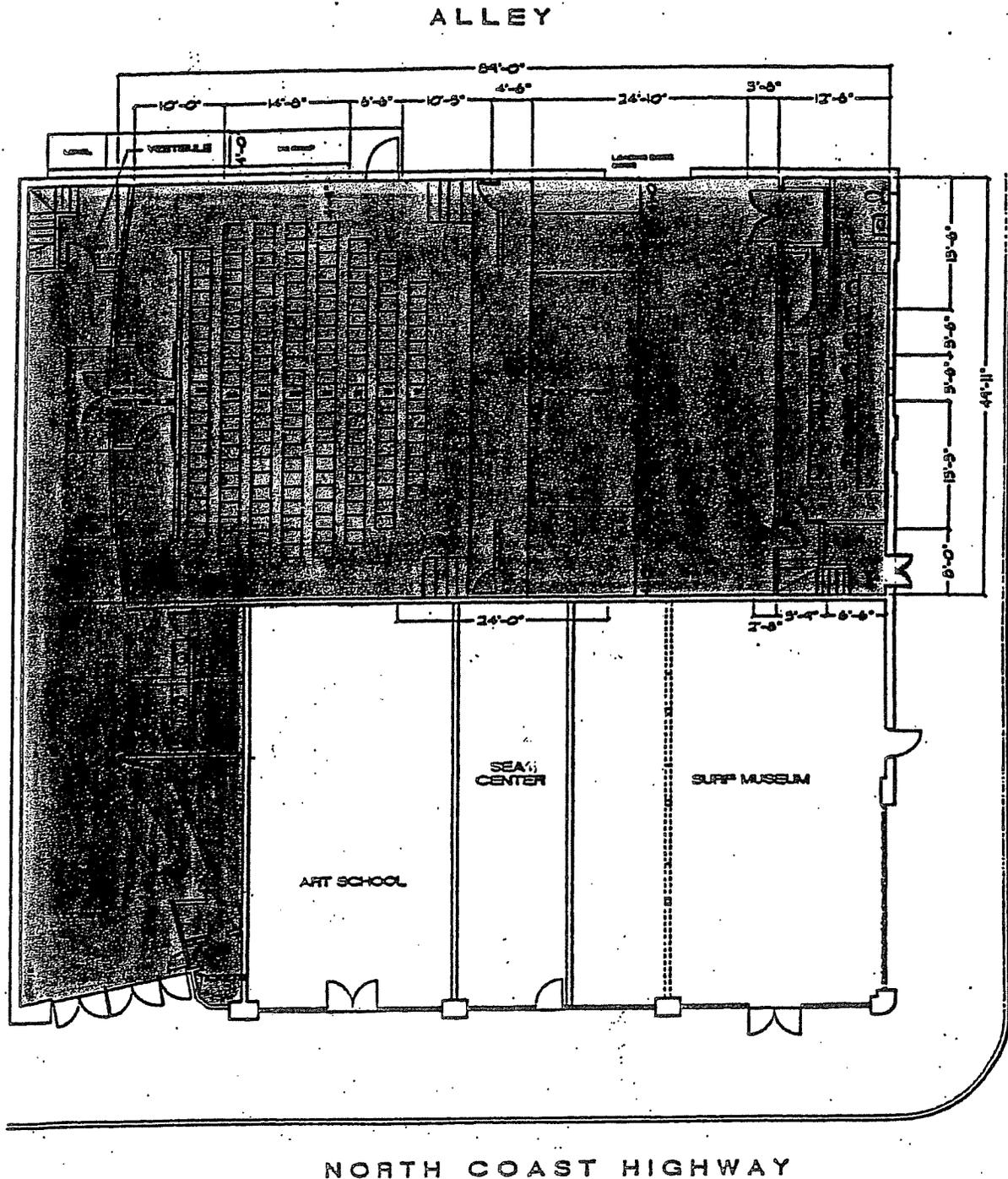
EXHIBITS

Exhibit "A". A sketch of the Premises attached hereto and incorporated herein by reference.

Exhibit "B". A sketch of the Premises attached hereto and incorporated herein by reference.

# SUNSHINE BROOKS THEATER

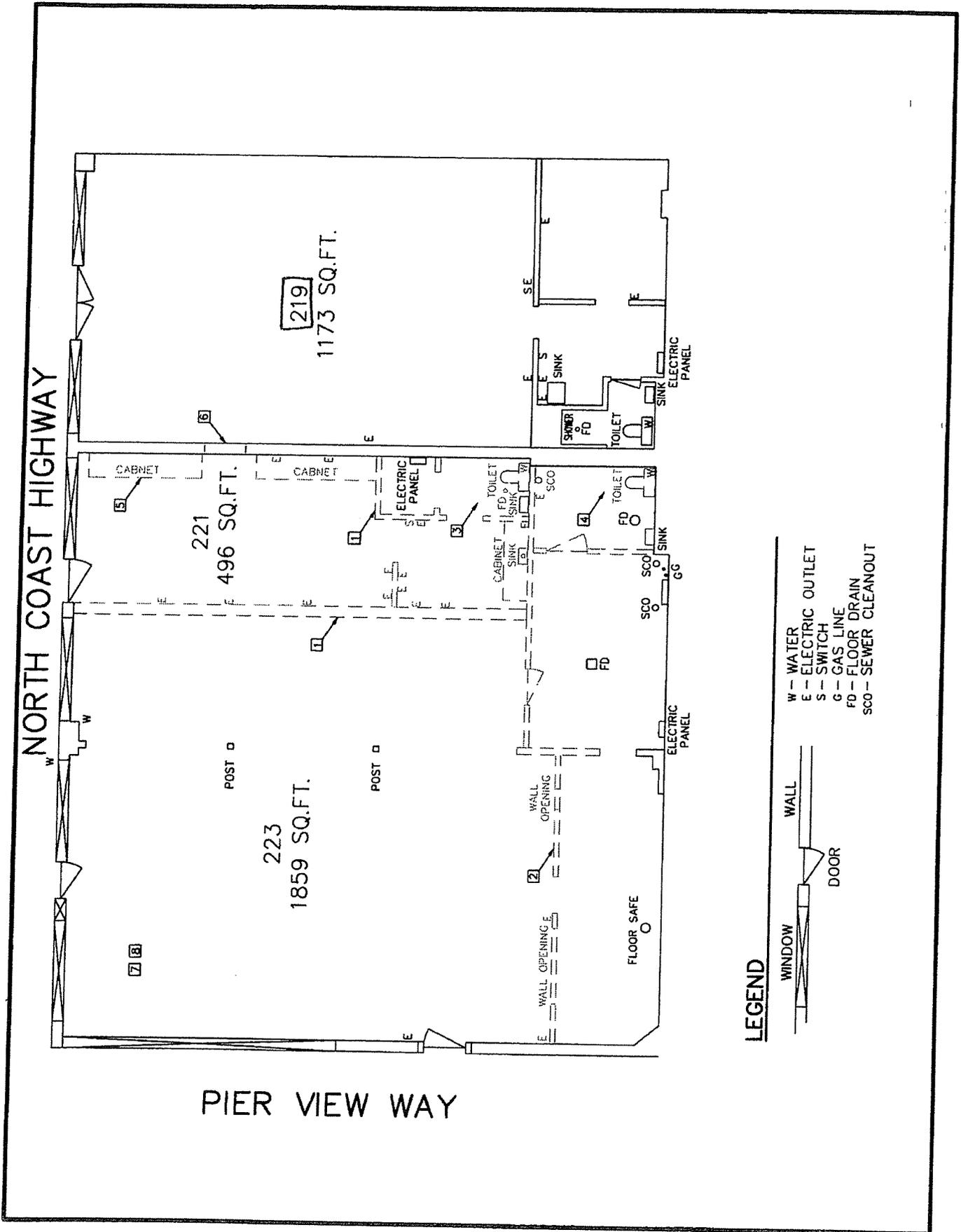
217 NORTH COAST HIGHWAY  
OCEANSIDE, CA 92054



## FLOOR PLAN

SCALE 1/8" = 1'-0"

### EXHIBIT "A"



**LEGEND**

- WINDOW
- WALL
- DOOR
- W - WATER
- E - ELECTRIC OUTLET
- S - SWITCH
- G - GAS LINE
- FD - FLOOR DRAIN
- SCO - SEWER CLEANOUT

EXHIBIT "B" - 219 N. COAST HWY.

