



DATE: September 28, 2011

TO: Honorable Mayor and City Councilmembers

FROM: Neighborhood Services Department

SUBJECT: **APPROVE THE SELECTION OF OCEANSIDE THEATRE COMPANY TO OPERATE THE SUNSHINE BROOKS THEATER AND AUTHORIZE THE CITY MANAGER TO SIGN THE PROPERTY USE AGREEMENT**

SYNOPSIS

Staff recommends that the City Council approve a five-year Property Use Agreement with the Oceanside Theatre Company as the operator for the Sunshine Brooks Theater located at 217 and 219 N. Coast Highway, with revenue in the minimum amount of \$14,400 per year; and authorize the City Manager to sign the Property Use 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.

On June 23, 2010, the City entered into a one-year Property Use Agreement with NVT for the theater at 217 N. Coast Highway and a vacant commercial space at 219 N. Coast Highway with lease rent on the commercial space only; herein, collectively referred to as Sunshine Brooks Theater (SBT). Additionally, NVT began paying for all utilities and maintenance on SBT. In light of the City's priority to generate revenues, staff recommended that an RFP be issued within a year of this action to explore revenue-generating alternatives for use of SBT.

On February 23, 2011, the City Council authorized staff to release an RFP for the lease and/or purchase of the Sunshine Brooks Theater. On May 6, 2011, three proposals were received for the lease and/or lease-to-own of the Sunshine Brooks Theater from the companies: INDEPENDant Players with Carlsbad Performing Arts Academy, New Vision Theatre Company (NVT), and Oceanside Theatre Company (OTC). No offers of purchase were received. On June 1, 2011, an RFP Review Committee conducted interviews of each of the companies and completed a criteria ranking for each (attached).

ANALYSIS

The RFP Review Committee results, from highest to lowest, are as follows: 1) OTC, 2) NVT (current operator), and 3) INDEPENDant Players. The Review Committee found the OTC to be best equipped with the necessary financial and staffing resources to make the biggest impact in Oceanside with the least involvement of City resources.

In 2007, an adhoc committee with members of the Parks & Recreation Commission, Arts Commission, and New Vision Theatre Company was formed to address goals and needs for the theater in Oceanside. Those goals were approved by both Commissions in late 2007 and then incorporated into the Parks & Recreation Strategic Plan of 2008-2012.

| | | |
|---|--------------------------------------|---|
| <u>Goal #5 – Sunshine Brooks Theater</u> – Provide recreational and leisure experiences through enhanced cultural arts programming while supporting economic development in Downtown Oceanside. | | |
| D.5.1. | Identify long-range funding sources. | |
| | D.5.1.a | Recruit sponsorship for the theater. |
| | D.5.1.b | Establish an annual fundraiser event. |
| D.5.2. | Create Program Action Plan. | |
| | D.5.2.a | Hire contract instructor to offer classes and programs. |
| D.5.3. | Create Facility Plan. | |
| | D.5.3.a | Pursue facility expansion to include a conceptual design process. |

With several years of budget reductions and further attempts to make all facilities and operations self-sufficient and provide full cost-recovery to the City, Parks & Recreation relies on the outsourcing and contract services for the Sunshine Brooks Theater to achieve the goals above. With a diverse and well established Board of Directors, fundraising, and diversification of revenues; the OTC is best positioned to carry the theater to a long-term sustainable operation for the residents of Oceanside.

The OTC made the most complete response to the RFP and provided the required support evidence, goals and objectives, and resources as summarized in the following table:

I. Operational Plan

OTC is supported by an eight member Board of Directors and an executive Artistic Director that will carry out assigned operational duties. These members provide a diverse background from small business operation, education, and financial advisement.

The program plan offers diversity in functions from adult/youth theatre productions to comedy, music competition, and film. OTC plans to participate in community events as community awareness.

OTC provided specific immediate goals with objectives and resources for achieving those goals as well as delineated long-term goals demonstrating sustainable operation without City resources.

II. Public Economic Benefits

OTC provided a report demonstrating the economic benefits to the City, such as the creation of 4.4 full time jobs and the generation of \$150,000 spent in the City.

OTC also provided a long-term plan to make capital upgrades to the theater, such as a restroom expansion, as well as establish a deferred maintenance program to sustain the facility.

In addition, OTC has a plan for a youth scholarship program for classes and workshops.

III. Financial Resources

OTC provided a bank statement, in the name of Oceanside Theatre Company, that demonstrated evidence of financial resources to plan and operate the theater. Additionally, OTC provided a plan to generate a diversity of revenues.

OTC proposes to establish a deferred maintenance program and make capital improvements to the facility.

IV. Relevant Experience

OTC encompasses a diversity of relevant experience including technical directing and master carpentry for Mira Costa College Theatre, as well as past Theater-In-Residence at the Sunshine Brooks Theater. Overall experience includes as a summary: box office, technical theater, theater/music production, professional education, business operation, human resources, and grant writing.

Staff is recommending a five-year Property Use Agreement with the option for a five-year renewal; totaling a potential 10-year opportunity for operating the Sunshine Brooks Theater. The Property Use Agreement provides for space rent for the 219 N. Coast Highway portion of the facility, as well as ticket shares to the City beginning in year two of the agreement. At time of renewal, should one take place, space rent will be recalculated at that future fair market value. OTC will be fully responsible for all utilities, security, and insurance of the facility.

FISCAL IMPACT

Rent for the OTC Property Use Agreement shall be \$1,200 per month and will be deposited to the General Fund (1101.4351.0009). Beginning in year two of the agreement, the City shall receive a fifty cent surcharge on each ticket sold by OTC and in year three that amount will increase to a one dollar surcharge. Staff recommends that such surcharges be deposited to a facilities account to enable the City to provide any necessary structural repairs and or assist with future capital improvements of the facility.

COMMISSION OR COMMITTEE REPORT

An RFP review committee consisting of City staff from Parks and Recreation, Library Services, and Economic Development as well as members of the public including one Parks and Recreation Commissioner and theater arts professionals, reviewed the proposals and participated in the interviews. The RFP review committee unanimously recommended OTC to be awarded a contract. The Arts Commission unanimously approved the selection of OTC on June 6, 2011, and the Parks and Recreation Commission unanimously approved the selection of OTC on August 11, 2011.

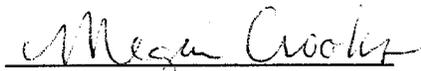
CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the City Council approve a five-year Property Use Agreement with the Oceanside Theatre Company as the operator for the Sunshine Brooks Theater located at 217 and 219 N. Coast Highway, with revenue in the minimum amount of \$14,400 per year; and authorize the City Manager to sign the Property Use Agreement.

PREPARED BY:


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Management Analyst

SUBMITTED BY:


Peter A. Weiss
City Manager

Reviewed By:

Michelle Skaggs-Lawrence, Deputy City Manager
Margery M. Pierce, Neighborhood Services Director
Doug E. Eddow, Real Estate Manager
Teri Ferro, Financial Services Director






Attachments: RFP Rating Sheet
Property Use Agreement

Sunshine Brooks Theater - RFP Rating Sheet

Proposing Entity:

Rated By: _____ Date: _____

| Criteria | Score | Comments |
|--|---|--|
| I. Operational Plan a. The proposal demonstrates previous experience to support the ability to successfully operate and manage a theater. b. The proposal provides a plan for diverse theater functions inclusive of the Oceanside residents, student, and youth. c. The proposal clearly states immediate goals and objectives for the operation of the theater and identifies strategies, resources, and experience for goal achievement. d. The proposal clearly describes a plan for long-term sustainability and identifies strategies, resources, and experience for achieving sustainability. e. The proposal clearly identifies a staffing plan that supports the proposed operational plan. | Out of 40 <u> </u> / 10 <u> </u> / 5 <u> </u> / 10 <u> </u> / 10 <u> </u> / 5 | |
| II. Public Economic Benefits a. The proposal identifies and supports the direct and indirect economic benefits to the City from the proposed operation of the theater. b. Level of consistency of the proposed theater operation with the Parks & Recreation Strategic goals. | Out of 20 <u> </u> / 10 <u> </u> / 10 | |
| III. Financial Resources a. Evidence of the financial resources to plan, operate, and sustain the theater operations and management. b. The proposal demonstrates a financial consideration for deferred maintenance and capital improvements. | Out of 20 <u> </u> / 10 <u> </u> / 10 | |
| IV. RELEVANT EXPERIENCE a. Operation of a public theater/facility including public access, maintenance and long-range planning/budgeting b. Overall quality, theatrical program experience | Out of 20 <u> </u> / 10 <u> </u> / 10 | |
| Total (out of 100) | <u> </u> / 100 | Final Entity Ratings: <u>Oceanside Theatre Company</u> 85 100 82 87 87 80 → Average 86 <u>New Vision Theatre Company</u> 67 63 73 72 82 76 → Average 72 <u>INDEPENDANT Players w/ CPAA</u> 18 51 25 27 37 18 → Average 29 |

USE AGREEMENT

BY AND BETWEEN

THE CITY OF OCEANSIDE

AND

OCEANSIDE THEATER COMPANY

ON CITY OWNED REAL PROPERTY, LOCATED AT

**217-219 COAST HIGHWAY,
OCEANSIDE, CA 92054**

DATED

SEPTEMBER 28, 2011

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EXHIBITS

- Exhibit "A" – Theater Space
- Exhibit "B" – Adjacent Space
- Exhibit "C" - Commencement Date Memorandum
- Exhibit "D" - Fixture and Equipment List
- Exhibit "E" - Application Request for Use of Sunshine Brooks

PROPERTY USE AGREEMENT

THIS PROPERTY USE AGREEMENT, hereinafter called "Agreement", is executed between the CITY OF OCEANSIDE, a California Charter City, hereinafter called "City", and Oceanside Theatre Company, (OTC), 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 Theatrical Production and Education Company and

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, readings, workshops, seminars, classes, lectures, galas, fundraisers, and 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 five (5) years commencing on the later of **October 1, 2011** or the date the previous tenant vacates and clears the premises ("Commencement Date"). Upon determination of the Commencement Date, Operator shall execute a Commencement Date Memorandum confirming the actual date the Agreement commences and terminates. A form Commencement Date Memorandum is attached hereto as **Exhibit "C"**, and by this reference made a part of this Agreement.

2.02 Extension of Term. The Permittee 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 Permittee is not in default or breach of any term, condition, or covenant of this Agreement.

The City Manager or City Manager's designee shall notify the Permittee not later than **thirty (30) days** after receipt of such request whether such request will be recommended to the City Council for approval, at which time the City Manager shall provide Permittee with the City's calculated fair market rent value and rental amount which the City is willing to accept for Permittee's use and occupation of the Premises during the extension term. In no event shall the rental rate be less than that required during the preceding annual term. City Manager's failure to provide the new rental amount within said timeframe shall not defeat City's ability to make adjustments to the rental 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 Permittee not later than **thirty (30) days** from receipt of the request for extension.

In no event shall the term of this Agreement be extended in excess of five (5) years beyond the expiration of the term of this Agreement without the mutual written agreement of the parties and the prior approval of the City Council.

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 Permittee 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.

2.03 Holdover. Any holding over by Permittee after expiration or termination shall not be considered as a renewal or extension of this Agreement. The occupancy of the Premises by Permittee or by Permittee's property after the expiration or termination of this Agreement constitutes a month-to-month tenancy, and all other terms and conditions of this Agreement, shall continue in full force and effect.

2.04 Abandonment by Permittee. In the event Permittee breaches the Agreement and abandons the Premises, this Agreement shall continue in effect for so long as City does not terminate this Agreement, and City may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

2.05 Surrender of Property. At the expiration or earlier termination of this Agreement, Permittee shall surrender the Premises to City free and clear of all liens and encumbrances created by Lessee, except those liens and encumbrances which existed on the date of the execution of this Agreement by City. The Premises, when surrendered by Permittee, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at commencement of this Agreement, absent normal wear and tear.

2.06 Time is of Essence. Time is of the essence of all of the terms, covenants, conditions and provisions of this Agreement.

2.07 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 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.

- A. Permittee agrees to pay City a Fifty Cent (**\$0.50**) surcharge on all ticket sales starting at the beginning of year two (2) of operation. Upon the commencement of year three (3) through five (5) of operation a One Dollar (**\$1.00**) surcharge on all ticket sales will be paid to the City.

3.02 Adjacent Space Payment. **Ninety (90) days** after the Commencement Date, hereby defined as "Rent Commencement Date", the first Annual rent amount for the first year of this Agreement shall be Ten Thousand Eight Hundred Dollars and No Cents (**\$10,800.00**) which shall be payable monthly in advance at the rate of One-Thousand Two Hundred Dollars and No Cents (**\$1,200.00**) on or before the first day of each new month starting on the Rent Commencement Date. If the Rent Commencement Date is not the first day of a month, then that portion of such rent which is attributable to the days in that month from the Rent Commencement Date until the end of that month shall be paid on the Rent Commencement Date

- A. **Rental Adjustment Date.** The rental adjustment date shall be the 5 year anniversary of the initial term of the 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 6.07 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. Premises shares water meter with adjacent unit 223 Coast Highway. City has right in its reasonable discretion to determine Permittee's prorated share of water to be paid City on a monthly basis.

3.06 Program Reports. Permittee shall be required to provide City with a written 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, 2012.

3.07 Security Deposit. Permittee shall not be initially required to pay a security deposit under this Agreement to the City. In the event the City determines, in its discretion, that a reasonable security deposit is required in order to protect City's interest in this Agreement, Permittee shall pay the amount determined by City, immediately upon demand.

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 June 30, 2012 and December 30, 2012. 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

| | |
|---|-------------|
| Combined Single Limit Per Occurrence | \$1,000,000 |
| General Aggregate | \$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" conditions, 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.

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 will keep the roof, foundation and the structural columns in good repair. City shall not, however, be liable to Permittee unless Permittee has given City prior written notice of the necessity for such repairs and any damage arising therefrom shall not have been caused, in whole or in part by the negligent or willful act or omission of Permittee, its employees, agents or invitees, or by the failure of Permittee to perform any of its obligations under this Agreement, or caused by any risk which Lessee is required to insure pursuant to Section 5. 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).

6.04 Fixtures and Equipment. The City shall furnish and equip the Premises with those items set forth on the inventory of Fixtures and Equipment List, which is attached hereto as and is incorporated herein by this reference ("Fixtures and Equipment"), as more particularly illustrated in **Exhibits "D"**. All fixtures and equipment provided by City shall remain the property of the City subject to Permittee's rights to use said items. No fixtures or equipment provided by City shall be removed or replaced by Permittee without the prior written consent of the City. Once the fixtures and equipment are furnished by the City, the maintenance, repair and replacement thereof, during the term of this Agreement shall be the sole responsibility of Permittee. Said fixtures and equipment shall be returned to City at the expiration and/or termination of the Agreement, subject to reasonable wear and tear.

6.05 Sign. Permittee shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising, other than within the available marquee or display cases, 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.

6.06 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.

6.07 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:

Oceanside Theatre Company
P.O.Box 5704
Oceanside, CA 92052

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.

6.08 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.

6.09 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.

6.10 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.

6.11 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.

6.12 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 a bankruptcy, 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.

6.13 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. City acknowledges and agrees that in connection with

the operation of the Premises as a theater, Permittee may engage in related income generating activities in support of its primary purpose, pursuant to which Permittee 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, Permittee is prohibited from selling alcoholic beverages on the Premises; provided, however, where permissible pursuant to Section 6.13 herein above, Permittee may provide for alcoholic beverages as part of a special engagement purpose, for which Permittee is required to obtain a Special Event Permit through the City.

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 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. If professional technical services are required it is understood the City shall reimburse Permittee for such expenses.

7.08 Oceanside Unified School District and City Use. Permittee 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 7.07. 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 "E"**, and proof of insurance naming the City and Permittee as additionally insured. If professional technical services are required it is understood Oceanside Unified School District shall reimburse Permittee for such expenses.

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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 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 *Antonia Samuelson* ASST.
City Attorney

Date _____

PERMITTEE

OCEANSIDE THEATRE COMPANY
a California non-profit corporation

By *Naomi Olson*
Name NAOMI OLSON
Title President

By *David A. Metteland*
Name DAVID A. METTELAND
Title TREASURER

Date 9/14/11

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

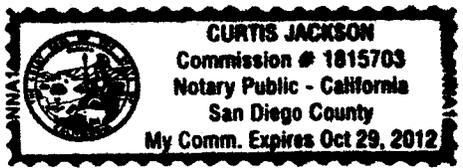
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On 9/14/11 before me, Curtis Jackson, Notary Public

personally appeared Naomi Olson and David Netteland



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 [Handwritten Signature]
Signature of Notary Public

Place Notary Seal 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: _____

Document Date: _____ Number of Pages: _____

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: _____

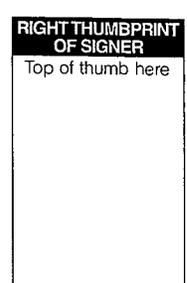
Signer Is Representing: _____



Signer's Name: _____

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

Signer Is Representing: _____



EXHIBITS

Exhibit "A". Theater Space

Exhibit "B". Adjacent Space

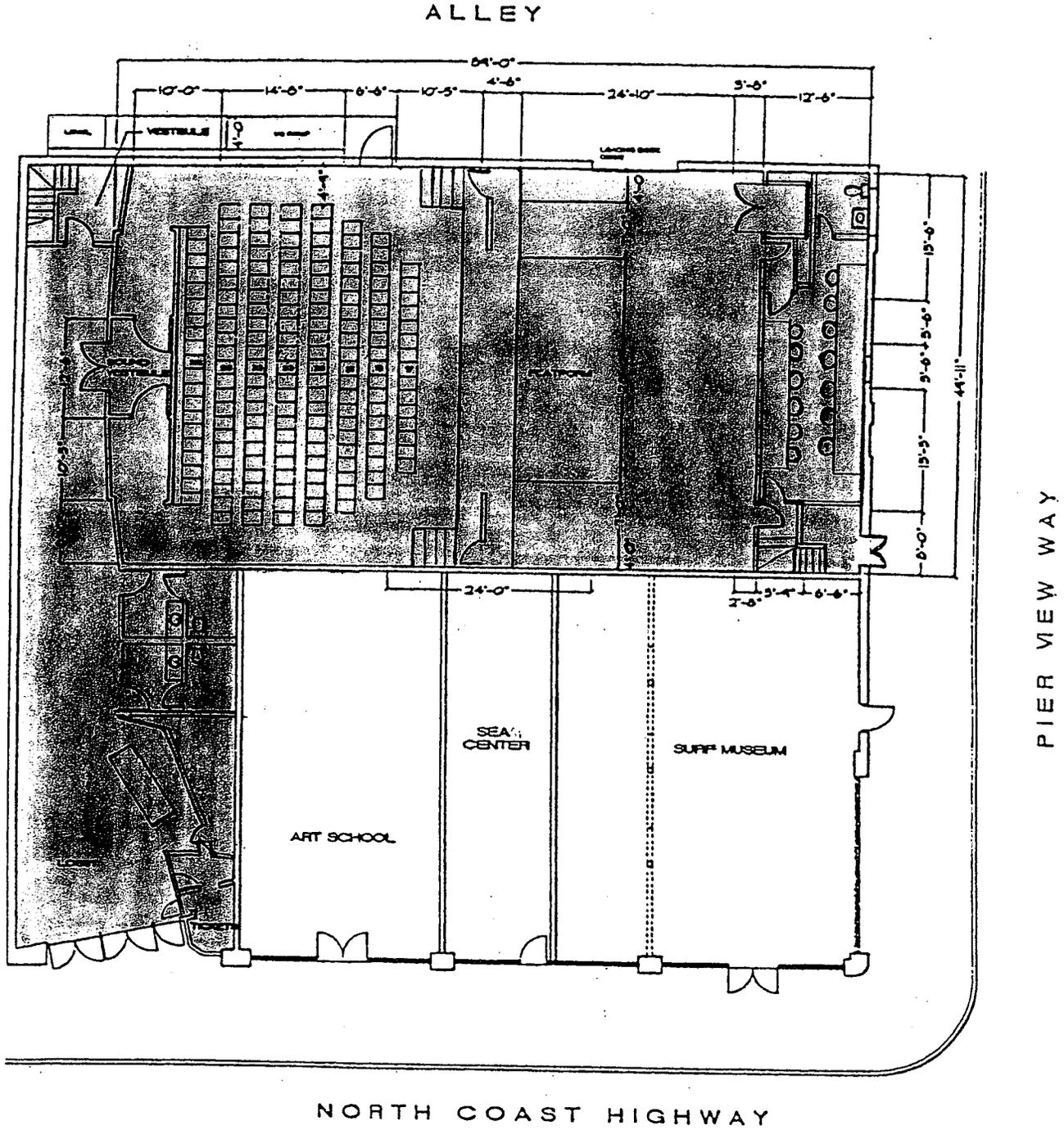
Exhibit "C". Commencement Date Memorandum

Exhibit "D". Fixture and Equipment List

Exhibit "E". Application Request for Use of Sunshine Brooks

SUNSHINE
BROOKS THEATER

217 NORTH COAST HIGHWAY
OCEANSIDE, CA 92054



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

EXHIBIT "A"

EXHIBIT "C"

COMMENCEMENT DATE MEMORANDUM

This Commencement Date Memorandum, dated as of _____, 2011 is executed between the **City of Oceanside**, a California Charter City ("City") and **Oceanside Theater Company**, a California non-profit corporation ("Permittee").

RECITALS

WHEREAS, City and Permittee have entered into that certain Use Agreement ("Agreement") dated September 28, 2011 for the premises at 217-219 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 Permittee 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 California Charter City

By: _____

"Permittee"

Oceanside Theater Company,
a California non-profit corporation

By: _____

Name: _____

Title: _____

EXHIBIT "D"

Sunshine Brooks Theater Inventory Technical Equipment and Furnishings

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

EXHIBIT "D"

Sunshine 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

EXHIBIT "D"

Sunshine 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

EXHIBIT "D"

Sunshine Brooks Theater Inventory

Technical Equipment and Furnishings

- 1 Old Fashioned Popcorn Machine

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

