

## RENTAL AND USE AGREEMENT

This Rental and Use Agreement (“Agreement”) is made and entered into this 20<sup>th</sup> day of September, 2011 (the “Effective Date”), by and between the City of Redlands, a municipal corporation (hereinafter “City”) and the Redlands Theatre Festival, a non-profit organization (hereinafter “RTF”). City and RTF are sometimes individually referred to herein as a “Party” and, together, as the “Parties.”

In consideration of the mutual promises contained herein, and for such other good and valuable consideration the receipt of which is hereby acknowledged, the City of Redlands and the Redlands Theatre Festival agree as follows:

### AGREEMENT

Section 1. Premises. City hereby rents to RTF that certain real property located at Prospect Park in the City of Redlands commonly known as the Sewall Theatre (the “Premises”). The Premises are more particularly shown in Exhibit “A,” attached hereto and incorporated herein by this reference.

Section 2. Term. Unless terminated earlier as provided for herein, this Agreement shall be for a term of five (5) years (the “Initial Term”) commencing on its Effective Date. RTF shall have the option to extend the term of this Agreement for one successive five (5) year term (the “Extended Term”) on the same terms and conditions as this Agreement. RTF may exercise such option by providing written notice to City not sooner than ninety (90) days, but not later than thirty (30) days, before the date of expiration of the Initial Term of this Agreement.

Section 3. Rent. RTF shall pay City rent in the sum of one dollar (\$1) per year for use and occupancy of the Premises. The first year’s rent payment shall be paid within ten (10) days of the Effective Date of this Agreement. Subsequently, the rent shall be payable on or before the anniversary date of the Effective Date each year during the Initial Term and Extended Term of this Agreement at the office of City at 35 Cajon Street, Redlands, California 92373.

### Section 4. Use of Premises.

A. During the Initial Term of this Agreement, and any Extended Term, the Premises shall be used by RTF for performances, rehearsals, receptions, and fund raising activities, and any other use associated with or necessary to accomplish these purposes. No other use of the Premises is permitted without the prior written consent of City.

B. City shall retain the right to use of the Premises for itself, and to accept bookings by third parties for use of the Premises, during times when the Premises are not used by RTF; provided, however, such use and bookings for third parties shall not include use of the offices, storage rooms or equipment rooms of the Premises (the “Excluded Areas”). The Excluded Areas are more particularly shown in Exhibit “B,” attached hereto and incorporated herein by this reference. All fees charged for third party bookings shall be established by City and shall be the property of City.

C. In connection with any third party booking of the Premises, City shall require the third party to secure liability insurance satisfactory to City and RTF for the use of the Premises and to provide City and RTF with Certificates of Insurance naming City and RTF as additional insureds, and to agree to indemnify and hold City and RTF harmless in connection with any claims, damages, losses, costs and liabilities arising from the third party's use of the Premises.

D. At City's request, RTF shall issue the appropriate key(s) to third parties who have booked areas of the Premises through City, provided that such third parties have presented RTF with a copy of City's approved reservation form and satisfied the insurance and indemnification requirements with respect to City and RTF referenced in Subsection 4.C. above, and have paid to RTF a deposit against the return of the keys to RTF. RTF shall have no obligation to provide any services, staff, sound, lighting or other equipment to any third party. Any arrangement for utilization of RTF's services, staff, sound, lighting or other equipment shall be made by separate agreement with RTF on the terms and conditions (including the payment of fees) specified by RTF. RTF shall have no obligation to provide access to the Excluded Areas to any third party.

Section 5. Utilities. RTF shall pay all costs associated with the furnishing of electricity to the Premises (except for general security and safety lighting around the Premises) during the term of this Agreement, except for the costs of any electrical usage which results from City or third party events. City shall invoice RTF for such electrical costs on a monthly basis, and RTF shall pay such invoice within thirty (30) days of the date of invoice. City shall pay all costs associated with the furnishing of water, sewer and solid waste services to the Premises during the term of this Agreement.

Section 6. Alterations and Repairs. RTF accepts the Premises, as well as all improvements located thereon, in their "as-is" condition as of the Effective Date of this Agreement.

Section 7. Maintenance of Premises. RTF shall, at its own cost, maintain the Premises and all improvements therein in good order and repair, present condition and reasonable wear and tear excepted, except as provided in Subsection A., below. City shall have the right to enter the Premises, at reasonable times, for inspection and maintenance purposes. Should an inspection disclose the need for maintenance or repairs, City shall provide RTF with written notice of the items requiring repair or maintenance. If action is not taken on such items by RTF within sixty (60) days from the provision of such notice, City may enter the Premises and take whatever action is necessary to perform such maintenance or repairs at RTF's expense. RTF shall also be responsible for any costs of any repairs to the structural elements of the Premises caused by RTF's or its employees', agents' and invitees' actions during the term of this Agreement.

A. City shall be responsible for maintenance and repair of all of the structural elements, the plumbing, electrical and mechanical systems of the Premises. "Structural Elements" shall include the roof, gutters, downspouts, walls, doors, windows, stairs, structural supports and foundation of the Premises. City shall be responsible for the repair of and maintenance of the Premises and all improvements in good order and repair. City shall be

responsible for the repair of any damages and wear and tear to the Premises arising from any third party bookings under Subsection 4. B.

B. On the expiration or earlier termination of this Agreement, RTF shall promptly surrender and deliver the Premises to City in as good condition as the Premises are in on the Effective date of this Agreement, excluding reasonable wear and tear.

Section 8. Improvements. RTF shall not make any improvements to the Premises without the prior written consent of City except that, after making reasonable attempts to contact City for its approval, RTF may undertake minor maintenance and repairs to the Premises which RTF determines are immediately necessary to protect against injury to persons or property. Within three days of performing any minor maintenance or repairs not verbally approved by City, RTF shall provide written notification to City of the same. All RTF proposals for improvements shall be submitted in writing to City for its consideration and prior approval. City shall approve or disapprove such proposals within twenty (20) days of their submission. With the prior written consent of City, RTF may enter into contracts and agreements for improvement work to be performed by contractors. RTF shall have the right to remove all improvements made by it to the Premises provided such removal results in no damage to the Premises. Improvements not removed by RTF shall, on expiration or earlier termination of this Agreement, remain on the Premises and become the property of City.

Section 9. Indemnity.

A. RTF shall defend, indemnify and hold harmless City, and its elected officials, officers and employees, from and against any and all liability resulting from the RTF's negligent acts or omissions, and intentional wrongful acts of RTF, and its agents and employees and invitees, during RTF's occupation and use of the Premises during the term of this Agreement.

B. City shall defend, indemnify and hold harmless RTF, its officers, directors and employees from and against any and all liability resulting from the City's negligent acts or omissions, and intentional wrongful acts of City, and its agents and employees during RTF's occupation and use of the Premises during the term of this Agreement.

Section 10. Public Liability and Property Damage Insurance. RTF shall maintain, at its own cost for the Initial Term or Extended Term of this Agreement, public liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, issued by an insurance company acceptable to City. Such insurance shall be primary with respect to City and non-contributory to any insurance or self-insurance maintained by City. The policy shall require that before amending or canceling the policy, the issuing insurance company shall give City at least thirty (30) days prior written notice. City shall be named as an additional insured on the policy and certificate of such insurance with endorsement shall be provided to City prior to RTF's use and occupancy of the Premises.

Section 11. Assignment of Rights. RTF shall not encumber, assign, sublease or otherwise transfer this Agreement, or any right or interest therein, without the prior written

consent of City. Any such encumbrance, assignment, sublease or transfer without such prior consent of City shall constitute an immediate breach of this Agreement and may, at the sole discretion of City, result in the immediate termination of this Agreement.

Section 12. Attorneys' Fees. In the event any action is commenced to enforce or interpret the terms or conditions of this Agreement, the prevailing party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for use of in-house counsel by a Party.

Section 13. Property Insurance.

RTF shall, at its own cost, maintain an insurance policy issued by an insurance company acceptable to City insuring, all fixtures, equipment, furniture and personalty. City assumes no responsibility for the loss, damage or destruction of items belonging to RTF or others on the Premises.

Section 14. Notices. Any and all notices required or permitted by this Agreement shall be in writing and shall be deemed served when personally delivered or when deposited in the United States Mail, certified, return receipt requested, first-class postage prepaid to the Parties at their respective addresses unless by such notice a different person or address shall have been designated:

City:  
City Clerk  
City of Redlands  
P.O. Box 3005  
Redlands, CA 92373

RTF:  
Stan Weisser  
President  
Redlands Theatre Festival  
237 Grand View Drive  
Redlands, CA 92373

Section 15. Entire Agreement. This Agreement constitutes the entire agreement between City and RTF regarding the rental of the Premises to RTF. Any prior written or oral agreements or representations respecting the Premises by City or RTF not expressly set forth herein are null and void.

Section 16. Amendments. Any amendment to this Agreement shall be in writing and executed by the Parties.

Section 17. Breach and Default by RTF. All covenants and agreements contained in this Agreement are declared to be conditions of this Agreement, and to the Term for which the Premises are hereby Agreement to RTF. Should RTF fail to perform any covenant, condition or agreement contained in this Agreement and the default not be cured within thirty (30) days after written notice of the default is served on RTF by City, then RTF shall be in default under this Agreement; provided, however, that if the default is one not capable of cure within such thirty (30) days, RTF shall so notify City in writing, shall commence action to cure within such thirty (30) days and prosecute such cure diligently until completion within a reasonable time. RTF's failure to complete such cure within a reasonable time (as determined in the sole discretion of City) shall also constitute a default by RTF.

Section 18. Termination. In the event of any default of this Agreement by RTF, in addition to any other rights or remedies City may have, City shall have the immediate right to terminate this Agreement and shall also have the immediate right of reentry and may remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of RTF. All remedies of City under this section shall be cumulative and in addition to any other legal or equitable rights and remedies which City may have.

Section 19. Waiver. No waiver by either Party of any provision of this Agreement shall be deemed to be a waiver of any other provision of this Agreement, or of any subsequent breach by either Party of the same or any other provision of this Agreement.

Section 20. Severability. If any provision of this Agreement is held invalid or unenforceable for any reason, this Agreement shall otherwise remain in full force and effect and shall be construed in all respects as if such invalid or unenforceable provision were omitted.

Executed on the 20th day of September, 2011, at Redlands, California.

CITY OF REDLANDS

\_\_\_\_\_  
Pete Aguilar, Mayor

ATTEST:

\_\_\_\_\_  
Sam Irwin, City Clerk, City of Redlands

REDLANDS THEATRE FESTIVAL

By:

\_\_\_\_\_  
Stan Weisser, President