

RESOLUTION NO. 2017-139

RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF ROCKLIN  
APPROVING AND AUTHORIZING THE  
CITY MANAGER TO EXECUTE A  
LEASE AGREEMENT WITH THE ROCKLIN COMMUNITY THEATER  
(Finn Hall, 4090 Rocklin Road, Rocklin, CA)

The City Council of the City of Rocklin does resolve as follows:

Section 1. The City Council of the City of Rocklin hereby approves and authorizes the City Manager to execute a Lease Agreement by and between the City of Rocklin and the Rocklin Community Theater for Finn Hall and Annex, in substantially the form attached hereto as Exhibit A and by this reference incorporated herein.

Section 2. The City Clerk is authorized and directed to cause the recordation of the Lease Agreement by and between the City of Rocklin and the Rocklin Community Theater for Finn Hall Site in the Office of the Placer County Recorder when fully executed and notarized.

PASSED AND ADOPTED this 27<sup>th</sup> day of June, 2017, by the following vote:

AYES: Councilmembers: Janda, Broadway, Gayaldo, Patterson, Yuill

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ABSTAIN: Councilmembers: None



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Scott Yuill, Mayor

ATTEST:



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Barbara Ivanusich, City Clerk

Recording Requested by  
and Return to:

City Clerk  
City of Rocklin  
3970 Rocklin Road  
Rocklin, CA 95677

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**Exhibit A to Resolution No. 2017-139**

**LEASE AGREEMENT BY AND BETWEEN  
THE ROCKLIN COMMUNITY THEATRE AND THE CITY OF ROCKLIN  
(Finn Hall, 4090 Rocklin Road, Rocklin, CA)**

This Lease Agreement ("Agreement") of Finn Hall and Annex by and between the CITY OF ROCKLIN, a municipal corporation, ("City") and the Rocklin Community Theater, a nonprofit corporation ("RCT") is entered into this 27<sup>th</sup> day of June, 2017.

The City of Rocklin and the Rocklin Community Theater desire to enter into a new Lease Agreement for three year period through June 30, 2020.

Therefore, for good and valuable consideration the receipt and adequacy of which is acknowledged, the parties agree as follows:

**Section 1. Lease of Premises.**

City leases to the RCT and the RCT leases from City the Leased Premises on the terms and conditions set forth in this Agreement. The Leased Premises consists of Finn Hall and the adjoining Annex.

**Section 2. Use.**

A. The RCT year round primary use of the Finnish Temperance Hall and adjoining Annex (portable building) located at 4090 Rocklin Road is for classes and performances and ancillary uses typical of a Community Theater operation.

B. RCT shall not commit any acts on the Leased Premises nor use the Leased Premises in any manner that will increase the existing rates for or cause cancellation of any fire, liability, or other insurance insuring the Leased Premises or the improvements on the Leased Premises.

C. RCT shall, at the RCT's sole cost, comply with all of the requirements of all municipal, state, and federal law pertaining to the use of the Leased Premises. The RCT agrees not to use the Leased Premises for any unlawful purpose.

D. RCT shall have the right to rent the premises in accordance with the City's rental policies and established rates provided the City shall approve all such rentals, whose approval shall not be unreasonably withheld, for the purpose of generating additional revenues to be split 50/50 between the City and RCT. In the event that RCT desires to utilize such funds for building improvements provided the City approves such improvements, then the City will contribute its share of the revenues in support of such improvements. RCT shall be responsible for all rental support. However, should RCT so request, City will support RCT by posting rental availability on City outlets.

E. RCT shall have the sole and exclusive use of Finn Hall and Annex for the full term of this Agreement. As such, any request by the City to use these facilities for any reason during the term of the Agreement shall require advance notice and approval by RCT which shall not be unreasonably withheld.

F. RCT shall be responsible to maintain building and fire code compliance during the term of the Agreement to include keeping all areas in order and free or clutter or hazards.

G. RCT shall have exclusive use of the Finn Hall Parking Lot on scheduled performance dates. Further, while the City has no authority or control regarding adjacent parking at the DMV, City will not advertise or plan to use this parking area on scheduled RCT performance dates.

### **Section 3. Term.**

The term of this Agreement shall be for a period of three (3) years, commencing on July 1, 2017, "Commencement Date," and unless terminated sooner in accordance with this Agreement, ending approximately three (3) years from that date, on June 30, 2020 ("Term").

### **Section 4. Rent.**

A. City agrees to provide use of the Leased Premises for the sum of \$1 per year during the term of this Agreement. The rent is subsidized by the City of Rocklin in support of the Rocklin Community Theater and our shared objectives to "enhance city-wide special events through incorporation of arts and cultural experiences for all residents" and "expand the Quarry District concept and consider a focus on the arts, music and food that compliments and leverages existing assets..." (City of Rocklin Strategic Plan 2015-2020)

B. RCT agrees to support City activities and programs as set forth in Attachment "A" of the Agreement.

C. RCT shall designate City as a primary supporter and sponsor of the RCT with the associated benefits to include recognition of the City as appropriate.

**Section 5. Security Deposit.**

A. The RCT shall deposit with City the sum of One Thousand and 00/100 Dollars (\$1,000.00) as security for the full and faithful performance by the RCT of the terms, conditions, and covenants of this Agreement.

B. In the event the RCT : (1) defaults in the payment of rent or utility billings from City; (2) damages the Leased Premises through want of ordinary care or any greater degree of culpability; or (3) fails to leave the Leased Premises in a clean condition (i.e., comparable to the condition of the Leased Premises at the time City delivered possession to the RCT at the commencement of this Agreement, excepting ordinary wear and tear) City may apply the funds held as a security deposit to remedy such default in the payment rent or utility billings, to effectuate necessary repairs, or to put the premises in clean condition.

C. City shall hold the security deposit for the RCT, free from the claim of any creditor of City except a trustee in bankruptcy. City shall return any portion of the security deposit remaining after any deductions authorized by this article, within thirty (30) days of the termination of this Agreement. The RCT shall not be entitled to any interest on any portion of the security deposit.

D. If during the term of this Agreement, City applies all or any portion of the security deposit for a purpose authorized by this article or otherwise authorized by law, the RCT agrees to restore the amount of the security so applied by City with within thirty (30) days of notification.

**Section 6. Taxes.**

A. Pursuant to California Revenue and Taxation Code section 107.6, the RCT is notified that the property interest acquired by the RCT in the Leased Premises under this Agreement may be subject to property taxation as a possessory interest in real property. In the event these taxes are assessed, it shall be the RCT's sole responsibility to pay any and all property taxes levied on that interest.

B. While it is understood that the RCT's status as a non-profit 501-c-3 organization will likely render any tax assessments mute, during the Term of the Agreement, RCT shall pay all taxes assessed against and levied upon fixtures, furnishings, equipment, and all other personal property of the RCT contained in the Leased Premises

prior to delinquency, and when possible the RCT shall cause these fixtures, furnishings, equipment, and other personal property to be assessed and billed separately from the real property of City.

#### **Section 7. Alterations.**

A. The RCT shall not make or cause to be made, any alterations of the Leased Premises, or any part of the Leased Premises, without the prior written consent of the City Manager or his or her designee. Any additions to, or alterations of, the Leased Premises, except movable furniture, and trade fixtures (e.g. theater lighting, speakers, sound and lighting control boards, etc.), shall become at once a part of the realty and belong to City. Any alterations shall be in conformance with the requirements of all municipal, state, and federal law.

B. Should RCT desire to construct tenant improvements to improve performance or use efficiency and/or provide for better customer service, City and RCT shall meet and endeavor to determine an appropriate cost sharing formula to fund the proposed tenant improvements, in advance of the construction of such tenant improvements. The City shall have final approval of any and all construction and tenant improvements, which may be approved or denied in the City's sole discretion.

#### **Section 8. Maintenance and Repair.**

##### **A. City's Responsibilities.**

1. Exterior improvements. City will maintain and repair all exterior improvements, including but not limited to, sidewalks, driveways, parking lots, landscaping areas, sprinkler systems, lighting, and landscaping that are part of or adjoin the Leased Premises. City will grant RCT the absolute right and ability to correct minor problems in a professional manner at RCT's cost and/or to report problems to the City with the expectation of a timely correction.

2. Interior Equipment. City shall, at its sole expense, maintain fixed interior equipment, including but not limited to, structural condition of interior bearing walls, fire sprinkler system, fire alarm and smoke detection systems, fire hydrants, mechanical equipment, electrical systems (not including light bulbs), and plumbing fixtures and equipment.

3. Building Structure. City shall, at its sole expense, maintain the building foundation, the exterior walls, windows (except cleaning) and doors, and the roof structure of the Leased Premises, but City shall not be responsible for any repairs to or maintenance to the building foundation, exterior walls, windows and doors, or roof structure caused by or resulting from the actions of the RCT or any of the RCT's contractors, employees, volunteers licensees, invitees or agents.

**B. RCT Responsibilities.**

1. The RCT shall, at its sole expense, keep and maintain the Leased Premises, including without limitation, interior walls, alarms, all windows' surfaces (cleaning both interior and exterior windows and window coverings), lighting fixtures (including replacement of lamps, bulbs, tubes and ballasts), interior ceilings, walls and floor coverings of the Leased Premises, store fronts, latches, locks, and all other interior improvements of any nature whatsoever.

2. RCT will be responsible for janitorial/cleaning for Finn Hall and Annex.

3. RCT will keep such items in good, clean and first-class condition and repair, including, without limitations, replacing such items as needed, and deliver to City physical possession of the Leased Premises at the termination of this Agreement or any sooner expiration thereof, in good condition and repair, reasonable wear and tear excepted. All repairs and replacements required of the RCT shall be promptly made with new materials of like kind and quality.

4. If any maintenance or repair affects the structural elements of the Leased Premises the RCT shall first obtain City's written approval of the scope of the work, the plans for the work, the materials to be used, and the contractor hired to perform the work.

C. The RCT, voluntarily and with full knowledge of its rights, waives the provisions of Civil Code sections 1941 and 1942 and any other law that would require City to maintain the Leased Premises in a tenantable condition or would provide the RCT with the right to make repairs and deduct the cost of those repairs from the rent.

**Section 9. Destruction of the Premises.**

A. **Partial Destruction.** In the event the Leased Premises or the property on which the Leased Premises are located becomes partially destroyed by any cause not the fault of RCT, its agents or employees, this Agreement shall continue in full force and effect and City shall promptly commence and expeditiously complete the work of repairing and restoring the Leased Premises and/or the Property to their prior condition, provided such work can be accomplished within thirty (30) working days from the date of partial destruction.

B. **Total Destruction.** In the event the Leased Premises or the property on which the Leased Premises are located becomes totally destroyed by any cause not the fault of the RCT, its agents or employees, the RCT shall be permitted to terminate this Agreement without further notice or obligation if the work of repairing and restoring

the Leased Premises and/or the property to their prior conditions cannot be accomplished by City, at its own cost and expense, within thirty (30) working days from the date of destruction.

**Section 10. Insurance.**

A. The RCT agrees to procure and maintain public liability insurance from a responsible insurance company authorized to do business in California, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) for injury or death to any person and One Hundred Thousand Dollars (\$100,000) for damage to Leased Premises, for any claim, demands, or causes of action of any person arising out of accidents occurring on the Leased Premises during the Term or arising out of the RCT's use of the Leased Premises. City, its officers, and employees shall be added as insureds with respect to liability; provided, that coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under California Civil Code §2782(b).

B. The RCT shall deliver a certificate for each insurance policy to City with all relevant endorsements. Each insurance policy shall provide that a thirty (30) day notice of cancellation and of any material modification of coverage shall be given to all named insureds. The insurance coverage required under this Section may be carried by the RCT under a blanket policy insuring other locations of the RCT's business, provided that the Leased Premises covered by this Agreement are specifically identified as included under that policy. The RCT agrees that upon the failure to insure as provided in this Agreement, or to pay the premiums for the insurance, City may contract for the insurance and pay the premiums, and all sums expended by City for the insurance shall be considered additional rent under this Agreement and shall be immediately repaid by RCT to the City, or the City may immediately terminate the Agreement, without advance notice to RCT.

C. The RCT agrees that in the event of loss due to any of the perils for which it has agreed to provide bodily injury and property damage coverage, the RCT shall look solely to its insurance for recovery. The RCT hereby grants to City, on behalf of any insurer providing bodily injury or property damage to the RCT or City with respect to the services of the RCT herein, a waiver of any right to subrogation which any such insurer of the RCT may acquire against City by virtue of the payment of such loss under such insurance.

D. City shall procure and maintain fire and extended coverage, and at City's option, earthquake insurance, throughout the Term, in an amount equal to at least ninety percent (90%) of the replacement value of the building that includes the Leased Premises, together with other insurance as may be required by City policy or by any other governmental entity. The RCT, voluntarily and with full knowledge of its rights, waives any right of recovery from City, City's officers and employees, and City, voluntarily and

with full knowledge of its rights, waives any right of recovery from the RCT, the RCT's Board members, officers, employees or volunteers, for any loss or damage (including consequential loss) resulting from any of the perils insured against in the standard form fire insurance policy with extended coverage endorsement.

**Section 11. Indemnification of City.**

The RCT, as a material part of the consideration to be rendered to City under this Agreement, agrees to indemnify, defend and hold harmless City, its officers, employees and volunteers, from any claims, demands, and causes of action of any nature and any expense incident to the defense, for physical injury to or death of persons or loss of or damage to Leased Premises or personal property, of any kind including other goods, wares, merchandise, and items of display, occurring on or about the Leased Premises that arise out of or are connected, directly or indirectly, with the RCT's use and occupation of the Leased Premises or the condition of the Leased Premises, or from the failure of the RCT to keep the Leased Premises in good condition and repair, as provided in this Agreement. RCT's foregoing responsibility to indemnify City shall be valid, unless the claims, demands, causes of action or expenses result from or are caused by the active negligence, sole negligence or willful misconduct of City or unless the condition is one for which City has expressly assumed the responsibility for remedying and the condition is not caused by the RCT.

**Section 12. Free From Liens.**

The RCT shall keep the Leased Premises and the property on which the Leased Premises are located free from any liens arising out of any work performed, material furnished, or obligation incurred by the RCT. In the event a lien is filed against the property arising out of any work performed, material furnished, or obligation incurred by the RCT, the RCT shall promptly pay all costs and fees, and take any and all steps necessary to cause the lien to be removed.

**Section 13. Abandonment.**

The RCT shall not vacate or abandon the Leased Premises at any time during the Term; and if the RCT shall abandon, vacate, or surrender the Leased Premises or be dispossessed by process of law, or otherwise, any personal property belonging to the RCT and left on the Leased Premises shall, at the option of City, be deemed abandoned.

**Section 14. Signs.**

No signs shall be placed or permitted to be placed upon the exterior of or in the windows of the Leased Premises without the express written consent of the City; however consent shall not be unreasonably withheld. The RCT shall comply with all applicable City sign ordinances and regulations. City agrees to work with RCT to approve



an acceptable sign placement program in advance of and in support of all scheduled productions.

**Section 15. Utilities.**

Utilities for the Leased Premises shall be paid as follows:

- A. City shall bill RCT monthly in arrears for the actual cost of the utilities listed below, provided such utilities are exclusively for Finn Hall and the Annex (e.g. RCT will reimburse the March 2017 bill in April 2017). A copy of the actual utility bill will be provided to RCT each month (the account numbers will match the account numbers on the sample bills provided to RCT). Alternatively, the City can forward the utility bills to RCT upon receipt and RCT will pay such bills directly to the utility or remit payment to the City, whichever the City prefers.
  - 1. Electricity (Acct ID #7846081046, SA ID # 0345487837) (RCT will have ability to control thermostat at Finn Hall and Annex remotely);
  - 2. Sewer service (#202-0000404-01); and
  - 3. Water (Customer #20700, Location #5807, Cycle/Route #18-01).
  
- B. The RCT shall directly pay all of the utility costs and expenses for the following:
  - 1. Cable service including high speed internet services;
  - 2. Telephone; and
  - 3. Alarm (if applicable).

If any other charges exist that have not been specifically disclosed herein (e.g. garbage, street cleaning, etc.), the cost will be paid by the City. Separately, should RCT voluntarily decide to add a service of any kind for Finn Hall or the Annex, RCT agrees to obtain advance approval from the City and pay the cost for such service.

**Section 16. Entry.**

Subject to reasonable prior notice to the RCT, the RCT shall permit City and City's agents to enter into and upon the Leased Premises at all reasonable times. RCT shall not re-key the building, change locks or add an alarm without the permission of the City. City shall at all times have keys to the building and the alarm code (if applicable). Further for security purposes, requests for keys shall be in accordance with the City's key policy.

**Section 17. Assignment and Subletting.**

The RCT shall not assign this Agreement, or any interest in this Agreement, and shall not sublet the Leased Premises or any part of it, or any right or privilege appurtenant to it, or

permit any other person other than the agents and servants of the RCT to occupy or use the Leased Premises without the prior written consent of City, except as provided in Section 4 above.

**Section 18. Default.**

A. Each of the following shall constitute an event of default (Event of Default) under this Agreement:

1. If the RCT fails to make any payment of rent or utility costs required by the provisions of this Agreement, within a period of ten (10) days of when due;
2. if the RCT fails within thirty (30) days after written notice to correct any breach or default of the other covenants, terms, or conditions of this Agreement;
3. If the RCT abandons the Leased Premises before the end of the Term; or
4. if all or substantially all of the RCT's assets shall be placed in the hands of a receiver or trustee and if this receivership or trusteeship continues for a period of thirty (30) days, or should the RCT make an assignment for the benefit of creditors, or be adjudicated bankrupt, or should the RCT institute any proceedings under any state or federal bankruptcy act in which the RCT seeks to be adjudicated bankrupt, or seeks to be discharged of debts, or should any voluntary proceeding be filed against the RCT under the bankruptcy laws and the RCT consents to it and acquiesces by pleading or default.

B. Upon the occurrence of an Event of Default, City shall have the right at any time afterwards to elect to terminate the Agreement and the RCT's right to possession under the Agreement.

**Section 19. Attorney Fees; Litigation Costs.**

If any action at law or in equity is brought to recover any rent or other sums under this Agreement, or for or on account of any breach of or to enforce or interpret any of the covenants, terms, or conditions of this Agreement, or for the recovery of the possession of the Leased Premises, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

Whenever provision is made in this Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for

the party (based on an hourly calculation of their actual compensation) or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

**Section 20. Holding Over.**

Any holding over after the expiration of the Term, with the consent of the City, shall be construed to be a tenancy from month to month cancelable upon thirty (30) days' written notice, and a rental upon all terms and conditions as existed during the last year of the term. Additionally, upon mutual consent for the parties, the term may be extended for a specified period of time. The parties shall meet no sooner than one hundred and eighty (180) days and no later than ninety (90) days prior to the expiration of the Term, in an effort to negotiate an extension of this Agreement.

**Section 21. Notices.**

Wherever in this Agreement it shall be required or permitted that notice and demand be given or served by either party to the other, this notice or demand shall be given or served and shall not be deemed to have been given or served unless in writing and forwarded by certified mail, addressed as follows:

If to City:	City of Rocklin Attention: City Manager 3980 Rocklin Road Rocklin, California 95677
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If to the RCT:	Rocklin Community Theater Attention: President of the Board P.O. Box 1401 Rocklin, California 95677
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Either party may change this address by written notice by certified mail to the other.

**Section 22. Successors in Interest.**

The covenants in this Agreement shall, subject to the provisions as to assignment, apply to and bind the heirs; successors, executors, administrators, and assigns of all the parties to this Agreement; and all of the parties to this Agreement shall be jointly and severally liable.

**Section 23. Force Majeure.**

If either party shall be delayed or prevented from the performance of any act required under this Agreement by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the party obligated, performance of this act shall be excused for the period of the delay and the period for the performance of any act shall be extended for a period equivalent to the period of the delay; provided, however, nothing in this Section shall excuse the RCT from the prompt payment of any rental or other charge required of the RCT except as may be provided elsewhere in this Agreement.

**Section 24. Partial Invalidity.**

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and shall in no way be affected, impaired, or invalidated.

**Section 25. Captions.**

The various headings and numbers in this Agreement and the grouping of the provisions of this Agreement into separate sections and paragraphs are for the purpose of convenience only and shall not be considered a part of this Lease.

**Section 26. Time.**

Time is of the essence in this Agreement.

**Section 27. Complete Agreement.**

This Agreement includes in full each agreement of every kind between the parties concerning the Leased Premises, and all preliminary negotiations and agreements of any kind or nature are merged in this Agreement, and there are no oral agreements or implied covenants made in connection with this Agreement. Any agreement or representations respecting the Leased Premises or the duties of either City or RCT in relation thereto not expressly set forth in this Agreement, or the attachments thereto, are null and void. This Agreement may only be modified by a written amendment hereto.

Further, this Agreement supersedes and replaces any all prior agreements or leases between the City and RCT relating to the Leased Premises.

**Section 28. Authority.**

All individuals executing this Agreement on behalf of an entity represent that they are authorized to execute and deliver this Agreement on behalf of that entity.


**Section 29. Governing Law / Venue.**

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement. Any action and/or proceeding that is initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Agreement shall be brought in a California state court in the County of Placer.

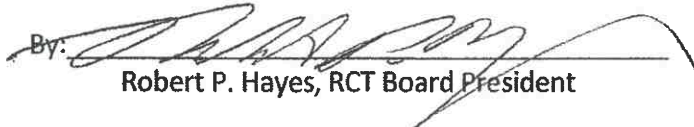
**SIGNATURE PAGE FOLLOWS**

The parties have executed this Agreement on the date first written above.

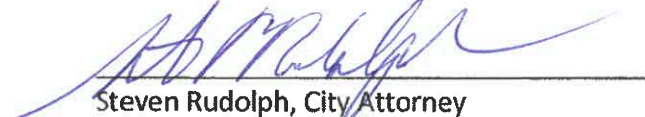
CITY OF ROCKLIN

By:   
Ricky A. Horst, City Manager

ROCKLIN COMMUNITY THEATER

By:   
Robert P. Hayes, RCT Board President

Approved as to form:

  
Steven Rudolph, City Attorney

Attest:

  
Barbara Ivanusich, City Clerk

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Scott Yuill, Mayor

ATTEST:

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Barbara Ivanusich, City Clerk

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B. RCT shall not commit any acts on the Leased Premises nor use the Leased Premises in any manner that will increase the existing rates for or cause cancellation of any fire, liability, or other insurance insuring the Leased Premises or the improvements on the Leased Premises.



C. RCT shall, at the RCT's sole cost, comply with all of the requirements of all municipal, state, and federal law pertaining to the use of the Leased Premises. The RCT agrees not to use the Leased Premises for any unlawful purpose.

D. RCT shall have the right to rent the premises in accordance with the City's rental policies and established rates provided the City shall approve all such rentals, whose approval shall not be unreasonably withheld, for the purpose of generating additional revenues to be split 50/50 between the City and RCT. In the event that RCT desires to utilize such funds for building improvements provided the City approves such improvements, then the City will contribute its share of the revenues in support of such improvements. RCT shall be responsible for all rental support. However, should RCT so request, City will support RCT by posting rental availability on City outlets.

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F. RCT shall be responsible to maintain building and fire code compliance during the term of the Agreement to include keeping all areas in order and free or clutter or hazards.

G. RCT shall have exclusive use of the Finn Hall Parking Lot on scheduled performance dates. Further, while the City has no authority or control regarding adjacent parking at the DMV, City will not advertise or plan to use this parking area on scheduled RCT performance dates.

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C. City shall hold the security deposit for the RCT, free from the claim of any creditor of City except a trustee in bankruptcy. City shall return any portion of the security deposit remaining after any deductions authorized by this article, within thirty (30) days of the termination of this Agreement. The RCT shall not be entitled to any interest on any portion of the security deposit.

D. If during the term of this Agreement, City applies all or any portion of the security deposit for a purpose authorized by this article or otherwise authorized by law, the RCT agrees to restore the amount of the security so applied by City with within thirty (30) days of notification.

#### **Section 6. Taxes.**

A. Pursuant to California Revenue and Taxation Code section 107.6, the RCT is notified that the property interest acquired by the RCT in the Leased Premises under this Agreement may be subject to property taxation as a possessory interest in real property. In the event these taxes are assessed, it shall be the RCT's sole responsibility to pay any and all property taxes levied on that interest.

B. While it is understood that the RCT's status as a non-profit 501-c-3 organization will likely render any tax assessments mute, during the Term of the Agreement, RCT shall pay all taxes assessed against and levied upon fixtures, furnishings, equipment, and all other personal property of the RCT contained in the Leased Premises

prior to delinquency, and when possible the RCT shall cause these fixtures, furnishings, equipment, and other personal property to be assessed and billed separately from the real property of City.

**Section 7. Alterations.**

A. The RCT shall not make or cause to be made, any alterations of the Leased Premises, or any part of the Leased Premises, without the prior written consent of the City Manager or his or her designee. Any additions to, or alterations of, the Leased Premises, except movable furniture, and trade fixtures (e.g. theater lighting, speakers, sound and lighting control boards, etc.), shall become at once a part of the realty and belong to City. Any alterations shall be in conformance with the requirements of all municipal, state, and federal law.

B. Should RCT desire to construct tenant improvements to improve performance or use efficiency and/or provide for better customer service, City and RCT shall meet and endeavor to determine an appropriate cost sharing formula to fund the proposed tenant improvements, in advance of the construction of such tenant improvements. The City shall have final approval of any and all construction and tenant improvements, which may be approved or denied in the City's sole discretion.

**Section 8. Maintenance and Repair.**

A. City's Responsibilities.

1. Exterior improvements. City will maintain and repair all exterior improvements, including but not limited to, sidewalks, driveways, parking lots, landscaping areas, sprinkler systems, lighting, and landscaping that are part of or adjoin the Leased Premises. City will grant RCT the absolute right and ability to correct minor problems in a professional manner at RCT's cost and/or to report problems to the City with the expectation of a timely correction.

2. Interior Equipment. City shall, at its sole expense, maintain fixed interior equipment, including but not limited to, structural condition of interior bearing walls, fire sprinkler system, fire alarm and smoke detection systems, fire hydrants, mechanical equipment, electrical systems (not including light bulbs), and plumbing fixtures and equipment.

3. Building Structure. City shall, at its sole expense, maintain the building foundation, the exterior walls, windows (except cleaning) and doors, and the roof structure of the Leased Premises, but City shall not be responsible for any repairs to or maintenance to the building foundation, exterior walls, windows and doors, or roof structure caused by or resulting from the actions of the RCT or any of the RCT's contractors, employees, volunteers licensees, invitees or agents.

B. RCT Responsibilities.

1. The RCT shall, at its sole expense, keep and maintain the Leased Premises, including without limitation, interior walls, alarms, all windows' surfaces (cleaning both interior and exterior windows and window coverings), lighting fixtures (including replacement of lamps, bulbs, tubes and ballasts), interior ceilings, walls and floor coverings of the Leased Premises, store fronts, latches, locks, and all other interior improvements of any nature whatsoever.

2. RCT will be responsible for janitorial/cleaning for Finn Hall and Annex.

3. RCT will keep such items in good, clean and first-class condition and repair, including, without limitations, replacing such items as needed, and deliver to City physical possession of the Leased Premises at the termination of this Agreement or any sooner expiration thereof, in good condition and repair, reasonable wear and tear excepted. All repairs and replacements required of the RCT shall be promptly made with new materials of like kind and quality.

4. If any maintenance or repair affects the structural elements of the Leased Premises the RCT shall first obtain City's written approval of the scope of the work, the plans for the work, the materials to be used, and the contractor hired to perform the work.

C. The RCT, voluntarily and with full knowledge of its rights, waives the provisions of Civil Code sections 1941 and 1942 and any other law that would require City to maintain the Leased Premises in a tenantable condition or would provide the RCT with the right to make repairs and deduct the cost of those repairs from the rent.

**Section 9. Destruction of the Premises.**

A. Partial Destruction. In the event the Leased Premises or the property on which the Leased Premises are located becomes partially destroyed by any cause not the fault of RCT, its agents or employees, this Agreement shall continue in full force and effect and City shall promptly commence and expeditiously complete the work of repairing and restoring the Leased Premises and/or the Property to their prior condition, provided such work can be accomplished within thirty (30) working days from the date of partial destruction.

B. Total Destruction. In the event the Leased Premises or the property on which the Leased Premises are located becomes totally destroyed by any cause not the fault of the RCT, its agents or employees, the RCT shall be permitted to terminate this Agreement without further notice or obligation if the work of repairing and restoring

the Leased Premises and/or the property to their prior conditions cannot be accomplished by City, at its own cost and expense, within thirty (30) working days from the date of destruction.

**Section 10. Insurance.**

A. The RCT agrees to procure and maintain public liability insurance from a responsible insurance company authorized to do business in California, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) for injury or death to any person and One Hundred Thousand Dollars (\$100,000) for damage to Leased Premises, for any claim, demands, or causes of action of any person arising out of accidents occurring on the Leased Premises during the Term or arising out of the RCT's use of the Leased Premises. City, its officers, and employees shall be added as insureds with respect to liability; provided, that coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under California Civil Code §2782(b).

B. The RCT shall deliver a certificate for each insurance policy to City with all relevant endorsements. Each insurance policy shall provide that a thirty (30) day notice of cancellation and of any material modification of coverage shall be given to all named insureds. The insurance coverage required under this Section may be carried by the RCT under a blanket policy insuring other locations of the RCT's business, provided that the Leased Premises covered by this Agreement are specifically identified as included under that policy. The RCT agrees that upon the failure to insure as provided in this Agreement, or to pay the premiums for the insurance, City may contract for the insurance and pay the premiums, and all sums expended by City for the insurance shall be considered additional rent under this Agreement and shall be immediately repaid by RCT to the City, or the City may immediately terminate the Agreement, without advance notice to RCT.

C. The RCT agrees that in the event of loss due to any of the perils for which it has agreed to provide bodily injury and property damage coverage, the RCT shall look solely to its insurance for recovery. The RCT hereby grants to City, on behalf of any insurer providing bodily injury or property damage to the RCT or City with respect to the services of the RCT herein, a waiver of any right to subrogation which any such insurer of the RCT may acquire against City by virtue of the payment of such loss under such insurance.

D. City shall procure and maintain fire and extended coverage, and at City's option, earthquake insurance, throughout the Term, in an amount equal to at least ninety percent (90%) of the replacement value of the building that includes the Leased Premises, together with other insurance as may be required by City policy or by any other governmental entity. The RCT, voluntarily and with full knowledge of its rights, waives any right of recovery from City, City's officers and employees, and City, voluntarily and

with full knowledge of its rights, waives any right of recovery from the RCT, the RCT's Board members, officers, employees or volunteers, for any loss or damage (including consequential loss) resulting from any of the perils insured against in the standard form fire insurance policy with extended coverage endorsement.

**Section 11. Indemnification of City.**

The RCT, as a material part of the consideration to be rendered to City under this Agreement, agrees to indemnify, defend and hold harmless City, its officers, employees and volunteers, from any claims, demands, and causes of action of any nature and any expense incident to the defense, for physical injury to or death of persons or loss of or damage to Leased Premises or personal property, of any kind including other goods, wares, merchandise, and items of display, occurring on or about the Leased Premises that arise out of or are connected, directly or indirectly, with the RCT's use and occupation of the Leased Premises or the condition of the Leased Premises, or from the failure of the RCT to keep the Leased Premises in good condition and repair, as provided in this Agreement. RCT's foregoing responsibility to indemnify City shall be valid, unless the claims, demands, causes of action or expenses result from or are caused by the active negligence, sole negligence or willful misconduct of City or unless the condition is one for which City has expressly assumed the responsibility for remedying and the condition is not caused by the RCT.

**Section 12. Free From Liens.**

The RCT shall keep the Leased Premises and the property on which the Leased Premises are located free from any liens arising out of any work performed, material furnished, or obligation incurred by the RCT. In the event a lien is filed against the property arising out of any work performed, material furnished, or obligation incurred by the RCT, the RCT shall promptly pay all costs and fees, and take any and all steps necessary to cause the lien to be removed.

**Section 13. Abandonment.**

The RCT shall not vacate or abandon the Leased Premises at any time during the Term; and if the RCT shall abandon, vacate, or surrender the Leased Premises or be dispossessed by process of law, or otherwise, any personal property belonging to the RCT and left on the Leased Premises shall, at the option of City, be deemed abandoned.

**Section 14. Signs.**

No signs shall be placed or permitted to be placed upon the exterior of or in the windows of the Leased Premises without the express written consent of the City; however consent shall not be unreasonably withheld. The RCT shall comply with all applicable City sign ordinances and regulations. City agrees to work with RCT to approve

an acceptable sign placement program in advance of and in support of all scheduled productions.

**Section 15. Utilities.**

Utilities for the Leased Premises shall be paid as follows:

- A. City shall bill RCT monthly in arrears for the actual cost of the utilities listed below, provided such utilities are exclusively for Finn Hall and the Annex (e.g. RCT will reimburse the March 2017 bill in April 2017). A copy of the actual utility bill will be provided to RCT each month (the account numbers will match the account numbers on the sample bills provided to RCT). Alternatively, the City can forward the utility bills to RCT upon receipt and RCT will pay such bills directly to the utility or remit payment to the City, whichever the City prefers.
  - 1. Electricity (Acct ID #7846081046, SA ID # 0345487837) (RCT will have ability to control thermostat at Finn Hall and Annex remotely);
  - 2. Sewer service (#202-0000404-01); and
  - 3. Water (Customer #20700, Location #5807, Cycle/Route #18-01).
  
- B. The RCT shall directly pay all of the utility costs and expenses for the following:
  - 1. Cable service including high speed internet services;
  - 2. Telephone; and
  - 3. Alarm (if applicable).

If any other charges exist that have not been specifically disclosed herein (e.g. garbage, street cleaning, etc.), the cost will be paid by the City. Separately, should RCT voluntarily decide to add a service of any kind for Finn Hall or the Annex, RCT agrees to obtain advance approval from the City and pay the cost for such service.

**Section 16. Entry.**

Subject to reasonable prior notice to the RCT, the RCT shall permit City and City's agents to enter into and upon the Leased Premises at all reasonable times. RCT shall not re-key the building, change locks or add an alarm without the permission of the City. City shall at all times have keys to the building and the alarm code (if applicable). Further for security purposes, requests for keys shall be in accordance with the City's key policy.

**Section 17. Assignment and Subletting.**

The RCT shall not assign this Agreement, or any interest in this Agreement, and shall not sublet the Leased Premises or any part of it, or any right or privilege appurtenant to it, or

permit any other person other than the agents and servants of the RCT to occupy or use the Leased Premises without the prior written consent of City, except as provided in Section 4 above.

**Section 18. Default.**

A. Each of the following shall constitute an event of default (Event of Default) under this Agreement:

1. If the RCT fails to make any payment of rent or utility costs required by the provisions of this Agreement, within a period of ten (10) days of when due;
2. if the RCT fails within thirty (30) days after written notice to correct any breach or default of the other covenants, terms, or conditions of this Agreement;
3. If the RCT abandons the Leased Premises before the end of the Term; or
4. if all or substantially all of the RCT's assets shall be placed in the hands of a receiver or trustee and if this receivership or trusteeship continues for a period of thirty (30) days, or should the RCT make an assignment for the benefit of creditors, or be adjudicated bankrupt, or should the RCT institute any proceedings under any state or federal bankruptcy act in which the RCT seeks to be adjudicated bankrupt, or seeks to be discharged of debts, or should any voluntary proceeding be filed against the RCT under the bankruptcy laws and the RCT consents to it and acquiesces by pleading or default.

B. Upon the occurrence of an Event of Default, City shall have the right at any time afterwards to elect to terminate the Agreement and the RCT's right to possession under the Agreement.

**Section 19. Attorney Fees; Litigation Costs.**

If any action at law or in equity is brought to recover any rent or other sums under this Agreement, or for or on account of any breach of or to enforce or interpret any of the covenants, terms, or conditions of this Agreement, or for the recovery of the possession of the Leased Premises, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

Whenever provision is made in this Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for



the party (based on an hourly calculation of their actual compensation) or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

**Section 20. Holding Over.**

Any holding over after the expiration of the Term, with the consent of the City, shall be construed to be a tenancy from month to month cancelable upon thirty (30) days' written notice, and a rental upon all terms and conditions as existed during the last year of the term. Additionally, upon mutual consent for the parties, the term may be extended for a specified period of time. The parties shall meet no sooner than one hundred and eighty (180) days and no later than ninety (90) days prior to the expiration of the Term, in an effort to negotiate an extension of this Agreement.

**Section 21. Notices.**

Wherever in this Agreement it shall be required or permitted that notice and demand be given or served by either party to the other, this notice or demand shall be given or served and shall not be deemed to have been given or served unless in writing and forwarded by certified mail, addressed as follows:

If to City:	City of Rocklin Attention: City Manager 3980 Rocklin Road Rocklin, California 95677
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If to the RCT:	Rocklin Community Theater Attention: President of the Board P.O. Box 1401 Rocklin, California 95677
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Either party may change this address by written notice by certified mail to the other.

**Section 22. Successors in Interest.**

The covenants in this Agreement shall, subject to the provisions as to assignment, apply to and bind the heirs; successors, executors, administrators, and assigns of all the parties to this Agreement; and all of the parties to this Agreement shall be jointly and severally liable.

**Section 23. Force Majeure.**

If either party shall be delayed or prevented from the performance of any act required under this Agreement by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the party obligated, performance of this act shall be excused for the period of the delay and the period for the performance of any act shall be extended for a period equivalent to the period of the delay; provided, however, nothing in this Section shall excuse the RCT from the prompt payment of any rental or other charge required of the RCT except as may be provided elsewhere in this Agreement.

**Section 24. Partial Invalidity.**

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and shall in no way be affected, impaired, or invalidated.

**Section 25. Captions.**

The various headings and numbers in this Agreement and the grouping of the provisions of this Agreement into separate sections and paragraphs are for the purpose of convenience only and shall not be considered a part of this Lease.

**Section 26. Time.**

Time is of the essence in this Agreement.

**Section 27. Complete Agreement.**

This Agreement includes in full each agreement of every kind between the parties concerning the Leased Premises, and all preliminary negotiations and agreements of any kind or nature are merged in this Agreement, and there are no oral agreements or implied covenants made in connection with this Agreement. Any agreement or representations respecting the Leased Premises or the duties of either City or RCT in relation thereto not expressly set forth in this Agreement, or the attachments thereto, are null and void. This Agreement may only be modified by a written amendment hereto.

Further, this Agreement supersedes and replaces any all prior agreements or leases between the City and RCT relating to the Leased Premises.

**Section 28. Authority.**

All individuals executing this Agreement on behalf of an entity represent that they are authorized to execute and deliver this Agreement on behalf of that entity.

**Section 29. Governing Law / Venue.**

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement. Any action and/or proceeding that is initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Agreement shall be brought in a California state court in the County of Placer.

**SIGNATURE PAGE FOLLOWS**

The parties have executed this Agreement on the date first written above.

CITY OF ROCKLIN

By: \_\_\_\_\_  
Ricky A. Horst, City Manager

ROCKLIN COMMUNITY THEATER

By: \_\_\_\_\_  
Robert P. Hayes, RCT Board President

Approved as to form:

\_\_\_\_\_  
Steven Rudolph, City Attorney

Attest:

\_\_\_\_\_  
Barbara Ivanusich, City Clerk