

LEASE AGREEMENT BETWEEN THE CITY OF HUNTINGTON BEACH
AND MARINERS CHURCH FOR
NONEXCLUSIVE USE OF THE PUBLIC LIBRARY THEATER

THIS LEASE AGREEMENT is made and entered into this _____ day of _____, 2012 by and between THE CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California (hereinafter "Lessor") and MARINERS CHURCH, a California nonprofit corporation (hereinafter "Lessee"), (collectively "Parties").

WHEREAS, Lessor owns certain real property (hereinafter "Premises") in the City of Huntington Beach and Lessee desires to lease, on a nonexclusive basis, the aforesaid Premises for community information, education, and cultural enrichment in the manner set forth below.

NOW, THEREFORE, in consideration of the obligation of Lessee to pay rent as herein provided and in consideration of the other terms and conditions hereof, Lessor hereby grants to Lessee and Lessee takes from Lessor, to have and to hold, a nonexclusive lease (hereinafter "Lease") of the Premises, upon the following terms and conditions:

SECTION 1. Description of Premises

The Premises consist of that certain real property commonly known and described as a portion of the improvement, structure and fixtures located at 7111 Talbert Avenue, Huntington Beach, California. The premises include (a) the physical structure consisting of (i) the theater (including the stage, auditorium, backstage area, designated storage areas, technical booth, greenroom, and all areas commonly associated with the intended use of the theater), (ii) B Room, C Room, D Room and E Room, (iii) the lobby, (iv) the theater office, and (v) the kitchen (collectively, the "Theater"), (vi) Balboa Room and (vii) Maddy Room; and (b) all fixtures, supplies, and personal property, as identified and itemized in the plans and specifications of the Central Library expansion documents (collectively, the "Personal Property"), which now or hereafter is owned or held by Lessor and located in or about the Theater or attached thereto or used in conjunction with the operation thereof. The use of the rooms can be amended from time to time through a letter agreement, signed by all parties.

SECTION 2. Nonexclusive Use

It is acknowledged by the Parties that Lessor intends to enter into other tenancy arrangements, including, but not limited to, daily or periodic use permits or rental agreements with various business, professional, artistic, dance and other community groups and organizations.

SECTION 3. Permitted Use

The Premises are let on a nonexclusive basis for the purpose of religious services, Sunday school and related church activities and meetings. Lessee's use shall be Sundays 6:30 a.m. to 1:30 p.m. The permitted use time can be amended from time to time through an agreement signed by both parties.

Upon ten (10) days written notice to Lessor, Lessee may expand or extend its use to include additional services or other activities on dates on which the Premises are open and available. Such additional use will be conditioned upon payment by Lessee to Lessor of a reasonable use fee in an amount to be agreed upon by the Parties.

SECTION 4. Term

This Lease shall be for a term of three (3) years commencing at 12:01 a.m. on September 1, 2012 (the "Commencement Date") and ending at 11:59 p.m. on August 30, 2015, unless sooner terminated as herein provided. The term can be extended for one additional two (2) year term, if agreed to in writing by both parties.

SECTION 5. Gross Rent

Lessee agrees to pay to Lessor as gross rent for the use and occupancy of the Premises the sum of one hundred seven thousand eight hundred eighty-six dollars and ninety-six cents (\$107,886.96) per year, payable in twelve equal monthly installments of eight thousand nine hundred ninety dollars and fifty-eight cents (\$8,990.58) each, on the first day of each month beginning on the Commencement Date ("Gross Rent"). In the event Lessee fails to pay any monthly installment on or before the thirtieth day of the month in which that installment is due, Lessee shall pay to Lessor a penalty in the amount of ten percent. The percentage late fee rental rate constitutes a gross rent and includes an amount intended to compensate Lessor for utilities and other expenses relating to the operation of the Premises, including administrative and custodial expenses. Payment of these expenses shall be the obligation of the Lessor. Attachment 1 shows the room rates and areas leased. Amounts can be amended by mutual agreement by the parties.

SECTION 6. Indemnification

Lessee hereby agrees to protect, defend, indemnify and hold harmless Lessor, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs (including, without limitation, costs and fees of litigation of every nature or liability of any kind or nature) arising out of or in connection with Lessee's (or Lessee's subcontractors, if any) negligent (or alleged negligent) use of the Premises or performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement by Lessee, its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of Lessor. Lessor shall be reimbursed by Lessee for all costs and attorney's fees incurred by Lessor in enforcing this obligation. Lessee will conduct all defense at its sole cost and expense and Lessor shall approve selection of Lessee's counsel, which approval shall not be unreasonably withheld. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by the Lessee.

SECTION 7. Hold Over

Should Lessee hold over and continue in possession of the Premises after expiration of the Term of this Lease, or any extension thereof, Lessee's continued occupancy of said Premises shall be considered a month-to-month tenancy subject to all the terms and conditions of this Lease.

SECTION 8. Maintenance

Lessor shall be responsible for all structural repairs to the Premises and shall keep the foundation, exterior and interior walls and the roof in good condition during the term of the Lease. Lessor shall repaint the Premises as required so as to keep the Premises in "first-class" condition. Lessor shall maintain and repair the Theater, Rooms and Personal Property; provided, however, that Lessee shall repair any damage caused by the activities of Lessee, its officers, agents, permittees, and invitees. It is specifically acknowledged by the Parties that Lessee shall not be responsible for any damage caused to the Premises or Personal Property by any person, group or entity, other than Lessee, to whom Lessor has leased, rented, or otherwise permitted to use, said Premises or Personal Property. Quarterly inspections by Lessee and Lessor of the facilities shall be conducted to ensure facility is maintained properly.

SECTION 9. Security

During the hours of Lessee's use of the Premises, security shall be provided by Lessor. The Parties agree that, in no event, shall food or drink be allowed inside the theater auditorium.

SECTION 10. Damage or Destruction

Lessee shall notify Lessor in writing immediately upon the occurrence of any damage to the Premises. If the Premises are only partially damaged, this Lease shall remain in effect and Lessor shall restore Premises to the condition existing on delivery of possession to Lessee as soon as possible. In the event that the partial damage to the Premises interferes with Lessee's ability to produce revenue through its use of the Premises, Lessee's rent shall be abated during the restoration period.

In the event of substantial or total destruction of the Premises, Lessor and Lessee each shall have the option to terminate this Lease within thirty (30) days of such destruction, in which event this Lease shall cease and terminate as of the date of such notice and both Parties shall be released without further obligation.

For the purposes of this Section 11, substantial destruction shall be deemed to be one-third (1/3) or more of the full replacement cost of the Premises as of the date of destruction.

SECTION 11. Termination By Lessor

Lessor may, upon three (3) days notice in writing to Lessee for rent and thirty (30) days notice in writing to Lessee for covenants, and utilizing due process of law, terminate this Lease without liability to Lessor in the event of failure by Lessee to comply with any of the terms or conditions or agreements hereof. When public necessity as determined by the City Administrator so requires, Lessor may temporarily take immediate possession of the Premises.

Notwithstanding the foregoing paragraph, in the event of termination under this Section 12, Lessee shall be allowed fifteen (15) days after written notice within which to cure the failure or default which gave rise to such termination; provided, however, if the nature of Lessee's default for covenants is such that more than fifteen (15) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said fifteen (15) day period and thereafter diligently prosecutes such cure to completion.

SECTION 12. Termination by Lessee

Lessee may, upon three (3) days notice in writing to Lessor for breach or default by Lessor, terminate this Lease without liability to Lessee in the event of failure by Lessor to comply with any of the terms or conditions or agreements hereof.

Notwithstanding the foregoing paragraph, in the event of termination under this Section 13, Lessor shall be allowed fifteen (15) days after written notice within which to cure the failure or default which gave rise to such termination; provided, however, if the nature of Lessor's default for covenants is such that more than fifteen (15) days are reasonably required for its cure, then Lessor shall not be deemed to be in default if Lessor commences such cure within said fifteen (15) day period and thereafter diligently prosecutes such cure to completion.

Lessee may terminate this Lease without cause by giving thirty (30) days prior written notice to Lessor.

SECTION 13. Inspection By Lessor

Lessee shall permit Lessor or Lessor's agents, representatives or employees to enter said Premises at all reasonable times for the purpose of inspecting said Premises to determine whether Lessee is complying with the terms of this Lease and for the purpose of doing other lawful acts that may be necessary to protect Lessor's interest in said Premises under this Lease or to perform Lessor's duties under this Lease.

SECTION 14. Surrender of Premises

On expiration or sooner termination of this Lease, and any extensions thereof, Lessee shall promptly surrender and deliver the Premises to Lessor.

SECTION 15. Quiet Possession

If Lessee pays the rent and complies with all other terms of this Lease, Lessee may occupy and enjoy quiet possession of the Premises for the full Lease term, and any extensions thereof, subject to the provisions of this Lease.

SECTION 16. Signage

Lessee can provide temporary signage as approved by Library Director.

SECTION 17. Lessee's Personal Property

Lessor and Lessee hereby acknowledge and agree that Lessee may, from time to time, install Lessee's personal property, including, without limitation, sets, furnishings, scrims, lighting equipment and sound equipment. Such personal property shall remain the personal property of Lessee during the term of the Lease, and any extensions thereof and shall be removed by Lessee at the expiration, or any sooner termination, of the Lease.

SECTION 18. Assignment and Subleasing

Provided that Lessee is not in default under the Lease, and after the Commencement Date, Lessee shall be permitted to assign and/or sublease all or any portion of the Lease or the Premises with the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed.

SECTION 19. Warranty and Representation

Lessor warrants and represents to Lessee that the building is constructed in a first-class manner and in full compliance with all governmental regulations, ordinances and laws existing at the time of construction.

SECTION 20. Insurance

A. Workers' Compensation and Employers' Liability Insurance

Lessee acknowledges awareness of Section 3700 *et seq.* of the *California Labor Code*, which requires every employer to be insured against liability for workers' compensation. Lessee covenants that it shall comply with such provisions prior to the commencement of this Lease. Lessee shall obtain and furnish to Lessor proof of workers' compensation and employers' liability insurance in amounts not less than the State statutory limits. Lessee shall require all sublessees and contractors to provide such workers' compensation and employers' liability insurance for all of the sublessees' and contractors' employees. Lessee shall furnish to Lessor a certificate of waiver of subrogation under the terms of the workers' compensation and employers' liability insurance and Lessee shall similarly require all sublessees and contractors to waive subrogation.

B. General Public Liability Insurance

In addition to the workers' compensation and employers' liability insurance and Lessee's covenant to defend, hold harmless and indemnify Lessor, Lessee shall obtain and furnish to Lessor, a policy of general public liability insurance, including motor vehicle coverage against any and all claims arising out of or in connection with the Lessee's use of the Premises. This policy shall indemnify Lessee, its officers, employees and agents, while acting within the scope of their duties, against any and all claims arising out of or in connection with the Premises, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of One Million Dollars (\$1,000,000.00) per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than

One Million Dollars (\$1,000,000.00) for the Premises. This policy shall name Lessor, its officers, elected or appointed officials, employees, agents, and volunteers as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable to the Lease shall be deemed excess coverage and that Lessee's insurance shall be primary.

Under no circumstances shall said above-mentioned insurance contain a self-insured retention without the express written consent of CITY; however an insurance policy "deductible" of \$5,000.00 is permitted..

C. Property Insurance

Lessee shall provide before commencement of this Lease and shall obtain and furnish to Lessor, at Lessee's sole cost and expense, property and fire insurance with extended coverage endorsements thereon, by a company acceptable to Lessor authorized to conduct insurance business in California, in an amount insuring for the full insurable value of the Premises and all Improvements, Trade Fixtures, personal property whether or not owned or leased by Lessee, and all trade inventory in or on the Premises against damage or destruction by fire, theft or the elements. This policy shall contain a full replacement cost endorsement naming Lessee as the insured and shall not contain a coinsurance penalty provision. The policy shall also contain an endorsement naming Lessor as an Additional Insured. The policy shall contain a special endorsement that such proceeds shall be used to repair, rebuild or replace any such

Improvements, Trade Fixtures, personal property whether or not owned or leased by Lessee, and all trade inventory so damaged or destroyed; and if not so used, such proceeds (excluding any insurance proceeds for Trade Fixtures, personal property whether or not owned or leased by Lessee, and trade inventory, but only to the extent the insurance proceeds specifically cover those items) shall be paid to Lessor. The policy shall also contain a special endorsement that if the Premises are so destroyed and either party elects to terminate the Lease, the entire amount of any insurance proceeds shall be paid to Lessor. The proceeds of any such insurance payable to Lessor may be used, in the sole discretion of Lessor, for rebuilding or repair as necessary to restore the Premises or for any such other purpose(s) as Lessor sees fit.

This policy shall also contain the following endorsements:

- (1) The insurer shall not cancel or reduce the insured's coverage without (30) days prior written notice to Lessor;
- (2) Lessor shall not be responsible for premiums or assessments on the policy.

A complete and signed certificate of insurance with all endorsements required by this Section shall be filed with Lessor prior to the execution of this Lease. At least thirty (30) days prior to the expiration or termination of any such policy, a signed and complete certificate of insurance showing that coverage has been renewed shall be filed with Lessor.

D. Increase in Amount of General Public Liability and Property Insurance

Not more frequently than once every two (2) years, if, in the sole opinion of Lessor, the amount and/or scope of general public liability insurance and/or property insurance coverage above at that time is not adequate, Lessee shall increase the insurance coverage as reasonably required by Lessor.

E. Certificates of Insurance; Additional Insured Endorsements

Prior to commencement of this Lease, Lessee shall furnish to Lessor certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverages as required by this Lease; these certificates shall:

- (1) provide the name and policy number of each carrier and policy;
- (2) shall state that the policy is currently in force; and
- (3) shall promise to provide that such policies shall not be canceled or modified without thirty (30) days' prior written notice of Lessor; however ten (10) days' prior written notice in the event of cancellation for nonpayment of premium, which 10-day notice provision shall not apply to property insurance set forth above.

Lessee shall maintain the foregoing insurance coverages in force during the entire term of the Lease or any renewals or extensions thereof or during any holdover period.

The requirement for carrying the foregoing insurance coverages shall not derogate from Lessee's defense, hold harmless and indemnification obligations as set forth in this Lease. Lessor or its representatives shall at all times have the right to demand the original or a copy of any or all the policies of insurance. Lessee shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

F. Insurance Hazards

Lessee shall not commit or permit the commission of any acts on the Premises nor use or permit the use of the Premises in any manner that will increase the existing rates for, or cause the cancellation of any liability, property, or other insurance policy for the Premises or required by this Lease. Lessee shall, at its sole cost and expense, comply with all requirements of any insurance carrier providing any insurance policy for the Premises or required by this Lease necessary for the continued maintenance of these policies at reasonable rates.

SECTION 21. Lessee as Nonprofit Organization

Lessee has represented that it is a nonprofit organization. As such, Lessee shall, prior to the effective date of this Lease, provide Lessor with evidence of its nonprofit status.

SECTION 22. Non-recyclable items prohibited.

All foods and beverages shall be sold in recyclable paper or plastic containers. No pull-top cans or styrofoam containers are to be vended or dispensed from the Premises by Lessee. Lessor may from time to time review the items sold and containers or utensils used or dispensed by Lessee for purposes of monitoring compliance with this section.

SECTION 23. Partial Invalidity

If any of the provisions of this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby.

SECTION 24. Good Faith

Whenever this Lease grants Lessor or Lessee the right to exercise discretion, establish rules and regulations or make allocations or other determinations, Lessor and Lessee shall act reasonably and in good faith, and subject to the next sentence, take no action which might result in the frustration of the reasonable expectations of the Lessee and Lessor concerning the benefits to be enjoyed under this Lease. In no event shall the preceding sentence prohibit or impair either party's rights under the Lease in the event of a breach by the other party.

SECTION 25. Entirety

The foregoing, including any exhibits attached hereto and incorporated herein, sets forth the entire agreement between the parties.

SECTION 26. Superseding of Prior Lease

This Lease shall supersede and replace any existing lease agreements for the Premises currently or previously entered into by the Parties and all supplemental agreements, if any, entered into by the Parties regarding the leasing of the Premises.

SECTION 27. Nondiscrimination

Lessee and its officers, agents, and employees shall not discriminate because of race, religion, color, ancestry, sex, age, national origin or physical handicap against any person in the performance of this Lease or the use of the Premises.

SECTION 28. Governing Law

This Lease shall be governed and construed in accordance with the laws of the State of California.

SECTION 29. Notices

All notices, demands and other communications required or permitted under the provisions of this Lease shall be in writing, unless otherwise specifically specified to the contrary, sent by personal delivery, by messenger, by telegram or by registered or certified first class mail, postage prepaid, return receipt requested, to the party or parties herein specified to receive such notices, demands or other communications at the following addresses, or at such addresses as the Parties shall from time to time designate in writing:

LESSOR: CITY OF HUNTINGTON BEACH
 2000 Main Street
 Huntington Beach, CA 92648
 Attention: Director of Economic Development

LESSEE: MARINERS CHURCH
 5001 Newport Coast Drive
 Irvine, CA 92603
 Attention: Chief Financial Officer

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by and through their authorized officers the day, month, and year first above written.

MARINERS CHURCH, a
California Nonprofit Corporation

By: [Signature]
Brian Norkaitis
print name

ITS: (circle one) Chairman/President/Vice President

AND

By: [Signature]
Jeremy Moser
print name

ITS: (circle one) Secretary/Chief Financial Officer/Asst. Secretary - Treasurer

CITY OF HUNTINGTON BEACH, a
municipal corporation of the State of
California

Mayor

APPROVED AS TO FORM:

[Signature] City Attorney Dks 7/23/12
7.23.12

REVIEWED AND APPROVED:

City Manager

INITIATED AND APPROVED:

[Signature]
Director of Economic Development

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by and through their authorized officers the day, month, and year first above written.

MARINERS CHURCH, a
California Nonprofit Corporation

CITY OF HUNTINGTON BEACH, a
municipal corporation of the State of
California

By: _____

print name

ITS: (circle one) Chairman/President/Vice President

Mayor

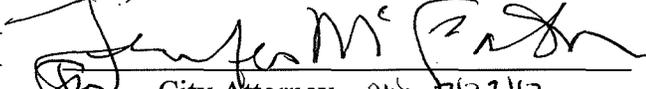
AND

APPROVED AS TO FORM:

By: _____

print name

ITS: (circle one) Secretary/Chief Financial
Officer/Asst. Secretary - Treasurer


City Attorney *DKB 7/23/12*
7-23-12 *JM 7.24.12*

REVIEWED AND APPROVED:

INITIATED AND APPROVED:

City Manager



Director of Economic Development

Attachment 1

Rental Price/Rooms

<u>ROOM</u>	<u>FEE</u>	<u>WEEKLY</u>	
Theater	\$125 per hour x 6.5	\$812.50	
B Room	\$44 per hour x 5	\$220.00	
Maddy Room	\$44 per hour x 5	\$220.00	
Balboa Room	\$44 per hour x 5	\$220.00	
C Room	\$66 per hour x 5	\$330.00	
D Room	\$66 per hour x 5	\$330.00	
E Room	\$44 per hour x 5	<u>\$220.00</u>	
	<i>Long Term Use discount</i>	<i>(\$705.75)</i>	
City Sound Technician	\$35 per hour x 3	\$105.00	
City Security (2)	\$25 per hour x 14	\$350.00	
			<u>Monthly</u>
TOTAL		\$2,074.75	\$8,990.58