

USE AGREEMENT

This USE AGREEMENT (the "AGREEMENT") is made **May 6, 2015**, by and between **GULFSHORE PLAYHOUSE ("GP")**, a Florida non-profit corporation, the address of which is 1010 Fifth Avenue South, Suite 205 Naples, Florida 34102 and **THE CITY OF NAPLES**, a Florida municipal corporation (the "CITY").

WITNESSETH:

WHEREAS, the **CITY** and **GP** have determined that it is in their best interest to establish a use of space for **GP** at the Norris Center, the address of which is 755 Eighth Avenue, Naples, FL 34102; and

WHEREAS, such a use would benefit the citizens of both the **CITY** and the County by providing increased and easier access to the services provided by **GP**; and

WHEREAS, the **CITY** has agreed to grant **GP** use of space at the Norris Center for a five (5) year period on the terms and conditions contained herein.

NOW, THEREFORE, based upon the mutual covenants and premises provided herein, and other valuable consideration, the parties hereby agree as follows:

1. **Recitals Incorporated:** The above recitals are true, correct and incorporated herein.
2. **Premises:** The **CITY** agrees to permit **GP** to use the property located at the **CITY**-owned property referred to as the Norris Center (the "PROPERTY") which is located at 755 8th Ave. South, Naples, Florida 34102.
3. **Term:** The term of this AGREEMENT shall be for five (5) years (the "TERM"). The TERM shall commence on **September 1, 2015** and shall expire on **September 1, 2020** (the "Termination Date"). At the end of the TERM or if terminated prior to Termination Date by either party, this AGREEMENT shall absolutely end. The AGREEMENT will be jointly reviewed by the **CITY** and **GP** during the final quarter of this AGREEMENT and future recommendations of terms and conditions will be recommended at that time.
4. **License Fee:** There shall be no license fees due under this AGREEMENT.
5. **Use:** The PROPERTY shall be used solely for the various business practices of **GP** including but not limited to: theatrical rehearsal and production including load-in, load-out, light hang, focus, etc.; live paid public performances; audience services; patron receptions; educational programs; administrative meetings; and any other associated activities and services pursuant to the terms of this AGREEMENT. Whenever not specifically stated herein, interpretation of appropriateness of any use shall be made by the Park Manager of Cambier Park / Norris Center.
6. **Sponsorship:** **GP** will be allowed to provide sole sponsorship for its corporate sponsors.
7. **Financial Obligations:** **GP** is solely responsible for the costs associated with its own business operations conducted on the PROPERTY; the **CITY** is not required to expend

public funds to support either the capital or operation expenses of GP. Financing of GP's business operations will be the sole responsibility of GP.

8. **Fees and Charges:**

A) GP shall pay to the CITY for use of the PROPERTY an annual sum equal to Seventy Thousand Dollars (\$70,000.00) for the non-exclusive use of the following spaces: auditorium and auditorium closets, lobby, front desk, game room, dance room, art room, conference room, restrooms, kitchen, dressing rooms, green room and backstage areas, gallery and parking lot. All fees are to be paid to the Norris Community Center on a payment schedule as pre-arranged with GP and CITY staff. The pre-arranged payment schedule agreed to by GP and CITY shall be as follows:

- October - \$8,750
- November - \$8,750
- December - \$8,750
- January - \$8,750
- February - \$8,750
- March - \$8,750
- April - \$8,750
- May - \$8,750

B) GP shall pay to the CITY for use of the PROPERTY a monthly sum equal to Seven Hundred and Fifty Dollars (\$750.00) for the use of the following spaces: costume shop. All fees are to be paid to the Norris Community Center on a payment schedule as pre-arranged with GP and CITY staff.

C) GP shall pay to the CITY for use of the PROPERTY a monthly sum equal to Three Hundred Dollars (\$300.00) for the use of the following spaces: spare office. All fees are to be paid to the Norris Community Center on a payment schedule as pre-arranged with GP and CITY staff.

D) This payment schedule is subject to increase in accordance with any changes that may be made by City Council to the Schedule of Fees in Appendix "A" of the City Code of Ordinances.

9. **Rights and Responsibilities of GP and the CITY:** The following terms have been mutually agreed to by GP and the CITY and represent the unique and specific history between the two parties.

- A) The CITY shall provide GP with up to six (6) proxy cards in order to gain admittance to the PROPERTY at any time, as needed.
- B) The CITY and GP hereby agree to define the standard auditorium set-up as one containing two hundred (200) seats set up in rows in a regular auditorium-style seating arrangement. Each party shall agree to restore the auditorium to the standard set-up described herein after each use, except in cases where either party has received prior approval from the other party to forego the restoration.
- C) GP shall provide the CITY with a standard lighting plot (i.e. a "general wash") for use by performers for any events that have arranged been by the CITY to take place on the PROPERTY.

- D) **GP** shall make at least one (1) dressing room and the green room available for use by performers for any events that have arranged been by the **CITY** to take place on the **PROPERTY**.
- E) **GP** shall provide the **CITY** with a stage plot of any set designs that will continue to exist in the auditorium while it is being used by other performers or events that have been arranged by the **CITY** to take place on the **PROPERTY**.
- F) If the **CITY** has the need to utilize a **GP** staff member for any production-related needs for any performers or events that have been arranged by the **CITY** to take place on the **PROPERTY**, **GP** will make best efforts to assist the **CITY** when possible, provided that such request is made to **GP** Production Manager in advance and is subject to **GP** staff member availability.
- G) The **CITY** shall allow **GP** the unlimited use of all technical equipment contained on the **PROPERTY** with no additional fees due, including but not limited to: the genie lift; any and all electrics equipment including lighting instruments, dimmers, light boards, etc; any and all audio/visual equipment including the projector, screen, DVD or Blu-ray player, speakers, microphones, headsets, and cabling; front desk computers, copiers and telephones, etc.
- H) **GP** shall return any **CITY** equipment used to its appropriate location and functionality, including but not limited to any sound equipment, projection equipment, and/or lighting equipment.
- I) **GP** shall regularly apprise the **CITY** of deficiencies in the facility being provided such as damages to **PROPERTY** and/or loss or damage of any equipment. The **CITY** shall be responsible for maintaining, repairing, or replacing within a timely manner any equipment that may become damaged through normal function and/or use. **GP** shall be responsible for maintaining, repairing or replacing within a timely manner any equipment that may become damaged through exceptional function and/or use.
- J) The **CITY** understands that a confirmed schedule and reliable room availability is of material importance to the **AGREEMENT**, and as such, the **CITY** and **GP** shall mutually agree to a seasonal calendar prior to January 15th of each year. After such time as a seasonal calendar has been approved, each party agrees to notify the other party in writing of any significant changes to the seasonal calendar including but not limited to: special closings of the **PROPERTY** in relation to holidays, other downtown Naples events, etc.; changes or additions to **GP** production or performance schedule that may affect the **CITY**; changes or additions to **CITY** performance schedule that may affect **GP**. A sample production calendar for one (1) show is as follows:
- Week 1 – Actor rehearsal in Game room – Game room is not available for other uses
 - Week 2 – Actor rehearsal in Game room – Game room is not available for other uses
 - Week 3 – Actor rehearsal in Game room – Game room is not available for other uses
– Production in Auditorium – Auditorium is not available for other uses

- Week 4 – Production in Auditorium – Auditorium is not available for other uses
 - Week 5 – Performance schedule per seasonal calendar – Auditorium is available at other times for other uses
 - Week 6 – Performance schedule per seasonal calendar – Auditorium is available at other times for other uses
 - Week 7 – Performance schedule per seasonal calendar – Auditorium is available at other times for other uses
- K) GP acknowledges the importance of the PROPERTY as a CITY public space and agrees to continue to be flexible and accommodating in all manner of scheduling.
- L) GP shall have the right to provide wine to its guests and patrons while on PROPERTY. The full execution of this AGREEMENT shall be deemed a standing authorization from the CITY to allow GP to provide wine to its guests and patrons during the TERM of this AGREEMENT. GP agrees to be bound by the “Rules and Regulations for users serving alcohol on City property”, as stated on the City of Naples Alcohol Request Application. No further applications shall be required to be submitted by GP to the CITY in this regard.
10. **Alterations and Improvements:** GP shall not alter, improve or change the PROPERTY, including existing signage, without the written consent of the CITY.
 11. **Termination:** At any time during the term of this AGREEMENT, either party may terminate this AGREEMENT by delivering sixty (60) days written notice of termination to the other party without liability to the other.
 12. **Assignment:** The use of the PROPERTY by GP is nonexclusive and the CITY may allow the PROPERTY to be used for the benefit of the residents of and visitors to the CITY and Collier County. GP shall not assign, sublet, or permit the PROPERTY to be used by others.
 13. **Insurance:** GP shall pay for and provide Liability and Property Damage insurance in an amount of at least \$1,000,000.00 (1 mil) per occurrence. In all policies, the CITY shall be included as an additional named insured.
 14. **Indemnification:** GP shall indemnify, defend, save, and hold harmless the CITY, its officers, agents and/or employees from and against any and all losses, penalties, damages, professional fees, including reasonable attorney’s fees and all costs of litigation and judgments, arising out of any willful misconduct or negligent act, error, or omission of GP arising out of or incidental to GP use of the PROPERTY, or the failure of GP to perform any duties under this AGREEMENT.
 15. **Taxes and Assessments:** GP hereby covenants that it is currently a non-profit corporation validly formed and operating under Section 501c(3) of the Internal Revenue Code, and that it shall maintain such status during the life of this AGREEMENT. GP shall pay all

taxes and assessments applicable to non-profit 501c(3) organizations, in the event that the non-profit status of the GP ceases, shall be in default hereunder.

16. **Effective Date:** This AGREEMENT shall take effect on the day of execution by the last party to execute this AGREEMENT
17. **Counterparts:** This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party who signature appears thereon and all of which shall together constitute one and the same instrument.
18. **Recording:** This AGREEMENT shall be recorded by GP in the Official Records of Collier County within thirty (30) days after this AGREEMENT is fully executed.
19. **Authority to Execute:** The terms of this AGREEMENT have been duly approved by representatives of GP. A true and correct copy of the Resolution authorizing entry into this AGREEMENT, and authorizing the current GP Producing Artistic Director to execute this AGREEMENT.
20. **Notices and Address Record:** All notices required or made pursuant to this AGREEMENT to be given by GP to the CITY shall be in writing and shall be delivered by hand or by United States Postal Services Department, first class mail services, postage prepaid, return receipt requested, addressed to the following:

City of Naples Community Services Department
280 Riverside Circle
Naples, Florida 34102

All notices required or made pursuant to this AGREEMENT to be given by the CITY to GP shall be made in writing and shall be delivered by hand or by United States Postal Services Department, first class mail services, postage prepaid, return receipt requested, addressed to the following:

Gulfshore Playhouse
1010 Fifth Avenue South, #205
Naples, Florida 34102
Attn: Kristen Coury

IN WITNESS WHEREOF, the parties hereto have executed this USE AGREEMENT as of the date first above written.

GULFSHORE PLAYHOUSE
A Florida Not for Profit Corporation

By: Kristen Coury
Kristen Coury
President/CEO
Title
Kristen Coury
Signature

ATTEST:

CITY OF NAPLES, FLORIDA

By: Patricia Rambosk
Patricia Rambosk, City Clerk

By: John F. Sorey
John F. Sorey, Mayor

Approved as to form and legal sufficiency:

By: Robert D. Pritt
Robert D. Pritt, City Attorney