

**FACILITIES RENTAL AGREEMENT**

This Facilities Rental Agreement dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 2024 (the "Rental Agreement" or the "Agreement") is between the Eureka Springs City Advertising and Promotion Commission (hereinafter called "Lessor" or "CAPC") as lessor, and \_\_\_\_\_, as the Promoter (hereinafter, the "Promoter").

**WITNESSETH:**

WHEREAS, the Lessor proposes to rent the Eureka Springs municipal auditorium, located at \_\_\_\_\_ (hereinafter the "Property"), to Promoter upon the terms and conditions set forth herein; and

WHEREAS, Promoter will organize, promote, and conduct an Event in the facility described as follows:

\_\_\_\_\_  
\_\_\_\_\_

NOW THEREFORE, in consideration of the respective representations and agreements hereinafter contained, Lessor and Promoter agree as follows:

I. **Rental Fee.** Payment of the rental deposit fee of one-thousand dollars (\$1,000.00) is required upon execution of agreement. The rental deposit fee is **non-refundable**. The date of the event will not be reserved without full payment of the \$1,000 rental fee.

**The RENTAL DEPOSIT FEE** of \$1,000 is for the use of the Auditorium Theatre ONLY. The use of the GYM or "basement" is an additional \$750 per day.

The RENTAL FEE of \$1,000 provides for 1-256 seats. The promoter may charge/sell tickets in any denomination. After 256 seats are taken, a **fee of \$3.89 is charged for each seat up to 900 seats**. The maximum rental fee **of 900 or more seats is \$3,500**. While the Auditorium holds 986 seats, the maximum rental per event is \$3,500 unless otherwise negotiated.

Any and all COMP seats are counted at the \$3.89 rate.

**If less than 256 seats are taken, the RENTAL DEPOSIT FEE is \$1,000 non-refundable.**

It is agreed that at the end of the performance, the PROMOTER and CAPC management will settle the final seat count. The final seat count fee must be paid at the end of the performance regardless of Promoter settlement with their ticketing agency.

The promoter may charge or sell any variety of tickets, VIP, Center, Balcony, etc.

II. **Occupancy and Date.**

A. The date of the Event shall be \_\_\_\_\_.

B. Promoter or Promoter's contracted performer(s) (including support personnel) may enter the Property at or after 9:00 a.m. of the date before the Event for purposes of set up,

rehearsal, etc., and may continue to be present in the Property until six (6) hours after the conclusion of the Event for purposes of tear down and load out.

- C. The maximum number of participants and guests when using the Property is 986. No animals except service animals are allowed in the building.

### III. **Parking.**

- A. CAPC Sponsored Events: Parking for tour buses is included in the rental fee.
- B. Non-CAPC Sponsored Events: The CAPC will secure tour bus parking upon request from the Promoter. The Eureka Springs CAPC will bill the Promoter for the tour bus parking at cost plus a ten percent (10%) administrative fee.

### IV. **Set-Up and Tear-Down.**

- A. CAPC Sponsored Events: Any Promoter of a CAPC Sponsored Event must coordinate with Eureka Sound on all sound, lighting, set up, and tear down.
- B. Non-CAPC Sponsored Events: Any lighting and sound coordinators used by Promoters must be approved by the CAPC within 48 hours of the event. The CAPC will provide set-up and tear-down labor upon request at a price of \$25/hour per person employed for the event.

- V. **Clean-Up.** Janitorial cleaning of the Property is included in the rental fee. This does not include repair of any damage that may be caused by the Promoter, the performer(s), or guests during an event.

- VI. **Security.** Ushers and Police Security are included in the base rental fee.

- VII. **Concessions.** Operation of concessions is the responsibility of the CAPC. All concession revenue belongs to the CAPC. Promoters and performers are allowed to bring their own merchandise and will retain all revenue acquired from such merchandise sales. Space for Promoter or performer merchandise will be provided by the CAPC and is included in the Rental Fee.

### VIII. **Ticketing.**

- A. CAPC Sponsored Events: All ticketing must be handled through the Eureka Springs CAPC ticketing systems.
- B. Non-CAPC Sponsored Events: Promoters may use any ticketing system of their choice.

- IX. **Insurance.** Each Promoter must carry a public liability insurance policy in the amount of at least one million dollars (\$1,000,000.00) per occurrence. Proof of such insurance is required prior to the event date.

- X. **Equipment.** All equipment in the building belongs to Eureka Sound.

### XI. **Legal Issues.**

- A. **Oversight:** The Promoter agrees that agents for the CAPC may enter that portion of the

Property under use by the rental agreement at any time during the term of the rental period for the purpose of inspection.

- B. Behavior: The Lessor expects the Promoter and all guests to be respectful of the property and each other. Inappropriate behavior, including intentional damage to property, will not be tolerated. The Lessor has the authority to take necessary actions to curtail or end such behavior and to remove offending parties from the premises.
- C. Assignment: Neither the interior nor the exterior of the Property, nor any portion thereof, may be sublet, nor may the agreement nor any interest therein be assigned by the Promoter.
- D. Liability: Promoters and guests shall hold the Eureka Springs CAPC and the City of Eureka Springs harmless from any loss, cost, damage, or injury that may arise out of, or in connection with, the use of the Property and its grounds by the Promoter, its agents, contracted performers, or invitees, or any other person using the Property under the authority of the Promoter.
- E. Termination: The Lessor may terminate the rental agreement at any time, should it be determined that public necessity, health, safety, or convenience require it to do so. A written notice of termination will be issued at least 14 days prior to the event date stated in this Rental Agreement, and the Promoter's security deposit and/or rental fee will be refunded.
- F. Compliance with State Law: The Promoter will at all times comply with State and local laws including specifically, but without limitation, all laws regarding alcohol sales and Act 131 of the 2023 legislative session (the "Act") which restricts or prohibits certain activities defined in the Act as "adult-oriented performances" from being held upon public property.
- G. Default: In the event that the Promoter is in default in the performance of any of the terms herein agreed to, the Lessor may terminate this agreement forthwith, the Lessor or their agents may enter the Property and remove all persons and personal property, and the Promoter will not be entitled to refund of any money paid as part of the rental agreement. In the event the Lessor brings legal action to enforce any of the terms thereof, or to obtain possession of said premises by reason of any default of the Promoter, the Promoter agrees to pay the Lessor all costs of such legal action, including CAPC's attorney fees.

XII. By signing this contract the Promoter agrees to abide by all requirements and restrictions detailed in the facilities rental agreement above. The Promoter further agrees and re-states that during its use and occupation of the premises, they will indemnify and hold harmless the Eureka Springs City Advertising and Promotion Commission and the city of Eureka Springs from and against any and all liability whatsoever resulting from injury or damage to any person, persons, or property by reason of or as a result of the use and occupation of the said premises directly or indirectly as herein set forth, or by reason of or as a result of the actions of it or its servants, agents, employees, or workers. The Promoter agrees to pay for all damages which occur in the course of the wedding.

XIII. The Lessor and its agents have the authority to evict anyone who, in the opinion of that agent, creates a disturbance or fails to adhere to warnings regarding accepted conduct and/or established regulations in accordance with the Eureka Springs City Advertising and Promotion Commission and/or Eureka Springs City policy. The Lessor representative has the authority and responsibility to enforce all regulations. A breach of the regulations may result in the termination of the contract by the Lessor and forfeiture of the rental fee.

XIII. Promoter shall not assign this lease, nor sublet the leased premises or any part thereof, without the

prior consent in writing of the Lessor. The consent by Lessor to a particular assignment of subletting shall not be construed to relieve Promoter from the obligation to obtain the consent in writing of Lessor on any other or future assignment or subletting.

XIV. This agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors, legal representatives, heirs and assigns, except as expressly limited otherwise herein.

XV. (a) Governing Law. This Lease shall be deemed entered into within and shall be governed by and interpreted in accordance with the laws of the State of Arkansas.

(b) Joint and Several Liability. If Promoter is composed of more than one signatory to this Lease, each signatory will be jointly and severally liable with each other signatory for payment and performance according to this Lease. The act of, written notice to, written notice from, refund to, or signature of any signatory to this Lease (including without limitation modifications of this Lease made by fewer than all such signatories) will bind every other signatory as though every other signatory had so acted, or received or given the written notice or refund, or signed.

(c) No Construction Against Drafting Party. Lessor and Promoter acknowledge that each of them and their counsel have had an opportunity to review this Lease and that this Lease will not be construed against Lessor merely because Lessor has prepared it.

(d) No Waiver. The waiver by Lessor of any agreement, condition, or provision contained in this lease will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this lease, nor will any custom or practice that may grow up between the parties in the administration of the terms of this lease be construed to waive or to lessen the right of Lessor to insist upon the performance by Promoter in strict accordance with the terms of this lease. The subsequent acceptance of rent by Lessor will not be deemed to be a waiver of any preceding breach by Promoter of any agreement, condition, or provision of this lease, other than the failure of Promoter to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

(e) No Easements for Air or Light. Any diminution or shutting off of light, air, or view by any structure that may be erected on lands adjacent to the building or complex will in no way affect this lease or impose any liability on Lessor.

(f) Attorney's Fees. If Lessor and Promoter litigate any provision of this lease or the subject matter of this lease, the unsuccessful litigant will pay to the successful litigant all costs and expenses, including reasonable attorneys' fees and court costs, incurred by the successful litigant at trial and on any appeal. If, without fault, either Lessor or Promoter is made a party to any litigation instituted by or against the other, the other will indemnify the faultless one against all loss, liability, and expense, including reasonable attorneys' fees and court costs, incurred by it in connection with the litigation. Promoter shall pay all attorney fees' incurred by Lessor to assist in collection of any late payments of Rent due under this Lease.

(g) Confidentiality. Promoter agrees that the terms and conditions of the Lease shall be confidential and shall not be disclosed to third parties except to the extent reasonably necessary for business purposes or as may be required by court of competent jurisdiction.

(h) Amendments in Writing. This Lease shall not be modified except by written agreement signed on behalf of Lessor and Promoter by their respective authorized officers.

(i) No Other Agreements. This Lease supersedes all prior understandings, representations, negotiations and correspondence between them with respect to the matters described, and shall not be modified or affected by a course of dealing, course of performance or usage of trade.

(j) Severability. If any provision of this Lease is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired.

(i) Multiple Counterparts. This Lease may be executed in any number of counterparts and each fully executed counterpart shall be deemed an original.

REMAINDER OF THIS PAGE BLANK. REQUIRED INFORMATION AND SIGNATURES APPEAR ON THE FOLLOWING PAGE

Promoter provides the following information:

Event Date: \_\_\_\_\_ Number of expected performers and support staff: \_\_\_\_\_

Time of Arrival: \_\_\_\_\_ Time of Departure: \_\_\_\_\_

Group Name: \_\_\_\_\_

Applicant Name: \_\_\_\_\_

Applicant Address: \_\_\_\_\_

Promoter Home Phone: \_\_\_\_\_ Promoter Cell Phone: \_\_\_\_\_

Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

Eureka Springs CAPC Approval:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_