

# Memorandum

Original to  
Maryanne  
RECEIVED Waldo  
12/19/16  
DEC 16 2016  
CITY ATTORNEY

**To:** Max Lohman, City Attorney

**CC:** File

**From:** Kimberly Wynn, Deputy City Clerk *KW*

**Date:** 12/16/2016

**Re:** Creative City Collaborative of Delray Beach/ Lease Agreement

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Here are two (2) fully executed Lease Agreements with the Creative City Collaborative for a five (5) year lease with Arts Garage. This item was approved at the November 15, 2016 Regular City Commission Meeting; File Number 16-1114.

A fully executed agreement will be maintained in the City Clerk Department.

Call me at 243-7057 if you have any questions.

Thank you.

Attachments

## LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter referred to as "Lease") is made and entered into as of the 8<sup>th</sup> of December 2016, by and between the City of Delray Beach, a Florida Municipal Corporation (hereinafter referred to as "Lessor", "City", or "Lessor") and the Creative City Collaborative of Delray Beach, Inc., a Florida not-for-profit corporation, (hereinafter referred to as "Tenant" or "Lessee").

### WITNESSETH:

THAT Lessor, in consideration of the rents and agreements promised and agreed by Tenant to be paid and performed, leases to Tenant, the Premises described herein, subject to the following terms.

### ARTICLE I

#### DESCRIPTION OF PROPERTY; TERM

1. Description of Property. Lessor hereby leases to Tenant and Tenant hereby leases from Lessor approximately Ten Thousand Two Hundred Eighty Nine (10,289) rentable square feet on the first (1st) floor of the Old School Square Parking Garage (the "Building"), as shown on Exhibit "A", which is attached hereto, and made a part of this Lease (the "Premises"), which is located at 94 NE 2<sup>nd</sup> Avenue, Delray Beach, Florida, together with the right to use in common with other tenants of the Building, their invitees, customers and employees, and the right of the public to use any portion of the Building which is located outside the Premises, including the stairways, elevators, hallways, and all other common facilities contained in the Building and parking areas. All of the land and real property underlying or adjacent thereto, with all improvements thereto, including the Building, and used in connection with the operation of the Building shall be referred to as the "Property".

2. Term. Tenant shall have and hold the Premises for a term of five (5) years (hereinafter referred to as the "Term") commencing on November 17, 2016, ("Commencement Date") and expiring on November 16, 2021 (the "Expiration Date"). For the purposes of this Lease, a "Lease Year" shall be defined as that twelve (12) month period during the Term commencing on the Commencement Date or the annual anniversary thereof, as may be applicable. For the purpose of this Lease, a "Lease Month" shall be defined as those successive calendar month periods beginning with the Commencement Date and continuing through the Term of the Lease.

## ARTICLE II

### RENT

1. **Base Annual Rent; Rental Adjustment; Late Charge; Sales Tax.** Tenant shall pay in advance to the Lessor, without prior demand, in lawful money of the United States, on the first day of each month, without any deduction or off-set whatsoever throughout the term of this, Base Annual Rent, plus applicable sales taxes. During the first year of the Lease Term, Base Annual Rent is Ten Thousand Three Hundred Ninety Two and No/100 Dollars (\$10,392.00) payable in equal monthly installments in the sum of Eight Hundred Sixty Six and No/100 Dollars (\$866.00), plus applicable sales taxes. Effective on November 17 of each Lease year, commencing on November 17, 2017, and continuing annually on the seventeenth day of November in 2018, 2019, and 2020, Base Annual Rent shall increase by three percent (3%) for the following twelve month period. By way of example, commencing on November 17, 2017, through November 16, 2018, Base Annual Rent shall increase to \$10,703.76, payable monthly on the first day of each month, in the amount of \$891.98, plus applicable sales taxes; and commencing on November 17, 2018, through November 16, 2019, Base Annual Rent shall increase to \$11,024.87, payable monthly on the first day of each month, in the amount of \$918.74, plus applicable sales taxes. Monthly Base Annual Rent commencing November 17, 2019, is \$946.30 and commencing November 16, 2020, is \$974.69. Such payment shall be made at the office of the Lessor as set forth in this Lease, or at such place Lessor may from time to time designate by written notice directed to Tenant at the Premises. In the event that the Commencement Date is other than the first day of the month, then the Tenant shall pay Rent for such fractional month prorated on the basis of a thirty (30) day month. Tenant shall pay the first month's monthly Base Annual Rent at the time of execution of this Lease, which amount shall be applied towards the payment of monthly Base Annual Rent for the first month of the Term. Lessor and Tenant hereby acknowledge that Lessor is holding the amount of \$974.69 under a separate lease with Lessor. Upon execution of this Lease, Lessor shall apply this amount towards the monthly Base Annual Rent payment for the last month of this Lease, or in the event of an uncured monetary default by Tenant under the Lease, the Lessor shall be entitled to retain the last month's monthly Base Annual Rent payment to be applied to the payment of any Rent. The last month's monthly Base Annual Rent retained by Lessor shall in no way be construed as liquidated damages, and Lessor does not waive its right to seek additional damages from Tenant for any loss or damages sustained due to Tenant's uncured default. Lessor shall not be required to keep this last month's monthly Base Annual Rent separate from its general funds, and Tenant shall not be entitled to interest on the last month's rental payment.

2. **Security Deposit.** Lessor and Tenant hereby acknowledge that Lessor is holding a security deposit in the amount of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) as security for the performance of Tenant's obligations under a separate lease with Lessor (the "Existing Security Deposit"). Simultaneously upon execution of this Lease, Lessor shall transfer the Existing Security Deposit to this Lease. Said sum shall be held by Lessor, as security for the faithful performance by Tenant of all

terms, covenants and conditions of this Lease to be kept and performed by Tenant during the Term hereof. In the event of an uncured monetary default by Tenant, all of the Security Deposit as of the date of Tenant's default shall be retained by Lessor to be applied toward the payment of any Rent, or additional sum due hereunder by Tenant, or to any loss or damage sustained by Lessor due to any uncured default by the Tenant, any excess deposit shall be returned to the Tenant forthwith upon termination of the Lease. The amount retained by Lessor shall in no way be construed as liquidated damages, and Lessor does not waive its right to seek additional damages from Tenant for any loss or damages sustained due to Tenant's default. Lessor shall not be required to keep this Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit.

3. Taxes. Tenant shall pay, or cause to be paid, before delinquency, any and all taxes levied or assessed and which become payable during the Term hereof upon all Tenant's equipment, furniture, fixtures, and any other personal property located in the Premises. In the event any or all of Tenant's equipment, furniture, fixtures and other personal property shall be assessed and taxed with the Property, Tenant shall pay to Lessee its share of such taxes within ten (10) days after delivery to Tenant by Lessor of a statement in writing setting forth the amount of such taxes applicable to Tenant's property.

Tenant shall at all times be further responsible for all applicable taxes including, but not limited to, Florida Sales Tax arising out of or associated with this Lease. Tenant shall provide to Lessor at the time of execution of the Lease, and each year thereafter, a copy of its certificate of tax exemption.

Tenant shall assume full responsibility for all mechanic's or materialman's liens for work done on the Premises by or on behalf of Tenant which may be hereafter lawfully levied against the Leased premises.

4. Payment Without Notice or Demand. The Annual Base Rent called for in this Lease shall be paid to Lessor without notice or demand, and without counterclaim offset, deduction, abatement, suspension, deferment, diminution or reduction. Tenant hereby waives all rights now or hereafter conferred to any offset, deduction, abatement, suspension, deferment, diminution or reduction of the Annual Base Rent on account of any such circumstances or occurrence.

5. All monetary obligations owed by Tenant to Lessor under this Lease shall be deemed "Rent."

6. The parties acknowledge that the Premises are currently exempt from any ad valorem taxes and assessments. In the event, during the Lease Term, it is determined that any taxes are due and owing, it shall be the Tenant's responsibility to remit the taxes to the applicable taxing authority.

7. Place of Payment. All payments of Rent, or any other charges imposed pursuant to this Lease shall be made and paid by Tenant to:

Delray Beach Treasurer  
City of Delray Beach  
100 N.W. 1st Avenue  
Delray Beach, Florida 33444

or at such other place as Lessor may, from time to time, designate in writing to Tenant. All payments shall be payable in current legal tender of the United States, as the same is then by law constituted.

8. Late Payment Charge. In the event any monthly installment of Rent is not paid within ten (10) days of its due date, as set forth in this Lease, Tenant agrees to pay as a late charge an amount equal to five percent (5%) of the monthly installment of Rent that is due and payable as compensation to Lessor for its additional administrative expenses in processing late payments.

### ARTICLE III

Intentionally deleted.

### ARTICLE IV

#### USE OF PREMISES

1. Except as provided in Article IV, Section (2) of this Lease, Tenant shall only use the Premises as an I.R.C. 501 (c)(3) not for profit ("not for profit") place for visual artists, musicians, performers, film presenters, theater productions and workshops, arts education, community and cultural programs, cultural activities, musical performances, arts exhibitions, arts and music classrooms, and a small Tenant administrative office, subject to applicable City zoning and building restrictions. All of such permitted uses are collectively referred to as the "Cultural Hub" use. As the space is located in a public facility, the Tenant shall ensure that activities are accessible to the public, and that activities promote and appeal to the diverse demographics of Delray Beach's population. The Tenant shall ensure a high quality and variety of performances, workshops, and exhibits. Tenant shall not use or permit the use of the Premises or any part thereof for any unlawful purpose, or in violation of any ordinances, laws, rules or regulations of any governmental body. Tenant shall not do or permit any act which would constitute a public or private nuisance or waste or which would be a nuisance or annoyance or cause damage to Lessor or Lessor's other tenants, or which would invalidate any policies of insurance or increase the premiums thereof, now or hereafter written on the Building and/or Premises.

2. **Permitted Incidental Uses.** In addition to the use of the Premises as a Cultural Hub, Tenant may issue a License to an independent third-party operator to use the Premises for any lawful purpose (hereinafter referred to as a "Permitted Incidental Use"). Tenant shall issue no more than twenty-four (24) Licenses for Permitted Incidental Uses in any calendar year. Tenant shall not use the Premises for a Permitted Incidental Use more than one time per week and more than a total of eight (8) hours per month.

3. **Operating Hours.** Tenant must use the Premises as a Cultural Hub open to the public and operating as follows:

- a. A minimum of 30 operating hours per week.
- b. Minimum operating hours must include 10 hours on weekends (Saturday and Sunday).
- c. Minimum operating hours must include at least two evenings per week having duration of at least three hours each.

## ARTICLE V

### PARKING

Tenant shall have the right to use of zero (0) designated or reserved parking spaces. All parking spaces not designated or reserved for other tenants of the Building shall be available on a first come first serve basis in the manner provided by the City for public parking. In the event that Tenant desires to reserve parking spaces for Tenant's exclusive use, Tenant may request Lessor to designate in Lessor's sole discretion reserved spaces for Tenant's use at a charge to be determined by the Lessor in its sole discretion, provided, however, Lessor shall not be required to grant Tenant an exclusive right to use any parking spaces. In the event the Lessor imposes a fee for parking at the Property, Tenant may be charged the same amount as City charges members of the public to park on the Property. Tenant acknowledges that a substantial portion of the Property is used and will be continued to be used as a public parking garage.

## ARTICLE VI

### ACCEPTANCE OF THE PREMISES

Tenant acknowledges that Lessor has not made any representations or warranties with respect to the condition of the Premises and neither Lessor nor any assignee of Lessor shall be liable for any latent defect therein. Tenant is presently in possession of the Premises and accepts the condition of the Premises "AS IS". Tenant acknowledges and agrees that the Premises are in good and satisfactory condition.

ARTICLE  
VII

TENANT OBLIGATIONS AND COMMON AREAS

1. **Tenant's Obligations.** Tenant shall be solely responsible for and shall promptly pay all charges for electricity, plumbing, telephone, cable, television, communication equipment, water, sewer, gas, daily janitorial service, refuse removal, interior and exterior window cleaning, and all other services and utilities. Unless approved by the Lessor's Board of Commissioners, the Tenant shall pay all costs and expenses for the installation of any improvements made to the Premises, any additional utilities, other improvements, or upgrades to the improvements provided by the Lessor, as well as costs and expenses associated with the extension of any and all lines necessary to provide such additional utilities, improvements, upgrades, and services to the Premises, and all connection fees, assessments and charges related thereto. Tenant shall be responsible for entering into a maintenance agreement for the maintenance and repair of the air conditioning. Tenant shall also be responsible for paying all charges associated with a maintenance agreement for the air conditioning system, in order to insure the maintenance of the air conditioning system, and shall provide proof of such maintenance agreement to the Lessor. Furthermore, Tenant shall be responsible for maintaining in good condition and repair, all exterior windows, security systems, interior and exterior doors, walls, flooring and ceiling, and all electrical and plumbing systems located within the Premises.

In the event Tenant does not keep and maintain the Premises to Lessor's satisfaction or make repairs within ten (10) days after notice from Lessor, Lessor may, in addition to any other remedies it may have under law or this Lease, enter upon the Premises and maintain the Premises and/or make the said repairs or replacements itself, as the case may be, and charge the cost thereof to Tenant as Additional Rent.

2. **Common Areas.** Tenant acknowledges that the City of Delray Beach ("City") owns the Building, and that the City is responsible for the maintenance of the structural, functional and systemic aspects of the Building, including the roof, foundation, load-bearing walls, general building maintenance, walkways, corridors, elevators, sidewalks, landscaping, water lines, sanitary sewer lines, stormwater lines, and parking areas (hereinafter referred to as "Common Areas"). The Tenant agrees that Lessor shall not be responsible for any claims for damage to person or property that results from any improvements constructed or installed by the Tenant on the Building or Premises, unless such claims result from Lessor's gross negligence or willful misconduct.

3. **Floor Loads; Noise and Vibration.** Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot, which such floor was designed to carry or which is allowed by law. Business machines and mechanical equipment belonging to Tenant which cause noise, electrical interference or vibration that may be transmitted to the structure of the Building or to the Premises to such a degree as to be

reasonably objectionable to Lessor shall, upon prior written notice from Lessor to Tenant, at Tenant's expense, be placed and maintained by Tenant in settings of cork, rubber, or spring-type vibration eliminators sufficient to eliminate such noise, electrical interference or vibration.

## ARTICLE VIII

### LESSOR'S AND TENANT'S PROPERTY

1. Lessor's Property. Unless listed in Exhibit "B", which is attached hereto and incorporated herein by reference, all fixtures, equipment, improvements and appurtenances attached to or built into the Premises at the commencement of, or during the Term of this Lease, whether or not by or at the expense of Tenant, shall be and remain a part of the Premises and shall be deemed the property of Lessor ("Lessor's Property") and shall not be removed by Tenant except as set forth herein. The fixtures and equipment listed in Exhibit "B" shall be considered Tenant's Property, and shall be removed at the conclusion of the Lease.

2. Tenant's Property. Unless approved by the Lessor's Board of Commissioners, Tenant shall be responsible for any additional build out of the Premises, including any additional flooring, plumbing, electrical, air conditioning, or interior walls, necessary for Tenant's use of the Property. Any alterations or amendments to the Floor Plan shall be approved, in writing, by Lessor, prior to commencement of any alterations to the Premises. All business and trade fixtures, machinery and equipment, communications equipment and office equipment, whether or not attached to or built into the Premises, which are installed in the Premises by or for the account of Tenant without expense to Lessor and which can be removed without damage to any fixture or Lessor Improvement nor structural damage to the Building, and all furniture, furnishings and other articles of moveable personal property owned by Tenant and located in the Premises (hereinafter collectively referred to as "Tenant's Property") shall be and shall remain the property of Tenant, and may be removed by Tenant at any time during the Term of this Lease so long as Tenant's obligations are current and no uncured default exists under this Lease. In the event Tenant's Property is so removed, Tenant shall repair or pay the cost of repairing any damage to the Premises or to the Building resulting from the installation and/or removal thereof and restore the Premises to the same physical condition and layout as they existed at the time Tenant was given possession of the Premises, normal wear and tear excepted. Any equipment or other property for which Lessor shall have granted any allowance or credit to Tenant shall not be deemed to have been installed by or for the account of Tenant without expense to Lessor, shall not be considered Tenant's Property and shall be deemed the property of Lessor.

3. Removal of Tenant's Property. At or before the Expiration Date of this Lease, or within five (5) days after any earlier termination hereof, Tenant, at its expense, shall remove from the Premises all of Tenant's Property (except such items thereof as Lessor



shall have expressly permitted to remain, which property shall become the property of Lessor), and Tenant shall repair any damage to the Premises or the Building resulting from any installation and/or removal of Tenant's Property, and shall restore the Premises to the same physical condition and layout as they existed at the time Tenant was given possession of the Premises, reasonable wear and tear excepted. In connection with its obligations set forth herein, Tenant specifically acknowledges that it shall be solely responsible prior to the expiration or earlier termination of the Lease for the removal of all of its computer and telecommunication- related equipment, including but not limited to, all wiring and cabling installed in connection therewith, unless Lessor, in its sole discretion, consents in writing to Tenant leaving such equipment, wiring or cabling at the Premises. Tenant agrees that any cabling or wiring installed during the Lease Term shall be subject to Lessor's prior consent, which consent shall not be unreasonably withheld, and shall comply, at Tenant's sole cost and expense, with all the requirements of the National Electric Code (NEC) and applicable national, state and local rules, regulations, laws and fire and safety codes. Any other items of Tenant's Property which shall remain in the Premises after the Expiration Date of this Lease, or the earlier termination thereof, may, at the option of Lessor, be deemed to have been abandoned, and in such case, such items may be retained by, or otherwise disposed of by Lessor. Lessor may request Tenant to remove and pay to Lessor the cost of repairing any damage to the Premises or the Building resulting from any installation and/or removal of Tenant's Property and the cost of restoring the Premises to the same physical condition and layout as they existed at the time Tenant was given possession of the Premises, reasonable wear and tear excepted.

#### ARTICLE IX DESTRUCTION OF PREMISES

If, during the Term hereof, the Premises and/or the Building are damaged by reason of fire or other casualty, Tenant shall give immediate notice thereof to Lessor. Tenant may restore the Premises to substantially the same condition the Premises was in, immediately before said destruction. During any period of restoration, the Lease shall continue in full force and effect. Rent may be abated during the period in which the Premises (or portion thereof on a prorated basis) are rendered untenable as a result of such damage, unless said damage was caused by the negligence or intentional wrongful act of Tenant or its officers, employees, agents or invitees. The Tenant and Lessor may enter into an amendment to this Lease to provide for the abatement of Rent in the event the Premises shall become untenable during the Term of the Lease. Should Lessor elect to terminate this Lease, the entire insurance proceeds shall be and remain the outright property of Lessor, except any proceeds received for Tenant's Property, or proceeds received from Tenant's business interruption insurance, if any.

#### ARTICLE X ALTERATIONS AND MECHANIC'S LIENS

1. Alterations by Tenant. No alterations to the Premises shall be made by

Tenant unless the following conditions are met:

A. Tenant shall provide a sealed set of plans prepared and certified by an architect to Lessor, and Tenant shall have received the prior written consent of Lessor, which shall not be unreasonably withheld or delayed.

B. Tenant shall have procured all permits, licenses and other authorizations required for the lawful and proper undertaking thereof, and immediately upon completion of any such alterations, Tenant shall obtain a proper Certificate of Occupancy and deliver same to Lessor.

C. All alterations when completed shall be of such a nature as not to (i) reduce or otherwise adversely affect the value of the Premises; (ii) diminish the general utility or change the general character thereof; (iii) result in an increase of the Operating Expenses, or (iv) adversely affect the mechanical, electrical, plumbing, security or other such systems of the Building or the Premises.

D. All alterations made by Tenant shall remain on and be surrendered with the Premises upon expiration or the earlier termination of this Lease.

2. **Mechanic's, Materialman's and Laborer's Liens.** Tenant agrees that it will make full and prompt payment of all sums necessary to pay for the cost of repairs, alterations, improvements, changes or other work done by Tenant to the Premises and further agrees to indemnify and hold harmless Lessor and the City of Delray Beach from and against any and all such costs and liabilities incurred by Tenant, and against any and all mechanic's, materialman's or laborer's liens arising out of or from such work or the cost thereof which may be asserted, claimed or charged against the Premises or the Building or Property. The interest of Lessor and the City of Delray Beach in the Property shall not be subject to liens for improvements made by or for Tenant, whether or not the same shall be made or done in accordance with any agreement between Lessor and Tenant. This Lease specifically prohibits the subjecting of Lessor's or the City of Delray Beach's interest in the Property to any mechanic's, materialman's or laborer's liens for improvements made by Tenant or for which Tenant is responsible for payment under the terms of this Lease. Tenant shall have no power or authority to create any lien or permit any lien to attach to the present estate, reversion, or other estate of Lessor or the City of Delray Beach in the Property and all mechanics, materialmen, contractors, artisans, and other parties contracting with Tenant or its representatives or agents are hereby charged with notice that they must look to Tenant to secure payment of any bill for work done or material furnished or for any other purpose during the term of the Lease. In addition to the foregoing, the Tenant shall notify any of its contractors making any improvements to the Property of the terms of this provision, and Tenant acknowledges that its knowing and willful failure to provide said notice to the contractor(s) shall render the contract between the Tenant and the contractor(s) voidable at the option of the contractor(s).

In the event any notice or claim of lien shall be asserted of record against the interest of Lessor or the City of Delray Beach in the Premises or Building or the site on which it is

located on account of or growing out of any improvement or work done by or for Tenant, or any person claiming by, through or under Tenant, for improvements or work the cost of which is the responsibility of Tenant, Tenant agrees to use its best efforts to have such notice of claim of lien canceled and discharged of record as a claim against the interest of Lessor or the City of Delray Beach in the Premises or the Building or Property (either by payment or bond as permitted by law) within thirty days after notice to Tenant by Lessor, and in the event Tenant shall fail to do so, Tenant shall be considered in default under this Lease. Tenant shall, prior to any work being performed, at Lessor's request, execute and record any such recordable documents as are necessary to evidence Lessor's non-responsibility to potential lienors.

#### ARTICLE XI ASSIGNMENT AND SUBLETTING

1. Except for the Licenses, this Lease, and any portion of the Leased Premises, shall be non-assignable and shall not be sublet by Tenant without Lessor's prior written consent.
2. Lessor shall have the right to sell, assign, or otherwise encumber or dispose of Lessor's interest in the Building, the Property, the Premises and this Lease. In the event of any such disposition, Lessor shall have no further liability or obligation to Tenant under this Lease.

#### ARTICLE XII OBLIGATION TO COMPLY

1. Obligations of Tenant. Tenant shall, during the Term of this Lease, at its sole cost and expense, comply with all valid laws, ordinances, regulations, orders and requirements of any governmental authority which may be applicable to the Premises or to its use, whether or not the same shall interfere with the use or occupancy of the Premises arising from (a) Tenant's use of the Premises; (b) the manner or conduct of Tenant's business or operation of its installations, equipment or other property therein; (c) any cause or condition created by or at the instance of Tenant; or (d) breach of any of Tenant's obligations hereunder, whether or not such compliance requires work which is structural or non-structural, ordinary or extraordinary, foreseen or unforeseen. Tenant shall pay all of the costs, expenses, fines penalties and damages which may be imposed upon Lessor by reason or arising out of Tenant's failure to fully and promptly comply with and observe the provisions of this Section. Tenant shall give prompt notice to Lessor of any notice it receives of the violation of any law or requirement of any public authority with respect to the Premises or the use or occupation thereof. Tenant's obligation to comply with laws shall include, without limitation, those laws and regulations contemplated by this Lease, Title III of the Americans With Disabilities Act of 1990, as Amended, and the Florida Clean Indoor Air Act (FCIAA) stating a person may not smoke in an enclosed indoor workplace. In the event Tenant receives any notice alleging violation of any of the aforementioned laws, ordinances, regulations, orders, rules or requirements relating to any portion of the Premises, the Building or of the Property; or any notice of regulatory action or investigation instituted in connection therewith, Tenant shall provide written notice to Lessor thereof within ten (10) days after receipt of same by Tenant.

2. Attorneys' Fees. In connection with any litigation, mediation, arbitration, special proceeding or other proceeding arising out of the Lease, each party shall bear its own attorney's fees and costs.

### ARTICLE XIII

#### RIGHT OF LESSOR TO PERFORM TENANT'S COVENANTS

1. **Payment or Performance.** Lessor shall have the right, upon ten (10) days prior written notice to Tenant (or without notice in the case of emergency or in order to avoid any fine, penalty or cost which may otherwise be imposed or incurred) to make any payment or perform any act required of Tenant under any provision in this Lease, and in exercising such right, to incur necessary and incidental costs and expenses, including reasonable attorneys' fees. Nothing herein shall imply any obligation on the part of Lessor to make any payment or perform any act required of Tenant, and the exercise of the right to do so shall not constitute a release of any obligation, waiver of any default or obligation of Lessor to make any similar payment or perform any similar act in the future.

2. **Reimbursement.** All payments made, and all costs and expenses incurred in connection with Lessor's exercise of the right set forth in Paragraph 1 above, shall be reimbursed by Tenant within ten (10) days after receipt of a bill setting forth the amounts so expended. Any such payments, costs and expenses made or incurred by Lessor shall be treated as Additional Rent owed by Tenant.

### ARTICLE XIV

#### INDEMNIFICATION, SOVEREIGN IMMUNITY, AND INSURANCE

1. The Lessor is a state agency as defined in §768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third Parties in any matter arising out of this Lease.

2. **Indemnification by Tenant.** In consideration of ten dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the Tenant shall defend, indemnify and hold the Lessor, its respective officers, agents and employees, harmless from or on account of any liabilities, damages, losses and costs received or sustained by any person or persons by or in consequence of any negligence of Tenant, excluding the gross negligence willful, wanton or intentional misconduct of the Lessor, and its agents and employees. The Tenant agrees that negligent, reckless or intentional wrongful misconduct also includes but is not limited to the violation of any Federal, State, County or City laws, by-laws, ordinances or regulations by the Tenant, its subcontractors, agents, servants or employees. Tenant further agrees to defend, indemnify and save harmless the Lessor from all such claims and fees, and from any and all suits and actions of every name and description that may be brought against the Lessor on account of any claims, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against the Lessor for the infringement of any and all patents or patent rights claimed by any person, firm, or corporation.

The indemnification provided above shall obligate the Tenant to defend at its own expense or to provide for such defense, at the Lessor's option, any and all claims or liability and all suits and actions

of every name and description that may be brought against the Lessor which may result from the operations and activities under the Agreement whether the actions are performed by the Tenant, its subcontractor, independent contractors, performers, artists, consultants, or by anyone directly or indirectly employed by either. This indemnification includes all costs and fees including reasonable attorney's fees, paralegal expenses, and costs at both the trial and appellate levels. The indemnity obligation of the Tenant shall survive expiration or termination of this Lease.

3. Insurance. Tenant shall, at its expense, procure and continue in force commercial general liability insurance with a limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) in the annual aggregate, or such greater amounts as may be required by Lessor from time to time in accordance with industry standards. All personal property of Tenant located in the Premises shall be placed therein at Tenant's sole risk and Lessor shall have no liability for any loss or damage suffered to such personal property unless such damage is proximately caused by the negligence of Lessor. Tenant shall also procure and maintain throughout the Term a comprehensive property policy, including special perils insuring all of Tenant's property and all improvements in an amount which will insure the replacement value of Tenant's property and the improvements. In addition, Tenant shall procure and continue in force a Host Liquor Liability policy with a limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) in the annual aggregate, or such greater amounts as may be required by Lessor from time to time in accordance with industry standards.

Any insurance policies hereunder will name Lessor as additional insureds, and Tenant will furnish Lessor evidence of such insurance coverage by way of an endorsement to same or a certificate of insurance no later than (10) days prior to the Commencement Date, unless otherwise sooner requested by Lessor. All such policies shall specify that the insurer shall have no right of subrogation against Lessor for payments of any premiums or deductibles there under and such insurance policies shall be assumed by, credited to the account of, and undertaken at the insurer's sole risk. All such insurance will be with an insurance carrier acceptable to Lessor, and who must have a rating of no less than "excellent" by A.M. Bests. All such insurance policies may not be modified or terminated without thirty (30) days' prior written notice to Lessor.

Upon the breach of Tenant in effecting any such insurance, Lessor may procure any such comparable insurance, and/or pay the premiums and other charges incidental thereto, and any and all reasonable amounts so paid by Lessor, together with the interest thereon from the date of such payment at the rate of 10% per annum, shall be additional Rent hereunder, and shall be paid with the next and subsequent installment of fixed Rent, which shall become due after such payment by Lessor, it being expressly agreed that the payment by Lessor of any such premium shall not be deemed to waive or release the default in the payment thereof by Tenant, or the right of Lessor to take such action as may be permissible hereunder, as is the case of default in the payment of fixed Rent.

Tenant will cooperate with Lessor and Lessor will cooperate with Tenant in connection with the collection of any insurance monies that may be due in the event of loss, and will execute and deliver to Lessor such proofs of loss, and any other instruments that may be required for the purpose of facilitating the recovery of any such insurance monies, and in the event that Tenant shall fail or neglect to so cooperate or to execute, acknowledge, and deliver any such instrument, Lessor in addition to any other remedies, may, as the agent or attorney in fact of Tenant, execute and deliver any proofs of loss, and any other instruments as may be desirable to Lessor for the collection of such

insurance monies, and Tenant hereby irrevocably nominates, constitutes and appoints Lessor, Tenant's proper and legal attorney in fact for such purpose, hereby ratifying all that Lessor may do as such attorney in fact of Tenant. Lessor will cooperate with Tenant in the same manner and to the same extent as Tenant is required to cooperate hereunder.

4. **Independent Obligations; Force Majeure.** The obligations of Tenant hereunder shall not be affected, impaired or excused, nor shall Lessor have any liability whatsoever to Tenant, because; (a) Lessor is unable to fulfill, or is delayed in fulfilling, any of its obligations under this Lease by reason of strike, other labor trouble, governmental preemption of priorities or other controls or shortages of fuel, supplies, labor or materials, acts of God or any other cause, whether similar or dissimilar, beyond Lessor's reasonable control; or (b) of any failure or defect in the supply, quantity or character of electricity or water furnished to the Premises by reason of any requirement, act or omission of the public utility or others serving the Building with electric energy, steam, oil, gas or water, or for any other reason whether similar or dissimilar, beyond Lessor's reasonable control. Tenant shall not hold Lessor liable for any latent defect in the Premises, the Property or the Building, nor shall Lessor be liable for injury or damage to person or property caused by fire, theft, or resulting from the operation of elevators, heating or air conditioning or lighting apparatus, or from falling plaster, or from steam, gas, electricity, water, rain or dampness, which may leak or flow from any part of the Building or Property, or from the pipes, appliances or plumbing work of the same.

## ARTICLE XV

### DEFAULT

1. Events of Default. Tenant shall be in default under this Lease if any one or more of the following events shall occur:

A. Tenant shall fail to pay any installment of the Rent or any other expenses called for hereunder five (5) days following the date the same shall become due and payable; or

B. Tenant shall default in the performance of or compliance with any of the other terms or provisions of this Lease, including without limitation, if Tenant is not operating the Premises as a not for profit Cultural Hub (except for a Permitted Incidental Use), Tenant fails to timely provide any Report to Lessor, Tenant fails or refuses to comply with subparagraph (1)(iii) of Article XXII of this Lease, or Tenant fails to timely comply with any term or condition of the Funding Agreement, and such default shall continue for a period of fifteen (15) days after the giving of written notice thereof from Lessor to Tenant, or, in the case of any such default which cannot, with bona fide due diligence, be cured within said fifteen (15) days, Tenant shall fail to proceed within said fifteen (15) day period to cure such default and thereafter to prosecute the curing of same with all due diligence (it being intended that as to a default not susceptible of being cured with due diligence within such period of fifteen (15) days, the time within which such default may be cured shall be extended for such period as may be necessary to permit the same to be cured with bona fide due diligence); or

C. Tenant shall assign, transfer, or encumber this Lease or sublet the Premises in any manner, except in connection with a License; or

D. Tenant shall file a voluntary petition in bankruptcy or any Order for Relief be entered against it, or shall file any petition or answer seeking any arrangement, reorganization, composition, readjustment or similar relief under any present or future bankruptcy or other applicable law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant of all or any substantial part of Tenant's properties; or

E. If any creditor of Tenant shall file a petition in bankruptcy against Tenant or for reorganization of Tenant, under state or federal law, and if such petition is not discharged within ninety (90) days after the date on which it is filed; or

F. Tenant shall vacate or abandon the Premises, then, and in such event, or during the continuation thereof (subject to the time period described in subparagraph (B) above, Lessor may, at its option, by written notice to Tenant, designate a date not less than five (5) days from the giving of such notice on which this Lease shall end, and thereupon, on such date, this Lease and all rights of Tenant hereunder shall terminate. Such termination by Lessor shall not affect the remedies of Lessor provided in this Lease.

2. Surrender of Premises. Upon any termination of this Lease, Tenant shall surrender the Premises to Lessor, and Lessor, at any time after such termination, may, without further notice, re-enter and repossess the Premises without being liable to any prosecution or damages therefore, and no person claiming through or under Tenant or by virtue of any statute or of any order of any court shall be entitled to possession of the Premises.

3. Re-letting. At any time or from time to time after any such termination of this Lease, Lessor may re-let the Premises or any part thereof, in the name of Lessor or otherwise, for such term or terms and on such conditions as Lessor, in its sole discretion, may determine, and may collect and receive the rents therefore. Lessor shall not be responsible or liable for any failure to re-let the Premises or any part thereof or for any failure to collect any Rent due upon such re-letting.

4. Survival of Obligations. No termination, pursuant to this Article, shall relieve Tenant of its liability and obligations under this Lease, and such liability and obligations shall survive any such termination. Any Rent or other monetary obligation of Tenant that has been abated, deferred or forgiven by Lessor in this Lease or any amendment thereto, and the cost of all Tenant Improvements provided or paid for by Lessor pursuant to this Lease, shall immediately become due and payable upon the occurrence of an event of default by Tenant under this Lease.

5. Holdover. Should Tenant hold over and remain in possession of the Premises at the expiration of any Term hereby created, Tenant shall, by virtue of this Section, become a tenant-at-sufferance and shall pay Lessor one and half times (1.5) times the Rent per month of the last monthly installment of Rent above provided to be paid. Said tenancy shall be subject to all the conditions and covenants of this Lease as though the same had been a tenancy-at-sufferance

instead of a tenancy as provided herein, and Tenant shall give to Lessor at least thirty (30) days prior written notice of any intention to vacate the Premises, and shall be entitled to ten (10) days prior notice of any intention of Lessor to remove Tenant from the Premises in the event Lessor desires possession of the Premises; provided, however, that said tenant-at-sufferance shall not be entitled to ten (10) days' notice in the event the said Rent is not paid in advance without demand, the said ten (10) days written notice being hereby expressly waived.

## ARTICLE XVI

### REMEDIES

1. Remedies. Upon the occurrence of any uncured event of default, Lessor shall be entitled to all remedies available to it under Florida law, including, but not limited to, the filing of suit for the recovery of all monetary damages sustained by Lessor as a result thereof. In addition to its statutory and common law remedies in the event of an uncured default by Tenant, Lessor shall also be entitled, at its option, to exercise any one or more of the following remedies:

A. Termination. Lessor shall be entitled to declare this Lease terminated and the term ended and/or shall have the immediate right of re-entry and may remove all persons and property from the Premises in accordance with Florida law and such property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Tenant, without evidence of notice and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby so long as all actions taken by Lessor were in accordance with Florida law.

B. Lessor may elect to re-enter the Premises, either by taking possession pursuant to legal proceedings or otherwise, and may either terminate this Lease or it may from time to time, without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the Premises, and re-let the Premises or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such other terms and conditions as Lessor in its sole discretion may deem advisable. No such re-entry or taking possession of the Premises by Lessor shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to Tenant, or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, Lessor may at any time hereafter elect to terminate this Lease for such previous default. Should Lessor at any time terminate this Lease for any uncured default, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such uncured default, including the cost of recovering the Premises and reasonable attorney's fees, which amount shall be immediately due and payable from Tenant to Lessor.



## ARTICLE XVII

### EMINENT DOMAIN

If the Premises or any part thereof shall be taken in condemnation proceedings or by the exercise of the right of eminent domain or by agreement with the authority empowered to exercise such right, this Lease shall automatically terminate as of the date of such taking. Lessor shall be entitled to collect an award from such condemnation proceedings less any interest which Tenant is entitled to receive as part of the condemnation proceedings. Tenant shall execute any and all documents which may be required in order to permit Lessor and Tenant to collect the award.

## ARTICLE XVIII

### QUIET ENJOYMENT

Lessor agrees that Tenant, upon paying all Rent and all other charges herein provided for and observing and keeping the covenants, agreements, terms and conditions of this Lease and the rules and regulations of Lessor affecting the Premises on its part to be performed, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term hereof, expressly subject to the terms, limitations and conditions contained in this Lease.

## ARTICLE XIX

### LESSOR'S RIGHT OF ACCESS

1. Access for Maintenance and Repair. Except for the space within the inside surfaces of all walls, hung ceilings, floors, windows and doors bounding the Premises, all of the Building including, without limitation, exterior walls, core interior walls and doors and any core corridor entrance, any terraces or roofs adjacent to the Premises and any space in or adjacent to the Premises used for shafts, stacks, pipes, conduits, fan rooms, ducts, electric or other utilities, sinks or other facilities of the Building, and the use thereof, as well as access thereto throughout the Premises for the purposes of operation, maintenance, decoration and repair, are reserved to Lessor. Lessor reserves the right, and Tenant shall permit Lessor, upon providing reasonable notice, to install, erect, use and maintain pipes, ducts and conduits in and through the Premises. Lessor shall be allowed to take all materials into and upon the Premises that may be required in connection therewith, without any liability to Tenant and without any reduction of Tenant's covenants and obligations hereunder. Lessor and its agents shall have the right to enter upon the Premises for the purpose of making any repairs therein or thereto or, upon reasonable notice to Tenant for any other purpose, which shall be considered necessary or desirable by Lessor, in

such a manner as not to unreasonably interfere with Tenant in the conduct of Tenant's business on the Premises; and in addition, Lessor and its agents shall have the right to enter the Premises, as Lessor deems reasonably necessary or desirable, at any time in cases of emergency to all or any part of the Building.

2. Access for Inspection and Showing. Upon reasonable notice to Tenant and during normal business hours, Lessor and its agents shall have the right to enter and/or pass through the Premises at any time to inspect or examine the Premises and to show them to prospective purchasers, mortgagees or lessees of the Building. During the period of six (6) months prior to the Expiration Date of this Lease, Lessor and its agents may exhibit the Premises to prospective Tenants.

4. Lessor's Alterations and Improvements. If, at any time, any windows of the Premises are temporarily darkened or obstructed by reason of any repairs, improvements, maintenance and/or cleaning in or about the Building, or if any part of the Building, other than the Premises, is temporarily or permanently closed or inoperable, the same shall be without liability to Lessor and without any reduction or diminution of Tenant's obligations under this Lease. Upon providing prior notice to the Tenant, Lessor reserves the right to make such changes, alterations, additions and improvements in or to the Building and the fixtures and equipment thereof, as well as in or to the street entrances, doors, halls, passages, elevators, escalators and stairways thereof, and other public portions of the Building and the Property, as Lessor shall deem necessary or desirable, and no such alterations or changes shall be deemed a breach of Lessor's covenant of quiet enjoyment or a constructive eviction.

## ARTICLE XX

### SIGNS AND OBSTRUCTION

1. Signs. Tenant shall not place or suffer to be placed or maintained upon any exterior door, roof, wall or window of the Premises or the Building, any sign, awning, canopy or advertising matter of any kind, and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Premises except as consented to by Lessor, such consent shall not be unreasonably withheld. Said Building signage shall be subject to Lessor's reasonable approval and is subject to all appropriate governmental approvals. At Tenant's sole expense, Tenant agrees to maintain any such signage approved by Lessor in good condition and repair at all times and to remove the same at its sole cost and expense at the end of the Term of this Lease. Upon removal thereof, Tenant agrees to repair any damage to the Premises caused by such installation and/or removal at Tenant's sole expense.

2. Obstruction. Tenant shall not obstruct the corridors, elevators, stairs, Common Areas, sidewalks, parking lots or other public portions of the Building or the Premises in any manner whatsoever.



development plan and five year strategic plan, all of which shall confirm Tenant has operated and is operating the Premises as a not for profit Cultural Hub;

b. Not less than thirty (30) days prior to the commencement of each fiscal year of Tenant during the term of this Lease, Tenant's annual budget for the Tenant's next fiscal year which shall confirm that Tenant is operating and shall operate the Premises as a not for profit Cultural Hub;

c. Not more than One Hundred Twenty (120) days after the end of each fiscal year of Tenant during the term of this Lease, an annual audit of Tenant's business operations, including management letters, and responses to management letters, if any, and Tenant's annual income tax returns, which shall confirm Tenant has operated and is operating the Premises as a not for profit Cultural Hub;

d. Not less than thirty (30) days prior to the commencement of each fiscal year of Tenant during the term of this Lease, Tenant's written statement signed by Tenant which describes Tenant's efforts and results to improve diversity on Tenant's Board of Directors; and,

e. Not less than thirty (30) days prior to the commencement of each fiscal year of Tenant during the term of this Lease, Tenant's written statement signed by Tenant which describes programing and collaborations with other arts and community organizations within the City of Delray Beach which utilize the Premises as a not for profit Cultural Hub and which describes the number of Permitted Incidental Use licenses issued which shall confirm Tenant has operating and is operating the Premises in accordance with Article IV.2 of the Agreement.

(ii.) Without notice or demand by Lessor, during the term of this Lease, on a semi-annual basis commencing on January 1, 2017, and continuing thereafter on the first day of each July and January during the Lease term, Tenant shall provide to Lessor a written statement signed by Tenant which sets forth Tenant's then current status on meeting the goals and objectives outlined in the Tenant's annual business plan.

(iii.) Tenant, at all times during the term of this Lease, will keep proper books of record and account in which full, true and correct entries will be made of its transactions with respect to the operation of the Premises in accordance with generally accepted accounting practices, consistently applied, and which will properly and correctly reflect all items of income and expense in connection with the operation of the Premises, regardless of whether such income or expense is realized by Tenant or any other person or entity whatsoever. Lessor will have the right from time to time during normal business hours and upon reasonable notice to Tenant to examine all such books, records and accounts at Tenant's office or at the office of such other person as maintains them, and to make such copies or extracts as Lessor may reasonably desire, at Tenant's expense. Tenant shall pay the reasonable fees and disbursements of any accountant or other agents of Lessor selected by Lessor for the foregoing purposes. Tenant will furnish to Lessor, at

Tenant's expense, all evidence which Lessor may from time to time reasonably request as to the accuracy and validity of or compliance with all Tenant's obligations under this Lease. Any inspection or audit of the books and records of Tenant or the procuring of documents verifying financial and other information, by or on behalf of Lessor, shall be for Lessor's verification of Tenant's operation of the Premises as a not for profit Cultural Hub only (except for a Permitted Incidental Use), and shall not constitute any assumption of responsibility or liability by Lessor to Tenant or anyone else with regard to the condition, maintenance or operation of the Premises, nor relieve Tenant of any of Tenant's obligations.

(iv.) If at any time during the term of this Lease, Tenant is a party to a funding agreement with the Delray Beach Community Redevelopment Agency ("Funding Agreement"), Tenant shall timely comply with all of the terms and conditions of the Funding Agreement.

### ARTICLE XXIII MISCELLANEOUS

1. **Environmental Indemnity.** Tenant agrees to indemnify and hold Lessor harmless from and against any and all loss, claim, liability, damages, injuries to person, property or natural resources, cost, expense, action or cause of action, arising in connection with the release or presence of any Hazardous Substances at the Premises, solely through the acts of Tenant, its officers, employees, contractors, agents or invitees, whether foreseeable or unforeseeable, regardless of the source of such release and when such release occurred or such presence is discovered. The foregoing indemnity includes, without limitation, all costs in law or in equity of removal, remediation of any kind, and disposal of such Hazardous Substances; all costs of determining whether the Premises is in compliance and to cause the Premises to be in compliance with all applicable environmental laws, all costs associated with claims for damages to persons, property or natural resources, and Lessor's reasonable attorneys' and consultants' fees and costs, whether or not litigation is instituted. For the purposes of definition, "Hazardous Substances" includes, without limitation, any toxic or hazardous wastes, pollutants (or substances, including, without limitation, asbestos, PCBs, petroleum products and by-products, substances defined or listed as "hazardous substances" or "toxic substances" or similarly identified in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9061 et. seq., hazardous materials identified in or pursuant to the Hazardous Materials Transportation Act 49 Section 1802 et. seq.). Nothing in this section is intended to alter or waive the Tenant's entitlement to statutory or common law sovereign immunity, or to extend Lessor's liability beyond the limits established in Section 768.28, Florida Statutes, as amended.

2. **Mold Exclusion.** Tenant hereby acknowledges that Lessor has advised Tenant that it is possible for mold/mildew/fungi/microbe-related forms to grow and affect the Premises and the property therein. Tenant agrees that Lessor shall not have any liability or responsibility

whatsoever for any damage, loss, claim, or court expense arising out of or resulting from mold/mildew/fungi/microbe-related forms in the Premises. Accordingly, Tenant hereby releases Lessor, and their agents, employees, successors and assigns, from and against any and all claims arising out of or relating to mold/mildew/fungi/microbe-related forms or any similar situation with respect to the Premises, unless caused by the gross negligence or willful misconduct of Lessor. In the event it is discovered that mold is present at the Premises then Tenant, at its sole cost and expense, shall promptly cause the mold condition to be remediated at Tenant's sole expense unless the mold resulted from Lessor's failure to comply with its maintenance obligations under this Lease, in which case the remediation of the mold condition shall be undertaken by Lessor at its cost and expense.

3. Asbestos. Tenant shall comply with all regulations enacted by the Occupational Safety and Health Administration ("OSHA"), as set forth in Sections 1910.1001 and 1926.1101 of Title 29 of the Code of Federal Regulations (the "OSHA Regulations"). In the event that Tenant performs any alterations to the Premises, Tenant shall be solely responsible for any contaminant or encapsulation of asbestos-containing materials "ACM" and materials designated by OSHA as presumed asbestos-containing materials ("PACM") located in the Premises, or resulting remediation made necessary as a result of Tenant's work. In addition, the following materials, if located in properties constructed prior to 1981, must, in accordance with the OSHA Regulations, be treated as PACM; any thermal system insulation and surfacing material that is sprayed on, troweled on, or applied in some other manner, as well as any resilient flooring material installed in 1980 or earlier. Upon written request by Tenant, Lessor shall provide Tenant with copies of any information pertaining to ACM or PACM in Lessor's files.

4. Radon Gas. Pursuant to Florida Statutes, Section 404.056[6], the following disclosure is required by law: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your county public health unit.

5. Estoppel Certificates. Each party agrees, at any time and from time to time as requested by the other party, to execute and deliver to the other a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same are in full force and effect as modified and stating the modifications), certifying the dates to which the Rent and other charges have been paid, stating whether or not the other party is in default in performance of any of its obligations under this Lease, to the best of the certifying parties' knowledge, and, if so, specifying each such default, and stating whether or not any event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default, and, if so, specifying each such event. Lessor also shall include in any such statements such other information concerning this Lease as Lessor may reasonably request

6. No Recordation. This Lease shall not be recorded in the Public Records of Palm Beach County.

7. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Florida, and in the event litigation arises between the parties in connection with any of the terms of this Lease, exclusive venue shall lie in the Circuit Court in Palm Beach County, Florida. If any provision of this Lease or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Lease shall remain in full force and effect. The captions, headings and titles in this Lease are solely for convenience of reference and shall not affect its interpretation. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. Each covenant, agreement, obligation or other provision of this Lease on Tenant's part to be performed shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender, as the context may require.

8. **No Partnership or Joint Venture.** Nothing contained in this Lease will be deemed or construed to create a partnership or joint venture between Lessor and Tenant, or to create any other relationship between the parties other than that of Lessor and Tenant.

9. **Capacity to Execute Lease.** If Tenant is other than a natural person, Tenant represents that it is legally constituted, in good standing and authorized to conduct business in the State of Florida. Tenant further represents that the person who is executing this Lease on its behalf has the full power and authority to perform such execution and deliver the Lease to Lessor, and that upon such execution and delivery, the Lease shall be valid and binding upon Tenant in accordance with its respective terms and conditions.

10. **Exculpation of Lessor.** Lessor's obligations and liability to Tenant with respect to this Lease shall be limited solely to Lessor's interest in the Property and neither Lessor, nor any officer, agent, or representative of Lessor, shall have any personal liability whatsoever with respect to this Lease.

11. **Waiver of Trial by Jury.** IT IS MUTUALLY AGREED BY AND BETWEEN LESSOR AND TENANT THAT THE RESPECTIVE PARTIES HERETO SHALL, AND THEY HEREBY DO, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LESSOR AND TENANT OR TENANT'S USE OR OCCUPANCY OF THE PREMISES, OR BY ANY COURSE OF CONDUCT OR COURSE OF DEALING.

12. **Entire Agreement.** This Lease constitutes the entire understanding between the parties and shall bind the parties, their successors and assigns. No representations, except as herein expressly set forth, have been made by either party to the other, and this Lease cannot be amended or modified except by a writing signed by Lessor and Tenant.

13. **Sale of Premises by Lessor.** The parties agree that Lessor has the right to sell the

Premises, subject to this Lease, at any time during the Lease Term.

14. Governmental Functions.

A. The parties agree that this Lease shall not constitute a waiver of any portion of the City of Delray Beach's Code of Ordinances, Land Development Regulations, or any other applicable law, code, or regulation, and that the Tenant shall comply with all applicable statutes, codes, regulations, and ordinances that apply to the Tenant's performance of its obligations pursuant to this Lease.

B. To the extent approval or permission must be obtained from the City of Delray Beach, such approval or permission shall be granted or denied in accordance with applicable governmental regulations, rules, laws, and ordinances, and no person shall have any vested rights.

C. The Lessor has not waived its sovereign immunity and the limits of tort liability set forth in F. S. §768.28(5), as may be amended from time to time; and

D. Any action by Lessor shall be without prejudice to, and shall not constitute a limit or impairment or waiver of, or otherwise affect the Lessor's right to exercise its discretion in connection with its governmental or quasi-governmental functions.

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IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

ATTEST:

*Acting* By: Kimberly Ryan  
City Clerk

\_\_\_\_\_  
CITY OF DELRAY BEACH, FLORIDA

By: [Signature]  
Cary D. Glickstein, Mayor

APPROVED AS TO LEGAL FORM:  
By: [Signature]  
City Attorney

Two Witnesses to Lessor's Execution:

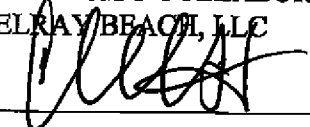
\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name of Witness

\_\_\_\_\_  
Witness Signature


\_\_\_\_\_  
Print Name of Witness

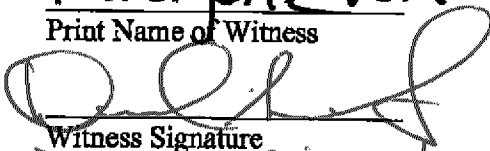
CREATIVE CITY COLLABORATIVE  
OF DELRAY BEACH, LLC

By: 

Title: CHAIR  
CHARLES HALBERG

Two Witnesses to Tenant's Execution:

  
Witness Signature  
Marjorie Waldo  
Print Name of Witness

  
Witness Signature  
Daniel Schwartz  
Print Name of Witness

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016 by \_\_\_\_\_ of CREATIVE CITY COLLABORATIVE OF DELRAY BEACH, LLC, a Florida corporation, on behalf of the corporation. He/She is personally known to me/or has produced \_\_\_\_\_ (as identification).

\_\_\_\_\_  
Signature of Notary Public

## LIST OF EXHIBITS

1. EXHIBIT "A" - DRAWING DEPICTING THE LOCATION OF THE LEASED PREMISES WITHIN BUILDING
2. EXHIBIT "B" - LIST OF EQUIPMENT AND FIXTURES OWED BY THE CREATIVE CITY COLLABORATIVE OF DELRAY BEACH, INC.



**EXHIBIT "B"**

**Arts Garage Installed Equipment**

**Stairs**

**Sectionals 20x16 with front apron and 3 stair links**

**Sound System**

**4 EV (electro voice) power speaker system**

**2 EV (electro voice) monitor system**

**1 Sound Craft 8 channel 1000 watt mixer board**

**1 galaxy sound cabinet**

**2 wireless EV microphones with receivers**

**Lighting**

**6 ETC Source 4 Jr 50 degree / 70 volts / 15A**

**4 ETC Source 4 Jr 25-50 degree zoom / 70 volts**

**5 Par can lights**

**1 ETC Express 250 - Console unit**

**1 ETC Micro elaton - Console unit**

**5 Café hanging house lights**

**Black Drapery  
(staging, window  
treatments)**

2	14'x11'6"
2	12'x8'
1	11'x5'
7	12'x12'
8	2'x12'
4	12'x10'
1	10'.6"x4'.6"
1	12'x4.6'
1	25'x1'.6" h

6  
2

1'6"x12'  
12'6"x25'

**Movable walls**

2 - 10x10

**Security System**

American security installed unit  
with 3 motion detectors, 1 keypad,  
and overhead wiring

**Rigging**

2 (10ft) pipe suspended for lighting  
plan  
4 (8ft) pipe for suspended over  
stage light plan

**Projector System**

1 Eiki Lumens 1000 projector with  
10 ft. wide retractable screen

**Control phone and internet**

1 control unit with 4 handheld  
devices (Panasonic) with wiring  
through conduit to control room.  
1 Sonic wall wireless device  
1 Dell server with wiring  
1 HP Procurve network unit with  
wiring  
1 phone board with Ethernet /  
Cabling