

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** (hereinafter referred to as "**Lease**") is made and entered into as of the 1<sup>st</sup> day of December, 2016, (the "**Effective Date**") by and between the City of Delray Beach, a Florida Municipal Corporation (hereinafter referred to as "**Lessor**", "**City**", or "**Landlord**") and Old School Square Center for the Arts, Inc., a Florida not-for-profit corporation, (hereinafter referred to as "**Tenant**" or "**Lessee**").

### WITNESSETH:

**WHEREAS**, the Lessor acquired that certain parcel of real estate together with the improvements thereon, formerly known as the "**Delray Beach Elementary School**" and now commonly referred to as "**Old School Square**", in the City of Delray Beach, as more particularly as described in **Exhibit "A"** which is attached hereto and made a part hereof from The School Board of Palm Beach County, Florida, a corporate body politic (the "**School Board**") pursuant to that certain Special Warranty Deed dated March 15, 1989, filed for record March 28, 1989 in Official Records Book 6012, at Page 559 of the Public Records of Palm Beach County, Florida (the "**Deed**") a copy of which is attached hereto as **Exhibit "C"**;

**WHEREAS**, the Deed restricts the use of Old School Square for cultural, civic, public or governmental purposes only (the "**Restrictions**");

**WHEREAS**, in the event that the use of Old School Square violates the Restrictions, the Deed provides that fee simple title to Old School Square would revert to the School Board;

**WHEREAS**, the Lessee was organized under the laws of the State of Florida as a non-profit corporation for the purpose of leasing, restoring, developing and operating Old School Square as a center for arts, cultural, and educational activities;

**WHEREAS**, in accordance with the Restrictions contained in the Deed the City adopted Resolution No. 59-88 on September 13, 1988 which resolution authorized the City to enter into that certain lease dated July 31, 1989 for Old School Square which lease was modified by: i) that certain Amendment No. 1 dated May 18, 1995; ii) that certain Amendment No. 2 dated July 19, 1996; iii) that certain Amendment No. 3 dated September 10, 1997; iv) that certain Amendment No. 4 dated January 2, 2002; and v) that certain Amendment No. 5 dated June 21, 2016 (collectively hereinafter the "**Prior Lease**"); and

**WHEREAS**, the Lessor and Lessee desire to replace the Prior Lease and enter into this Lease.

**NOW THEREFORE**, based upon the mutual agreements, promises, and covenants contained herein, and for good and valuable consideration, Lessor and Lessee agree as follows:

## ARTICLE I - DESCRIPTION OF PROPERTY; TERM

1.1. **Description of Property.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor certain buildings (collectively hereinafter the "**Building**") and land on which the Building is located and which is appurtenant thereto ("**Land**"), as shown and described on **Exhibit "A"**, which is attached hereto, and made a part of this Lease, which has a physical address of 51 N. Swinton Avenue, Delray Beach, Florida. All of the Land and real property underlying or adjacent thereto, with all improvements thereon, including the Building, shall be referred to collectively as the "**Premises**".

1.2. **Term.** Lessee shall have and hold the Premises for a term of ten (10) years (hereinafter referred to as the "**Term**" or "**Initial Term**") commencing on December 15, 2016, ("**Commencement Date**") and expiring on, December 14, 2026, unless terminated sooner or extended as provided herein (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.

1.3. **Option to Renew.** Provided the Lessee is not in default of this Lease or any of the covenants or undertakings contained in this Lease, then and in such event, this Lease shall automatically renew for **two (2)** successive additional periods of **ten (10)** years (each being an "**Option Term**") unless Lessee gives the Lessor written notice of Lessee's election not to renew which notice must be delivered to Lessor not less than ninety (90) days prior to the expiration of the then existing Term or Option Term. Such notice shall be sent to the Lessor either by registered or Certified Mail, Return Receipt Requested, and be properly addressed to the Lessor. Each Option Term shall be upon the same terms, covenants and conditions as provided in this Lease for the initial Term.

1.4. **Early Termination Without Cause.** Notwithstanding anything to the contrary contained in this Lease, either Lessor or Lessee may terminate this Lease, without cause and without prejudice to any other right or remedy, by sending the other party written notice of termination of this Lease (specifying the effective date of termination) not less than **one-hundred eighty (180)** days before the effective date of termination. Termination of the Lease shall not constitute a waiver or release of any rights or claims that had accrued thereunder prior to termination. Notwithstanding the foregoing, in the event that Lessee had entered into one or more binding contracts for events, displays, performances, or exhibits which were scheduled to occur on the Premises prior to Lessee receiving notice of termination pursuant to this **Subsection 1.4**, either at Lessor's option: i) the Term of this Lease shall be extended to that date which is **one (1)** day after the last such event, display, performance or exhibit, or ii) Lessor shall perform the Lessee's contractual obligation.

1.5. **Early Termination for Criminal Misconduct.** Lessee represents and warrants that neither the Lessee nor any current or former officer of lessee, within the last **three (3)** years of the Effective Date, has been convicted of a public entity crime, as defined in **Florida Statute Chapter 287**. In the event Lessee, or any current officer of Lessee, has been convicted of a

public entity crime as defined in **Florida Statute Chapter 287** within the last **three (3)** years of the Effective Date, the Lessor may terminate this Lease immediately by giving written notice to the Lessee.

## ARTICLE II - RENT

2.1. **Base Annual Rent; Late Charge; Sales Tax.** Lessee shall pay in advance to the Landlord, without prior demand, in lawful money of the United States, on the first day of each Lease year, without any deduction or off-set whatsoever throughout the term of this, Base Annual Rent, plus applicable sales taxes. During the term of this Lease, Base Annual Rent is **One and No/100 Dollars (\$1.00)**, plus applicable sales taxes, if any. Such payment shall be made at the office of the Landlord as set forth in this Lease, or at such place Landlord may from time to time designate by written notice directed to Lessee at the Premises. Lessee shall pay the first year's rent at the time of execution of this Lease in order to guarantee the Lessee's faithful performance of its obligations as provided in this Lease.

2.2. **Security Deposit.** No security deposit is required.

2.3. **Taxes.**

a. **Ad-Valorem/Non Ad-Valorem Taxes.** Lessor and Lessee acknowledge that the Premises are presently exempt from the payment of Ad-Valorem real estate taxes and that the Lessor is responsible for the payment of any Non Ad-Valorem taxes and assessments. Lessor acknowledges and agrees that in the event of any change in the law or sale of the Premises which results in the Premises being subject to the payment of any Ad-Valorem, Non Ad-Valorem or other real estate taxes or assessments, that Lessor shall be responsible for the payment of any and all real property taxes as well as any special assessments imposed against the Premises. Lessee acknowledges and agrees that in the event, during the Lease Term, it is determined that the property loses its exemption from ad valorem taxation due solely to conduct by the Lessee and it is determined that taxes are due and owing resulting solely from such conduct of Lessee, it shall be the Lessee's responsibility to remit any tax payments to the Lessor or the applicable taxing authority. Lessor and Lessee acknowledge that Lessee is presently exempt from the payment of tangible personal property taxes levied or assessed upon all of Lessee's equipment, furniture, fixtures, and any other personal property located in the Premises. In the event of a change in law that results in the imposition of any personal tangible property tax on Lessee's equipment, furniture, fixtures and other personal property, then and in such event, Lessee shall pay, or cause to be paid, before delinquency, any and all taxes so levied or assessed which become payable during the Term hereof upon all of Lessee's equipment, furniture, fixtures, and any other personal property located in the Premises.

b. **Sales Tax.** To the extent applicable, Lessee shall at all times be responsible for the payment of any Florida Sales Tax arising out of or associated with this Lease, if any. Lessee shall provide to Lessor at the time of execution of the Lease, and at each renewal thereafter, a copy of its certificate of tax exemption.

2.4. **Payment Without Notice or Demand.** The 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. Lessee hereby waives all rights now or hereafter conferred to any offset, deduction, abatement, suspension, deferment, diminution or reduction of the Base Rent on account of any such circumstances or occurrence.

2.5. **Additional Rent.** All monetary obligations owed by Lessee to Lessor under this Lease shall be deemed Rent.

2.6. **Place of Payment.** All payments of rent, or any other charges imposed pursuant to this Lease shall be made and paid by Lessee 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 Lessee. All payments shall be payable in current legal tender of the United States, as the same is then by law constituted.

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

### ARTICLE III - GROSS LEASE

3.1 **Gross Lease.** Consistent with the Prior Lease, Lessor acknowledges and agrees that this Lease shall be a "Gross Lease" to Lessee except as otherwise provided herein. Lessor shall pay the charges, impositions, costs and expenses relating to environmental matters, fire and life safety codes, employee health and safety, with respect to the Building and exterior portions of the Premises.

### ARTICLE IV -USE OF PREMISES

4.1. **Permitted Uses.** The Lessee shall use the Premises only to: a) operate a public not for profit, I.R.C. Section 501 (c)(3) tax exempt center for the arts, cultural, governmental (for assembly purposes only), and educational purposes; b) for uses consistent with the Site Use Restrictions (as hereinafter defined); and c) for all such uses and any incidental uses permitted by Lessor in connection therewith (collectively herein after referred to as the "**Permitted Use**"). Notwithstanding anything to the contrary contained in this Lease, Lessee shall not use the Premises in any manner which would violate the use restrictions as contained in this lease or the Restrictions. Subject to the preceding Permitted Use and Site Use Restrictions, it is understood and agreed that the Lessee may charge a reasonable admission fee to the public for exhibits, entertainment, cultural events, performances, and other presentations.

4.2. **No Discrimination.** Lessee shall ensure that the Premises are accessible and open to the public (subject to reasonable admission fees) and that the Permitted Use appeals to and promotes the diverse demographics of the City's population. Lessee specifically covenants and agrees that Lessee shall not discriminate against or segregate any person or group of persons on account of race, sex, creed, color, national origin, genetic information, ancestry, religion, disability, marital status, familial status, age, sexual orientation, gender identity or expression in the occupancy, use, tenure or enjoyment of the Premises. Lessee shall endeavor to ensure that the Permitted Use provided by Lessee is market appropriate and of the highest quality attainable. It is mutually agreed that a condition for the granting of this Lease is the active and continuous use of the Premises for the Permitted Use.

4.3. **No Unlawful Use.** Lessee 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 now in force or which may hereafter be in force. Lessee shall comply with all recorded covenants which encumber the Premises, and all rules and regulations relating to fire and life safety systems. Lessee shall not do or permit any act which would constitute a public or private nuisance or waste or cause damage to Lessor, or which would invalidate any policies of insurance or increase the premiums thereof, now or hereafter written on the Building and/or Premises. Lessee shall comply with all state, county and city ethics laws and regulations in the use of the Premises.

## ARTICLE V - OPERATING COMMITMENTS

5.1. **Operating Commitments.** Lessee acknowledges that the Lessor desires to lease the Premises to Lessee in substantial reliance on the level of programming services that Lessee has previously provided under the Prior Lease, and those Lessee has represented that Lessee will provide on the Premises, including the staff necessary to provide such programming ("**Operating Commitments**"). The Operating Commitments include programming services that support Lessee's mission and that meet certain performance standards and are more particularly described in **Exhibit "B"** attached hereto.

5.2. **Diversity.** Lessee commits to provide diverse, high-quality, enriching entertainment and educational experiences for all residents of Delray Beach. Lessee is further committed to assuring that the experience Lessee provides and the manner in which Lessee conducts its business are reflective of the diversity of the residents of the City.

5.3. **Cultural Community Center.** It is mutually agreed that a condition for the granting of this Lease is the active and continuous use of the Premises as a high-quality cultural community center and gathering place by Lessee (except for failure of use caused by reason of wars, strikes, riots, civil commotion, acts of public enemies and acts of God) for the purpose herein described, in that said use provides a needed public service and provides additional employment and other benefits to the general economy of the area.

## ARTICLE VI - REPORTING COMMITMENTS

6.1. **Operating Commitments.** Lessee acknowledges that the amount of Annual Base Rent is nominal and Lessor has agreed to lease the Premises to Lessee in consideration of Lessee's Operating Commitments. To ensure that Lessee complies with its Operating Commitments, Lessee has the following reporting and document production obligations (hereinafter "**Reporting Commitments**"):

a. Not less than **thirty (30)** days prior to the commencement of each fiscal year of Lessee during the term of this Lease, Lessee's three (3) year strategic plan (updated annually) which shall confirm Lessee has operated and is operating the Premises in compliance with its Operating Commitments;

b. Not less than **thirty (30)** days prior to the commencement of each fiscal year of Lessee during the term of this Lease, Lessee's annual budget for the Lessee's next fiscal year which shall confirm that Lessee is operating and shall operate the Premises in compliance with the Operating Commitments;

c. Not more than **One hundred and eighty (180)** days after the end of each fiscal year of Lessee during the term of this Lease, an annual audit of Lessee's business operations, including management letters, and responses to management letters, if any, and Lessee's annual income tax returns (IRS Form 990, 990-T or then current equivalent), which shall confirm Lessee has operated and is operating the Premises in compliance with the Operating Commitments;

d. Lessee shall submit annual reports to the City in form reasonably acceptable to the City, within **ninety (90)** days after Lessee's fiscal year-end which reports shall include the following: (i) a description of the principal activities, programs and services offered and provided by Lessee at the Premises during the immediate preceding fiscal year time period; and (ii) the number of persons (adults and children) who participated in Lessee's activities and programs during the immediate preceding year;

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 Tenant's efforts and results to improve diversity on Tenant's Board of Directors, that the Tenant is committed to providing diverse, high quality, enriching entertainment and educational experiences for all of City's residents and to assuring that the experience Tenant provides and the manner in which Tenant conducts its business are reflective of the diversity of the City's residents;

f. No more than ninety (90) days after the end of each fiscal year of Tenant during the term of this Lease, Tenant's written statement signed by Tenant which describes cooperation, participation, and collaboration with other organizations within the City;

g. Tenant shall submit semi-annual reports to the City in form reasonably acceptable to the City, commencing on January 1, 2017, and continuing thereafter on the first

day of each July and January during the Lease term, which shall include the following: (i) a description of the principal activities, programs and services offered and provided by Tenant at the Premises during the immediate preceding six month time period; (ii) information on the status of funding for the activities, programs and services offered by the Tenant as well as maintenance and operation of the Premises; (iii) the number of persons (adults and children) who participated in Tenant's activities and programs during the immediate preceding six month period; and (iv) 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 updated annual and three year (3) strategic plans and the Operating Commitments, which of such goals and objectives were not met, and which Operating Commitments were not satisfied, all with appropriate explanation.

h. Lessee's Community Redevelopment Agency A-Guide report prepared by the Lessee shall be deemed an acceptable report required by Subsection 6.1(d) and Subsection 6.1(f) herein, so long as Lessee provides the subject report to the CRA. If Lessee ceases to provide the subject report to the CRA, Lessee shall be required to provide the individual reports required by Subsection 6.1(d) and Subsection 6.1 (f) to Lessor.

## ARTICLE VII - SITE USE RESTRICTIONS

7.1. **Site Use Restrictions.** The Premises shall be divided into the **five (5)** distinct areas (each being an "**Area**"), as illustrated in **Exhibits A-2** through **A-6**, the use of which shall be restricted in accordance with this **Article VII** (hereinafter the "**Site Use Restrictions**").

7.2. **Area A: Cornell Museum, Crest Theatre, Concession Building, Field House, and Loggia.** Area A as more particularly described in **Exhibit A-2**, shall be used by Lessee to provide and/or support indoor events, exhibits, and programming. Lessee shall be solely responsible for the prioritization of the use of Area A.

7.3 **Area B: Pavilion.** Area B as more particularly described in **Exhibit A-3**, shall be used by Lessee to provide and/or support outdoor events, exhibits, and programming. Lessee shall prioritize use of Area B for outdoor events. Subject to all other permitting and legal requirements (including permit and license fees), Lessee shall be allowed to temporarily fence this area for outdoor events, as necessary, for any event with a maximum occupancy of **Three Thousand (3,000)** people or less.

7.4. **Area C: East Lawn.** Area C as more particularly described in **Exhibit A-4**, shall be used by Lessee to provide and/or support outdoor events, exhibits, and programming; **provided however**, Lessee shall use this property less intensively than Area B the Pavilion. Area C consists of three (3) zones (each being a "**Zone**"): Zone 1, which is the western most Zone of Area C; Zone 2, which is the center Zone of Area C; and Zone 3, which is the eastern most Zone of Area C. Subject to all other permitting and legal requirements (including permit and license fees), Lessee shall be allowed to temporarily fence each Zone as follows: Zone 1 for no more than **fifteen (15)** events per year; Zone 2 for no more than **eight (8)** events per year; and Zone 3 for no more than **three (3)** events per year.

7.5. **Area D: North Lawn.** Area D as more particularly described in **Exhibit A-5**, shall be used by Lessee as passive park space except for outdoor events which are an accessory use to indoor events being held at the Crest Theatre Building or Fieldhouse and for those events specifically authorized by the City Commission or its designee. Lessee shall not install tents in excess of **forty (40)** feet by **forty (40)** feet or any chain-link fencing within Area D.

7.6. **Area E: Old School Square Perimeter.** Area E as more particularly described in **Exhibit A-6** shall be used by Lessee as passive park space only. No events shall be located on Area E except for: i) the **One Hundred (100)** Foot Christmas Tree Event (the "**Christmas Tree Event**") in the year 2016; ii) the Delray Art League events for the dates of February 4, 2017 through February 5, 2017, April 1, 2017 through April 2, 2017 (West lawn aligned with Loggia); iii) the Cornell Art Museum Fine Art Show for the dates of March 18, 2017 through March 19, 2017; iv) the Delray Affair for the dates of April 7, 2017 through April 9, 2017; and v) for any other any event specifically authorized by the City Commission or its designee. Lessor and Lessee acknowledge and agree that the Christmas Tree Event shall be thereafter relocated at City expense to Area C, Zone to be determined. Lessee shall not locate and/or install tents, fencing or mechanical contrivances or amusements in Area E except as may be specifically authorized by the City Commission or its designee. The Lessor by its City Manager, or his or her designee, will inspect Area E prior to the events contained in this **Section 7.6** prior to and after the events contained in this **Section 7.6**. Lessee will be responsible for any damage, including any cost to repair, to Area E arising solely from the events listed herein, except that Lessor shall be responsible for any damage, including any cost to repair, Area E arising from the Christmas Tree Event.

7.7. **Motorized vehicles.** No motorized vehicles shall be driven on any unpaved surfaces of the Premises without prior written authorization of both the City Manager or his or her designee and Lessee's Executive Director with the following exceptions. Use of motorized vehicles on unpaved surfaces for the following purposes shall require authorization by Lessee's Executive Director only: (i) the customary maintenance and repair of the Premises, and (ii) the transport of vehicles and equipment for events and activities that occur in Areas B and C. Lessee shall be responsible for the repair and replacement of any and all portions of the Premises that are damaged as a result of motorized vehicle use on unpaved surfaces of the Premises, except that Lessor shall be responsible for repair and replacement of any and all portions of the Premises that are damaged as a result of maintenance and other activities that are the responsibility of or undertaken by the Lessor under this Lease.

7.8 **Annual Site Use Permit.**

(a) Lessee shall apply for and obtain from the City an Annual Site Use Permit ("Permit") for all outdoor events to be held on the Premises during the Lessee's fiscal year, including but not limited to Lessee's regular programming; recurring events on the Premises, such as the Green Market; 501(c)(3) organization events hosted by Lessee, and licensed third-party events in accordance with section (c) below. Lessee shall submit its Permit application no later than June 1st of each year. In the event that Lessee desires to amend the Permit after it is issued to include more events, Lessee shall submit a request to amend the Permit in accordance with the time requirements of the City's Special Events Policy but no later than thirty days



before the additional event is to occur.

(b) Lessee shall submit its Permit application no later than August 1<sup>st</sup> of each year. Thirty days after receipt of Lessee's Permit application, but not later than September 1 of each year, City shall issue the Permit to Lessee. The Lessee's application will be reviewed in accordance with the City's Special Events Policy, but City reserves the right, in its sole and absolute discretion, to waive any and all requirements and restrictions in its Special Events Policy. Further, City shall have the right to impose conditions on the Permit prohibiting Lessee from holding concurrent events on adjacent Areas as described in this Article VII, prohibiting events requiring an extended liquor license unless City has provided its prior written consent, and other conditions to mitigate the impact of such events. City reserves the right, in its sole and absolute discretion, to request Lessee to reschedule events or deny any event based on the nature of the event, the event's public safety impacts and/or impacts on Municipal Services, as that term is defined below.

(c) Lessee shall, among other duties and responsibilities, have the authority to grant a license to private third-party operators for temporary events for use of areas of the Premises ("**Licensed Events**") and otherwise manage the use of the Premises on behalf of Lessor as the Premises "**Site Manager**." Lessee shall manage the Licensed Events in accordance with the City's Special Events Policy, Ordinances, and Regulations, as they exist now and as they may be amended from time to time by the Lessor. Such Licensed Events shall be included in the Annual Site Use Permit. Lessee shall charge third-party operators a License fee in accordance with the City's Special Events Policy, which shall be remitted directly to the Lessor. Notwithstanding the Lessees' rights in licensing Licensed Events, Lessee shall not be responsible for the conduct of or be required to supervise private third-party operators for Lessor's events. Lessee shall remain responsible for Lessee sponsored event.

(d) Lessee shall have the authority to use areas of the Premises to host 501(c)(3) organizations for temporary events. Such events shall be considered part of Lessee's regular programming, and shall be subject to the same terms and restrictions as Lessee's regular programming,

(e) Lessee acknowledges that Lessee's use of the Premises under the Annual Site Use Permit, including uses by third-parties pursuant to a License granted in accordance with section (c) above may cause the City to expend additional money for City services including but not limited to police and fire protection, administrative services, management fees, staff time, environmental services, garbage collection, and other event-related expenses ("Municipal Services"). Lessor acknowledges that Lessee provides certain services and contributions that reduces City's need for certain Municipal Services, including Site Manager services, event production services, in-kind services, and Lessee-provided staff, management services, and office space. In exchange for Lessee's contributions, City shall not charge Lessee for the full cost of Municipal Services required in support of Lessee's Annual Site Use Permit. However, Lessee shall be required to pay to the City Permit Fees as provided for in Exhibit "D" attached hereto and incorporated here.

(f) Lessor reserves the right in its sole and absolute discretion to recover any extraordinary expenses incurred by Lessor for any specific event where the circumstances of the event differ from those represented by the Lessee and cause the Lessor to provide more Municipal Services than anticipated when the Permit application was approved. The Lessor shall have the right to increase the Permit Fees from those stated in Exhibit "D" for any event where Lessor anticipates a necessity for more Municipal Services than those contemplated by the Permit Fees stated in Exhibit "D". All Permit Fees charged by the City are deemed additional rent and payment thereof shall be made in accordance with the City's Special Events Policy.

## **ARTICLE VIII - LESSOR'S USE OF THE PREMISES**

8.1. **Lessors Use of Premises.** The Lessor shall have the right, upon reasonable prior written notice to Lessee, to schedule meetings or events in the Premises as space is available at no rental charge to the Lessor. The Lessor will assume set up and clean up responsibilities for said events or meetings.

8.2. **Emergency Use.** Lessee agrees that in the event of any catastrophe, including but not limited to natural disasters such as hurricanes and other weather-related events, the Lessor shall have the right to take immediate occupancy of the Premises and to utilize the Premises as a City shelter during and subsequent to any such emergency. Lessor shall occupy the Premises for only such time as is reasonably necessary. Lessor shall be responsible for any damage caused to the Premises reasonably resulting from any such emergency.

## **ARTICLE IX PARKING**

9.1. **Parking; General.** Lessee shall have the right to park motor vehicles on that portion of the Premises which is presently designated for parking, subject to and as permitted by the City's Codes and Ordinances. Lessee's right to use the parking areas is non-exclusive, and Lessor also has the right to utilize the parking areas on the Premises.

## **ARTICLE X - ACCEPTANCE OF THE PREMISES**

10.1. **Acceptance of Property.** Lessee 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 the Lessee shall be responsible for any latent defects therein. Tenant is presently in possession of the Premises and accepts the condition of the Premises "AS-IS" subject to Lessor's continuing obligations contained in this Lease for the maintenance, repair, and replacement of portions of the Premises, including compliance for the Premises under 42 U.S.C. §12101, commonly known as the Americans with Disabilities Act of 1990. Lessor acknowledges and agrees that portions of the Premises currently do not comply with all regulations and laws relating to the use of the Property and that the Lessee shall have no responsibility to bring the Premises into compliance.

## **ARTICLE XI -LEASE OBLIGATIONS**

11.1. **Lessee's Obligations.** With respect to the interior of the Buildings, Lessee shall

be solely responsible for and shall promptly pay as its expense all charges for electricity, telephone, cable, television, communication equipment, water, sewer, gas, janitorial service, cleaning, refuse removal, pest control, painting, window cleaning, all other utility consumption charges. Lessee shall also be solely responsible for maintaining the interior non-structural portions the Building, at its sole cost and expense, including without limitation, its walls, floors, and ceiling, the electrical and plumbing systems, lighting, security, fire safety, and the exterior doors and exterior windows of the Building. Lessee, at its sole cost and expense, shall maintain the outdoor Pavilion stage performance area, specialized performance lighting, sound system, trade fixtures and other specialized equipment, in good condition and repair. The Lessee shall pay all costs and expenses for the installation of any improvements made to the interior of the Buildings, any additional utilities, other improvements, or upgrades to the improvements provided by the Lessee, 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 interior of the buildings, and all connection fees, assessments and charges related thereto.

11.2. **Failure to Maintain by Lessee.** In the event Lessee does not keep and maintain the interior of the buildings in accordance with Section 11.1 to Lessor's reasonable satisfaction or make repairs or commence repairs within **fifteen (15)** days after written notice from Lessor, Lessor may, in addition to any other remedies it may have under law or this Lease, enter upon the Premises to maintain the interior of the Buildings and/or make the said repairs, as the case may be, and charge the cost thereof to Lessee as Additional Rent.

11.3. **Lessor's Obligations.** Lessor is responsible for the maintenance, repair, and replacement of the portions of the Premises which the Lessee is not obligated to maintain and repair, including without limitation, all perimeter parts of the Buildings, the structural, non-structural, functional and systemic aspects of the Buildings, including the roof, foundation, load-bearing walls, general exterior Building maintenance, walkways, elevators, sidewalks, landscaping, irrigation, water lines, sanitary sewer lines, stormwater lines, exterior lighting, signage, water features, public restrooms, security cameras, parking areas, downspouts, gutters, sprinkler system, regular mowing of any grass, trimming, weed removal and general landscape maintenance, including driveways and alleys, including, but not limited to, cleaning, repaving, restriping and resealing. However, Lessee 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 Lessee on the Buildings or Premises, or for the maintenance, repair, or replacement of same. Lessee shall immediately give Landlord written notice of any defects, repairs or maintenance for which Landlord is responsible under any of the provisions of this Lease.

11.4. **Floor Loads; Noise and Vibration.** Lessee shall not place any 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 Lessee 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 Lessee, at Lessee's expense, be placed and maintained by Lessee in settings of cork, rubber, or spring-type vibration eliminators sufficient to eliminate such noise, electrical interference or vibration.

11.5. **No Damage.** Neither Lessee nor any of its agents, employees, guests, and invitees shall damage, destroy, deface, or injure any portion of the Premises.

11.6. **National Registry.** Lessor and Lessee acknowledge that the Building is listed in the National Register of Historic Places. The Lessor's and Lessee's obligation to maintain and repair their respective portions of the Building includes the obligation to comply with the applicable treatment and preservation standards and guidelines of maintaining and repairing a property listed in the National Register of Historic Places. The guidelines and standards contained in Chapter 36 of the Code of Federal Regulations, as they are amended from time to time, shall be complied with in the performance of the maintenance and repair obligations required by this Lease.

## ARTICLE XII - LESSOR'S AND LESSEE'S PROPERTY

12.1. **Lessor's Property.** Unless listed in **Exhibit "E"**, which is attached hereto and incorporated herein by reference and subject to **Section 12.2** herein, 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 Lessee, shall be and remain a part of the Premises and shall be deemed the property of Lessor, and shall not be removed by Lessee except as set forth herein. The fixtures and equipment listed in **Exhibit "E"** shall be considered Lessee's Property, and shall be removed at the termination or expiration of the Lease.

12.2. **Lessee's Property.** In addition to those items listed on **Exhibit "E"**, 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 Lessee 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 Lessee and located in the Premises (hereinafter collectively referred to as "**Lessee's Property**") shall be and shall remain the property of Lessee, and may be removed by Lessee at any time during the Term of this Lease so long as Lessee's obligations are current and no default exists under this Lease. In the event Lessee's Property is so removed, Lessee 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 Lessee was given possession of the Premises, with the obligation of Lessee to ensure that the Premises meet the standards of a property listed in the National Register of Historic Places.

12.3. **Removal of Lessee's Property.** At or before the Expiration Date of this Lease, or within **fifteen (15)** days after the Expiration Date if this Lease is terminated prior to the end of the Term, Lessee, at its expense, shall remove from the Premises all of Lessee's Property (except such items thereof as Lessor shall have expressly permitted to remain, which property shall become the property of Lessor), and Lessee shall repair any damage to the Premises or the Building resulting from any installation and/or removal of Lessee's Property, and shall

restore the Premises to the same physical condition and layout as they existed at the time Lessee was given possession of the Premises, reasonable wear and tear excepted. In connection with its obligations set forth herein, Lessee specifically acknowledges that it shall be solely responsible prior to the Expiration Date of the Lease or within **fifteen (15)** days after the Expiration Date if this Lease is terminated prior to the end of the Term 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 Lessee leaving such equipment, wiring or cabling at the Premises. Lessee agrees that any cabling or wiring installed by Lessee during the Lease Term shall be subject to Lessor's prior consent, which consent shall not be unreasonably withheld, and shall comply, at Lessee's sole cost and expense, with all of 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 Lessee'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 Lessee 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 Lessee's Property and the cost of restoring the Premises to the same physical condition and layout as they existed at the time Lessee was given possession of the Premises, reasonable wear and tear excepted.

### **ARTICLE XIII - DESTRUCTION OF PREMISES**

13.1. **Partial Destruction.** In the event of a partial destruction of the Premises, from any cause, the Lessor may, but is not obligated to, repair the same, provided such repairs can be made within **one hundred twenty (120)** days under the laws and regulations of state, county, federal or municipal authorities. If such repairs cannot be made in **one hundred twenty (120)** days, the Landlord shall, at its option make same within a reasonable time, this Lease continuing in full force. In the event that the Landlord does not desire to make such repairs at its option which cannot be made in **one hundred twenty (120)** days or such repairs cannot be made under such laws and regulations, this Lease may be terminated at the option of either the Lessee or the Lessor.

13.2. **Total Destruction.** In the event that the Building is destroyed to the extent of not less than **forty (40%)** of the replacement cost thereof, the Lessor may elect to terminate this Lease, whether the Premises are affected or not. A total destruction of the Building shall terminate this Lease.

13.3. **Abatement of Rent.** 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 Lessee or its officers, employees, agents or invitees. The Lessee 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.

## ARTICLE XIV - ALTERATIONS AND MECHANIC'S LIENS

14.1. **Alterations by Lessee.** No alterations to the Premises shall be made by Lessee unless the following conditions are met:

a. Lessee shall provide a sealed set of plans prepared by an architect to Lessor and Lessee shall have received the prior written consent of Lessor, which shall not be unreasonably withheld or delayed. Issuance of a building permit by the City will constitute consent of the Lessor.

b. Lessee shall have procured all permits, licenses and other authorizations required for the lawful and proper undertaking thereof.

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; or (iii) adversely affect the mechanical, electrical, plumbing, security or other such systems of the Building or the Premises.

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

14.2. **Mechanic's, Construction, Materialman's and Laborer's Liens.** Lessee 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 Lessee to the Premises and further agrees to indemnify and hold Lessor harmless from and against any and all such costs and liabilities incurred by Lessee, and against any and all mechanic's, materialman's, construction, 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 in the Premises shall not be subject to liens for improvements made by or for Lessee, whether or not the same shall be made or done in accordance with any agreement between Lessor and Lessee. This Lease specifically prohibits the subjecting of Lessor's interest in the Premises to any mechanic's, materialman's, construction, or laborer's liens for improvements made by Lessee or for which Lessee is responsible for payment under the terms of this Lease. Lessee 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 in the Premises and all mechanics, materialmen, contractors, artisans, and other parties contracting with Lessee or its representatives or agents are hereby charged with notice that they must look to Lessee 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 Lessee shall notify any of its contractors making any improvements to the Premises of the terms of this provision, and Lessee acknowledges that its knowing and willful failure to provide said notice to the contractor(s) shall render the contract between the Lessee and the contractor(s) voidable at the option of the Lessor. In the event any notice or claim of lien shall be asserted of record against the interest of Lessor in the Premises or Building or the site on which it is located on account of or arising out of any improvement or work done by Lessee, or any person claiming by, through or under Lessee, for improvements or work the cost of which is the responsibility of Lessee,

Lessee 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 in the Premises or the Building (either by payment or bond as permitted by law) within thirty (30) days after notice to Lessee by Lessor. If so requested by Lessor, Lessee shall execute a short form or memo of this Lease, which may at Lessor's discretion be recorded in the Public Records of Palm Beach County, Florida for purposes of protecting Lessor's estate from any claims of lien, as provided in Section 713, Florida Statutes.

#### **ARTICLE XV - ASSIGNMENT AND SUBLETTING**

15.1. **No Assignment by Lessee.** This Lease and any portion of the Premises shall be non-assignable by Lessee, in whole or in part. Notwithstanding the foregoing, Lessee shall have the right to license all or a portion of the premises pursuant to the Lessee's Permitted Uses and Operating Commitments.

15.2. **Lessor's Right of Assignment.** Lessor shall have the right to sell, assign, or otherwise encumber or dispose of Lessor's interest in the Building and/or the Premises and this Lease. In the event of any such disposition, Lessor shall have no further liability or obligation to Lessee under this Lease, except as specifically provided for in this Lease which shall include, but are not limited to the agreements regarding Cultural Service Fees.

#### **ARTICLE XVI - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES**

16.1. **Lessor Obligations.** Lessor shall be responsible, at its sole cost and expense for any code compliance for Premises under 42 U.S.C. §12101, commonly known as the Americans with Disabilities Act of 1990 and shall not be passed through to Tenant in any form during the Term of the Lease or any extensions thereof.

16.2. **Obligations of Lessee.** Lessee 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. Lessee shall during the Term of this Lease comply with all laws, ordinances, regulations, orders and requirements of any governmental authority which may be applicable to Lessee's Permitted Use of the Premise. Lessee's obligation shall include compliance with the Florida Clean Indoor Air Act which provides in part that a person may not smoke in an enclosed indoor workplace. In the event Lessee 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, Lessee shall provide written notice to Lessor thereof within ten (10) days after receipt of same by Lessee.

#### **ARTICLE XVII - RIGHT OF LESSOR TO PERFORM LESSEE' S COVENANTS**

17.1. **Payment or Performance.** Lessor shall have the right, upon ten (10) days prior written notice to Lessee (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 Lessee 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 Lessee, 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.

17.2. **Reimbursement.** All payments made, and all costs and expenses incurred in connection with Lessor's exercise of the right set forth in **Section 17.1** above, shall be reimbursed by Lessee 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 Lessee.

## **ARTICLE XVIII - INDEMNIFICATION, SOVEREIGN IMMUNITY, AND INSURANCE**

18.1. **State Agency.** The Lessor is a state agency as defined in **Section 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 Agreement.

18.2. **Indemnification by Lessee.** Lessee shall defend, indemnify and hold the Lessor, its respective officials, officers, agents and employees, harmless from or on account of any liabilities, damages, losses and costs received or sustained by any person or persons arising out of or connected with, directly or indirectly, Lessee's use of the Premises whether or not the incident giving rise to the injury, loss or damage occurs within or without the Premises, excluding the negligence, willful, wanton or intentional misconduct of the Lessor, and its officials, officers, agents and employees. Lessee 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 arising solely out of Lessee's use of the Premises. The indemnification provided herein shall obligate the Lessee 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 arising from the Lessee's use of the Premises. 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 Lessee shall survive expiration or termination of this Agreement.

### **18.3 Lessor's Insurance.**

a. **Self-Insurance.** Lessee acknowledges that the Lessor is a Florida Municipal Corporation and is self-insured and that so long as the Premises are owned by Lessor, the Lessor shall have no obligation to obtain separate insurance.



b. **City No Longer Lessor.** In the event that the City is no longer the Lessor, Lessor shall at all times during the term of this Lease carry and maintain the following types of insurance in the amounts specified and in the form hereinafter provided for:

(i) **Commercial General Liability and Property Damage.** Lessor shall maintain insurance against public liability, including that from personal injury or property damage in or about the Building resulting from the occupation, use or operation of the Building in amounts of not less than **TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00)** in respect of bodily injury or death to any one (1) person of not less than **TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00)** in respect of bodily injury or death to more than one (1) person in one (1) accident, and of not less than **TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00)** in respect of property damage. Landlord shall also keep and maintain such insurance which Lessor deems necessary and/or which Lessor's lender, if any, requires to be kept in force, which insurance may include general liability, workers' compensation, rental interruption insurance and other insurance or self-insurance programs.

(ii) **Lessor's Real and Personal Property.** Lessor shall maintain insurance covering the Lessor's Building, excluding Lessee's property required to be insured by Lessee pursuant to **Section 18.3** hereof, in an amount not less than **One Hundred Percent (100%)** of full replacement cost (exclusive of excavations, foundations and footings), from time to time during the term of this Lease, providing protection against perils included within the standard Florida form of fire and extended coverage insurance policy, together with insurance against vandalism and malicious mischief, and such other risks as Lessor may from time to time determine.

c. **Blanket Policies.** Any Insurance provided for in **Section 18.3** may be maintained by means of a policy or policies of blanket insurance, covering additional items or locations or insures, provided that the requirements of **Section 18.3** are otherwise satisfied.

d. **No Lessee Rights.** Lessee shall have no rights in any policy or policies maintained by Lessor and shall not be entitled to be a named insurer thereunder.

#### 18.4. **Lessee Insurance.**

a. Lessee will carry and maintain, at its sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided for:

(i) **Workers' Compensation Insurance:** Lessee shall during the Term of this Lease provide and maintain in accordance with statutory requirements of the State of Florida workers compensation insurance or employee's liability insurance to protect against on-the-job injury or illness which may not fall within the provisions of the Florida State's Workers'

Compensation Law. The limits shall be no less than **Five Hundred Thousand Dollars (\$500,000)** for each accident, and an occupational disease limit of **Five Hundred Thousand Dollars (\$500,000)** per employee/**Five Hundred Thousand Dollars (\$500,000)** aggregate.

- (ii) **Commercial General Liability and Property Damage.** Lessee shall maintain a Commercial General Liability policy applying to the use and occupancy of the Premises and any areas adjacent thereto, and the Permitted Use operated by Lessee, or by any other occupant of the Premises with limits of liability not less than **One Million Dollars (\$1,000,000.00)** per occurrence and **Two Million Dollars (\$2,000,000)** general aggregate for Bodily Injury and Property Damage. Such policy shall specifically name the Lessor as an additional insured. Lessee's Commercial General Liability policy shall not provide for a deductible in excess of **Two Thousand Dollars (\$2,000)** without the prior written approval of the Lessor.
- (iii) **Property Insurance.** Lessee shall maintain a personal property insurance policy on all personal property, furniture and fixtures of Lessee.

b. All policies of insurance provided for in this **Section 18.4** shall be issued in form acceptable to Lessor by insurance companies reasonably acceptable to Lessor with general policyholder's rating of not less than XI and a financial rating of AAA as rated in the most current available Best's Insurance Reports, and qualified to do business in Florida. Each and every such policy:

- (i) shall be issued in the name of Lessee and with regard to Commercial General Liability policy, shall be endorsed to name as additional insureds Lessor and any other parties in interest from time to time designated in writing by notice from Lessor to Lessee; and with regard to the Property Damage policy, shall name Lessor and any other parties in interest from time to time designated in writing by notice from Lessor to Lessee, as an additional loss payee;
- (ii) shall be for the mutual and joint benefit and protection of Lessor and Lessee and any such other parties in interest;
- (iii) shall (for a certificate thereof shall) be delivered to Landlord and any such other parties in interest within **ten (10)** days before delivery of possession of the Premises to Tenant and thereafter within **thirty (30)** days prior to the expiration of each policy, and as often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained in like manner and like extent;
- (iv) shall contain a provision that the insurer will give to Lessor and such other parties in interest at least **thirty (30)** days' notice in writing in advance of any cancellation, termination or lapse, of insurance;

- (v) shall be written as a primary policy which does not contribute to and is not in excess of coverage which Lessor may carry; and
- (vi) shall contain a provision that Lessor and any such other parties in interest, shall be entitled to recover under said policies for any loss occasioned to it, its servants, agents and employees by reason of the negligence of Lessee.

c. Lessee agrees to permit Lessor at all reasonable times to inspect the policies of insurance of Tenant with respect to the Premises for which policies or copies thereof are not delivered to Lessor.

d. Notwithstanding any laws to the contrary, the City is an additional insured but only to the extent of monetary limits as set forth by Florida Statute 768.28 and the Florida Constitution. Nothing contained herein shall be deemed a waiver of the Lessor's Sovereign Immunity.

18.5. **Lessee's Contractor's Insurance.** Lessee shall require any contractor of Lessee performing work on the Premises to carry and maintain, at no expense to Lessor: (a) comprehensive general commercial liability insurance, including contractor's liability coverage, contractual liability coverage, completed operations coverage, broad form property damage endorsement and contractor's protective liability coverage to afford protection, with limits for each occurrence of not less than **ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00)** with respect to personal injury or death, and **ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00)** with respect to property damage; and (b) Workers' compensation or similar insurance in form and amounts required by law. Alternatively, Lessee may procure for the benefit of Lessee and Lessor (and covering the work of Lessee's contractor) such policies of insurance which would include the protections contained herein, including but not limited to such "builder's risks" or "all risks" insurance policies. Lessee shall provide a certificate of insurance from contractor's insurer to the Lessor prior to the commencement of any work in the Premises.

18.6. **Waiver of Subrogation.** In the event that the City ceases to be the Lessor in such case Lessor and Lessee waive, unless said waiver should invalidate any such insurance, their right to recover damages against each other for any reason whatsoever to the extent the damaged party recovers indemnity from its insurance carrier. Any insurance policy procured by either Lessee or Lessor which does not name the other as an additional named insured shall, if obtainable, contain and express waiver of any right or subrogation by the insurance company, including but not limited to, Lessee's worker's compensation carrier, against Lessor or Lessee or Tenant, whichever the case may be. All general liability and property damage policies shall contain an endorsement that Lessor, although named as an insured, shall nevertheless be entitled to recover for damages caused by the negligence of Lessee.

18.7 **Payment Bond.** Lessee shall require its contractor to furnish and provide to Lessee and/or Lessor a Material and Labor Payment Bond for the construction of the Lessee Improvements ("**Payment Bond**") as required by **Section 255.05, Florida Statutes.** The

Payment Bond must be issued by an insurance company or surety company reasonably acceptable to the Lessor and comply with Sections 255.05 and 713.23, Florida Statutes. The amount of the Payment Bond shall be the amount of the construction contract to complete the improvements. The Payment Bond shall remain in effect until the improvements are completed and all contract obligations of the contractor have been satisfied.

## **ARTICLE XIX - DEFAULT; LANDLORD REMEDIES**

19.1. **Events of Default.** Lessee shall be in default of this Lease if any one or more of the following events shall occur:

a. Lessee shall fail to pay any installment of the Rent or any other monetary obligation of Lessee called for hereunder as and when the same shall become due and payable; or

b. Lessee shall default in the performance of or compliance with any of the other terms or provisions of this Lease, including without limitation, the Site Use Restrictions, the Operating Commitments, and the Reporting Commitments, and such default shall continue for a period of **thirty (30)** days after the giving of written notice thereof from Lessor to Lessee, or, in the case of any such default which cannot, with bona fide due diligence, be cured within said **thirty (30)** days, Lessee shall fail to proceed within said **thirty (30)** 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 **thirty (30)** 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. Lessee shall, other than as part of a program or event which is a Permitted Use, assign, transfer, or encumber this Lease or sublet the Premises in contravention of the Permitted Uses or in violation of the Permitted Uses; or

d. Lessee 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 Lessee of all or any substantial part of Lessee's properties; or

e. If, within **ninety (90)** days after the filing of an involuntary petition to bankruptcy against Lessee or the commencement of any proceeding against Lessee seeking any arrangement, reorganization, composition, readjustment or similar relief under any law, such proceeding shall not have been dismissed, or if, within **ninety (90)** days after the appointment, without the consent or acquiescence of Lessee, or any substantial part of its properties, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within **ninety (90)** days after the expiration of any such stay, such appointment shall not have been vacated; or

f. Lessee shall vacate or abandon the Premises, then, and in such event, or during the continuation thereof (subject to the time period described in **Subsection 19.1.b**, Lessor may, at its option, by written notice to Lessee, designate a date not less than **fifteen (15)**

days from the giving of such notice on which this Lease shall end, and thereupon, on such date, this Lease and all rights of Lessee hereunder shall terminate. Such termination by Lessor shall not affect the remedies of Lessor provided in this Lease; or

g. The failure by Lessee to maintain its legal existence as a Federal tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code or its equivalent;

19.2. **Surrender of Premises.** Upon any termination of this Lease, Lessee 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 Lessee or by virtue of any statute or of any order of any court shall be entitled to possession of the Premises.

19.3. **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.

19.4. **Survival of Obligations.** No termination, pursuant to this **Article 19** shall relieve Lessee of its liability and obligations under this Lease, and such liability and obligations shall survive any such termination.

19.5. **Holdover.** Should Lessee hold over and remain in possession of the Premises at the expiration of any Term hereby created, Lessee shall, by virtue of this Section, become a Lessee-at-sufferance and shall pay Lessor twice 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 Lessee shall give to Lessor at least **thirty (30)** days prior written notice of any intention to remove from the Premises, and shall be entitled to **fifteen (15)** days prior notice of any intention of Lessor to remove Lessee from the Premises in the event Lessor desires possession of the Premises; provided, however, that said tenant-at-sufferance shall not be entitled to **fifteen (15)** days' notice in the event the said Rent is not paid in advance without demand, the said **fifteen (15)** days written notice being hereby expressly waived.

19.6. **Force Majeure.** The obligations of Lessee hereunder shall not be affected, impaired or excused, nor shall Lessor have any liability whatsoever to Lessee, 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. Lessee shall not hold Lessor 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.

19.7. **Additional Remedies.** Upon the occurrence of any 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. The remedies herein provided are not exclusive and the Lessor shall have any and all other remedies provided herein or by law or in equity.

## ARTICLE XX - EMINENT DOMAIN

20.1. **Taking.** If the whole of the Building or the Premises or if more than **Fifty Percent (50%)** of the Building which materially affects Lessee's use and occupancy of the Premises shall be taken by condemnation or in any other manner for any public or quasi-public use or purpose, this Lease and the term and estate hereby granted shall terminate as of the date of vesting of title on such taking and the Rent shall be prorated and adjusted as of such date.

20.2. **Award.** In the event that the City ceases to be the Lessor, in such case the subsequent Lessor shall be entitled to receive the entire award or payment in connection with any taking without deduction therefrom except to the extent that the Lessee shall be entitled to compensation based upon the damages sustained to its property.

20.3. **Temporary Taking.** If the temporary use or occupancy of all or any part of the Premises shall be taken by condemnation or in any other manner for public or quasi-public use or purpose during the term of this Lease and at the time of such temporary taking the City is not then the Lessor, Lessee shall be entitled, except as hereinafter set forth to receive that portion of the award or payment for such taking which represents compensation for the use and occupancy of the Premises, for the taking of Lessee's Property and for moving expenses, and Lessor shall be entitled to receive that portion which represents compensation for the use and occupancy for a period beyond the date to which the Rent has been paid shall be received, held and applied by Lessor as a trust fund for payment of the Rent becoming due hereunder.

20.4. **Partial Taking.** In the event of any taking of less than the whole of the Buildings situated which does not result in termination of this Lease, or in the event of a taking for a temporary use or occupancy of all or any part of the Premises which does not result in a termination of this Lease, Lessor, at its expense, and whether any award shall be sufficient for the purpose, shall proceed with reasonable diligence to repair to the remaining part(s) of the Building and the Premises to substantially their former condition to the extent that the same be feasible (subject to reasonable changes which Lessor shall reasonably deem

desirable) and so as to constitute complete and tenantable Building and Premises.

## **ARTICLE XXI - QUIET ENJOYMENT**

21.1. **Quiet Enjoyment.** Lessor agrees that Lessee, 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 XXII - LESSOR'S RIGHT OF ACCESS**

22.1. **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 Lessee 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 Lessee and without any reduction of Lessee'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 Lessee for any other purpose, which shall be considered necessary or desirable by Lessor, in such a manner as not to unreasonably interfere with Lessee in the conduct of Lessee'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.

22.2. **Access for Inspection and Showing.** Upon reasonable notice to Lessee 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 actual or prospective purchasers or mortgagees of the Premises. During the period of six (6) months prior to the Expiration Date of this Lease, upon reasonable notice to Lessee, Lessor and its agents may exhibit the Premises to prospective Lessees.

22.3. **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 Lessee's obligations under this Lease. Upon providing prior notice to the Lessee, 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 XXIII - SIGNS AND OBSTRUCTION

23.1. **Signs.** Lessee 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 Lessee's sole expense, Lessee 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, Lessee agrees to repair any damage to the Premises caused by such installation and/or removal at Lessee's sole expense.

23.2. **Obstruction.** Except as may be permitted with a Special Event Permit Tenant shall not permanently obstruct, block, or impede the public sidewalks, parking lots, rights of way, or other public appurtenant areas to the Premises in any manner whatsoever.

23.3. **Naming Rights.** Tenant may enter into a naming rights agreement for the Premises, subject to Lessor's reasonable consent. The terms of any such agreement may not exceed the term of this Lease.

### ARTICLE XXIV - NOTICES

24.1. **Notices.** Except as otherwise provided in this Lease, any notice or other information required or authorized by this Lease to be given by either Party to the other may be given by hand with receipt; or by certified prepaid mail, return receipt requested; or by nationally recognized overnight courier service, to the other Party at the address stated below. Such address may be changed by either respective Party at any time by giving prior written notice as herein provided. The effective date of any Notice shall be the date of delivery of the Notice if by personal delivery, courier services or prepaid overnight delivery service, or if mailed, upon the date which the return receipt is signed or delivery is refused or the Notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the address to which Notices may be delivered, and delivery to such address shall constitute binding notice give to such party:

AS TO LESSOR:  
City Manager, City of Delray Beach  
100 N.W. 1st Avenue  
Delray Beach, Florida 33444

WITH A COPY TO:  
City Attorney, City of Delray Beach  
200 N.W. 1st Avenue



Delray Beach, Florida 33444

AS TO LESSEE:

President

Old School Square Center For The Arts, Inc.

51 N. Swinton Avenue

Delray Beach, Florida 33444

WITH A COPY TO:

SARAGA/LIPSHY, PL

201 N.E. 1st Avenue

Delray Beach, Florida 33444

Attention: Brian Louis Lipshy, Esq.

## ARTICLE XXV - RECORDS

25.1. **Records.** Lessee, 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. Lessor will have the right from time to time during normal business hours and upon reasonable notice to Lessee to examine all such books, records and accounts at Lessee's office or at the office of such other person as maintains them, and to make such copies or extracts as Lessor may reasonably be required in order for Lessor to comply with any agreement, ordinance, law or regulation regarding the use of the Premises and operation of the Premises, which shall at Lessor's sole costs and expense. Lessee will furnish to Lessor, at Lessee's expense, all evidence which Lessor may from time to time reasonably request as to the accuracy and validity of or compliance with all Lessee's obligations under this Lease. Any inspection or audit of the books and records of Lessee or the procuring of documents verifying financial and other information, by or on behalf of Lessor, shall be for Lessor's verification of Lessee's operation of the Premises, and shall not constitute any assumption of responsibility or liability by Landlord to Lessee or anyone else with regard to the condition, maintenance or operation of the Premises, nor relieve Lessee of any of Lessee's obligations.

25.2. **Funding Agreement.** If at any time during the term of this Lease, Lessee is a party to a funding agreement, or grant, or it is the recipient of a conditional gift (collectively a "**Funding Agreement**"), Lessee shall timely comply with all of the terms and conditions of the Funding Agreement.

## ARTICLE XXVI - MISCELLANEOUS

26.1. **Environmental Indemnity.** Lessee 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

Lessee, 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 9601 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 Lessee'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. The Lessor and its agents shall have the right, but not the duty, to inspect the Premises at any time to determine whether Lessee is complying with the terms of this Lease. If Lessee is not in compliance with this Lease, the Lessor shall have the right to immediately enter upon the Premises to remedy any contamination caused by Lessee's failure to comply notwithstanding any other provision of this Lease. The Lessor shall use its best efforts to minimize interference with Lessee's business but shall not be liable for any interference caused thereby.

26.2. **Mold Exclusion**. Lessee hereby acknowledges that Lessor has advised Lessee that it is possible for mold/mildew/fungi/microbe-related forms to grow and affect the Premises and the property therein. Lessee 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 to Lessee. Accordingly, Lessee 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. In the event it is discovered that mold is present at the Premises then Lessor, at its sole cost and expense, shall promptly cause the mold condition to be remediated at Lessor's sole expense.

26.3. **Asbestos**. Lessor 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 Lessee performs any alterations to the Premises, Lessee shall be solely responsible for compliance with the OSHA Regulations and any containment 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 Lessee'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 Lessee, Lessor shall provide Lessee with copies of any information pertaining to ACM or PACM in Lessor's files.

26.4. **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.

26.5. **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.

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

26.7. **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 Lessee's part to be performed shall be deemed and construed as a separate and independent covenant of Lessee, 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.

26.8. **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 Lessee, or to create any other relationship between the parties other than that of Lessor and Lessee.

26.9. **Capacity to Execute Lease.** Lessee represents that it is legally constituted, in good standing and authorized to conduct business in the State of Florida. Lessee 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 Lessee in accordance with its respective terms and conditions. Each of the persons executing this Lease on behalf of Lessee represents and warrants that it is a duly organized and existing 501(c)(3) corporation. Lessor 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 Lessee, and that upon such execution and delivery, the Lease shall be valid and binding upon Lessor in accordance with its respective terms and conditions.

26.10. **Exculpation of Lessor.** In the event that the City is no longer the Lessor, then, and only in such event, Lessor's obligations and liability to Lessee with respect to this Lease shall be limited solely to Lessor's interest in the Premises and neither Lessor, nor any officer, agent, or representative of Lessor, shall have any personal liability whatsoever with respect to this Lease.

26.11. **Waiver of Trial by Jury.** IT IS MUTUALLY AGREED BY AND BETWEEN LESSOR AND LESSEE 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.

26.12. **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 Lessee.

26.13. **Sale of Premises by Lessor.** The parties agree that Landlord has the right to sell the Premises, subject to this Lease, at any time during the Lease Term.

26.14. **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 Lessee shall comply with all applicable statutes, codes, regulations, and ordinances that apply to the Lessee'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. Moreover, the Lessor desires to enter into this Lease only if in so doing the Lessor can place a limit on the Lessor's liability

for any cause of action for money damages due to an alleged breach by the Lessor of this Lease, so that its liability for any such breach never exceeds the sum of \$10,000. Lessee hereby expresses its willingness to enter into this Lease with a \$10,000 limitation on recovery for any damage action for breach of contract. Accordingly Lessee hereby agrees that the Lessor shall not be liable to Lessee for damages in an amount in excess of \$10,000 for any action for breach of contract arising out of the performance or nonperformance of any obligations imposed upon the Lessor by this Lease. The foregoing provisions shall not preclude an action by Lessee for specific performance. Nothing contained in this subparagraph or elsewhere in this Lease is in any way intended to be a waiver of the limitation placed upon the Lessor's liability as set forth in Florida Statutes, Section 768.28; 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.

26.15. **No Brokers.** Lessor and Lessee each represents and warrants to the other that such party has not authorized or employed, or acted by implication to authorize or to employ, any real estate broker or salesman to act for such party in connection with this Lease. Each party shall indemnify, defend and hold the other harmless from and against any and all claims by any real estate broker or salesman for a commission, finder's fee or other compensation as a result of the inaccuracy of such party's representation above.

26.16. **No Rights of Third Parties.** Nothing contained in this Lease shall be construed so as to confer upon any other party the rights of a third party beneficiary.

26.17. **No Waiver.** The waiver by the Lessor of any agreement, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition or provision herein contained, nor shall any custom or practice which may grow up between the parties in the administration of the terms hereof be construed to waive or to lessen the right of the Lessor to insist upon the performance by Lessee in strict accordance with such terms. The subsequent acceptance of Rent hereunder by the Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any agreement, condition or provision of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of the Lessor's knowledge of preceding breach at the time of acceptance of Rent.

26.18. **Counterpart Execution.** This Lease may be executed in counterparts, each of which shall be a fully executed original and all of which together shall constitute one and the same instrument. A facsimile or electronic mail copy of this Lease with signatures thereon will be considered for all purposes an original hereof. Each party agrees to promptly deliver an execution original to this Lease with its actual signature to the other party upon request, but a failure to do so shall not affect the enforceability of this Lease, it being expressly agreed that each party to this Lease shall be bound by its own electronic signature and shall likewise accept the electronic signature of the other party.

26.19. **Inspector General.** Lessee is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and

performance of this Lease, and may demand and obtain records and testimony from Lessee. Lessee understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Lessee to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Lease.

26.20. **Time is of the Essence.** Time is of the essence with respect to the payment of all Rent and Additional Rent and with respect to the performance of every provision of this Lease

26.21. **Prior Lease.** The Prior Lease of the Premises entered into between the Lessor and Lessee, as amended, and the previous management agreement for the Premises entered into between Lessor and Lessee, as amended, are hereby terminated as of the Commencement Date of this Lease.

26.23. **Public Records Statutory Disclosure.** Lessee shall comply with public records laws as applicable to this Lease and to Lessee's obligations hereunder. IF THE LESSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LESSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS LEASE, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH, FLORIDA, (561) 243-7050, E-MAIL: [publicrecordsrequest@mydelraybeach.com](mailto:publicrecordsrequest@mydelraybeach.com).

26.24. **Chapter 119, Fla. Stat. Compliance.**


Lessee shall comply with public records laws, specifically to:


- a. Keep and maintain public records required by the City to perform the service;
- b. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law;
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Lessee does not transfer the records to the City; and
- d. Upon termination or expiration of the Lease, transfer, at no cost, to the City all public records in possession of the Lessee or keep and maintain public records required by the City to perform the service. If the Lessee transfers all public records to the City upon expiration or termination of this Lease, Lessee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Lessee keeps and maintains public records upon termination or expiration of this Lease, the Lessee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

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

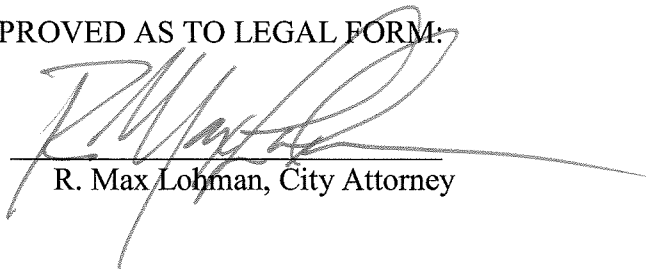
ATTEST:

CITY OF DELRAY BEACH, FLORIDA

By:   
City Clerk

By:   
Cary Glickstein, Mayor

APPROVED AS TO LEGAL FORM:

By:   
R. Max Lohman, City Attorney

Two Witnesses to Lessor's Execution:

Bess Case  
Witness Signature

BESS Case  
Print Name of Witness

  
Witness Signature

  
Print Name of Witness

OLD SCHOOL SQUARE CENTER FOR THE  
ARTS, INC, a Florida not-for-profit corporation.

By:   
Robert Steele, President

Two Witnesses to Lessee's Execution:

  
Witness Signature

Deborah A. Veres  
Print Name of Witness

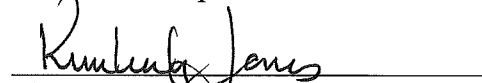
  
Witness Signature

Taryn Wheat  
Print Name of Witness

STATE OF Florida

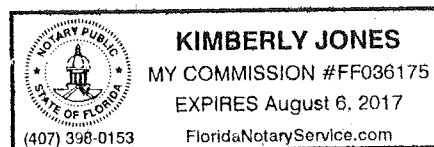
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of December, 2016 by Robert Steele, President & CEO of Old School Square Center For The Arts, Inc., a Florida corporation, on behalf of the corporation. He/She is personally known to me/or has produced \_\_\_\_\_ (as identification) and did take an oath and who has authority to bind the corporation.

  
Signature of Notary Public

My commission expires:

August 6, 2017





## LIST OF EXHIBITS

EXHIBIT	"A"	Legal Description of the Premises
EXHIBIT	"A-2"	Area A: Cornell Museum, Crest Theatre, Concession Building Field House and Loggia.
EXHIBIT	"A-3"	Area B: Pavilion
EXHIBIT	"A-4"	Area C: East Lawn
EXHIBIT	"A-5"	Area D: North Lawn
EXHIBIT	"A-6"	Area E: Old School Square Perimeter
EXHIBIT	"B"	Basic Level of Service and Performance Standards
EXHIBIT	"C"	Special Warranty Deed
EXHIBIT	"D"	Cultural Service Fee Schedule
EXHIBIT	"E"	Lessee's Property

**EXHIBIT "A"**  
**Legal Description of the Premises**

Lots, 1, 2, 3, 4, 5, 6, 7, and 8 in Block 68, of TOWN OF DELRAY, according to the Plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 1, Page 3.

and

That Block of land labelled "Park and School" bounded North by Pearl Street; West by Swinton Avenue; South by Atlantic Avenue; East by Gaillard Street as per map of Linton, Florida, which was filed in the office of the Clerk of the Circuit Court in Dade County, Florida, on July 29, 1896, the same being the land upon which the public school at Linton is now located, the said above described land being in the southwest corner of the Northwest Quarter of Sec. 16, Twp. 46 S., Range 43 East.

LESS AND EXCEPTING THE FOLLOWING TWO PARCELS:

The South Ten (10) feet of Block 68, TOWN OF DELRAY, as shown in Plat Book 1, Page 3, Public Records of Palm Beach County, Florida,

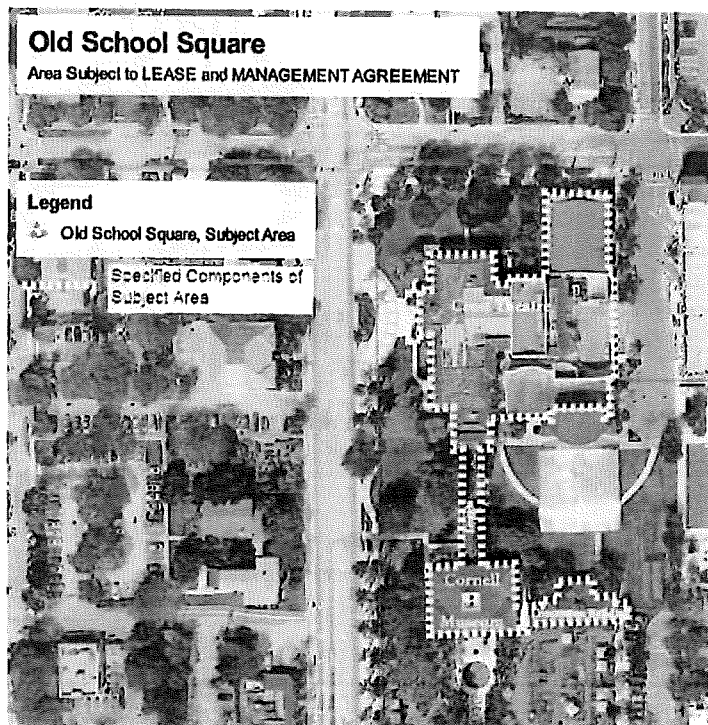
and

A part of Lot 1, Block 68, Plat of Delray Beach (formerly Linton), as said Plat is recorded in Plat Book 1, Page 3, sheet 2 of the Public Records of Palm Beach County, Florida, said part being more particularly described as follows:

Beginning at the Northwest corner of said Lot 1 of Block 68; thence east on an assumed bearing along the North line of said Lot 1, being also the South Right-of-Way line of Northeast First Street, a distance of 19.75 feet; thence S 16 degrees, 08' 07" W, said Lot 1, of Block 68, said West line being also the East right of way line of Swinton Avenue; thence N 0 degrees, 51' 47" W along said West line of Lot 1 and said East right of way line of Swinton Avenue, a distance of 64.89 feet to the Point of Beginning.

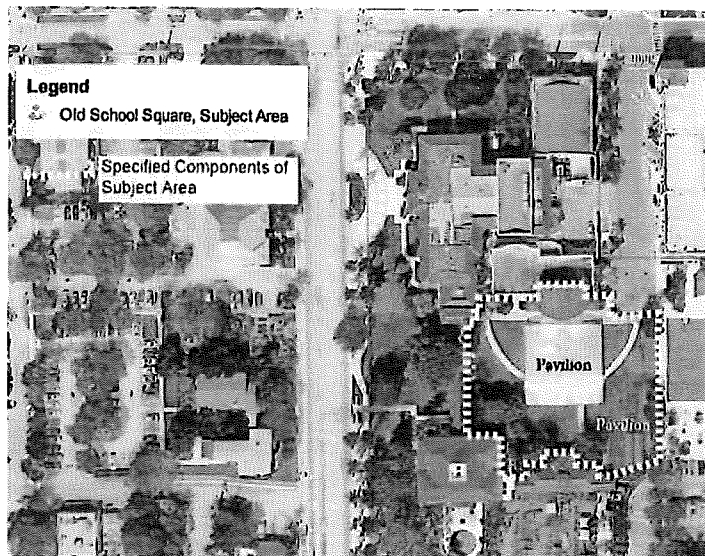
**EXHIBIT "A-2"**  
**Area A: Cornell Museum, Crest Theatre, Concession Building Field House and Loggia.**

Exhibit A-2: Crest Theatre, Cornell Museum, Loggia, Concession Building



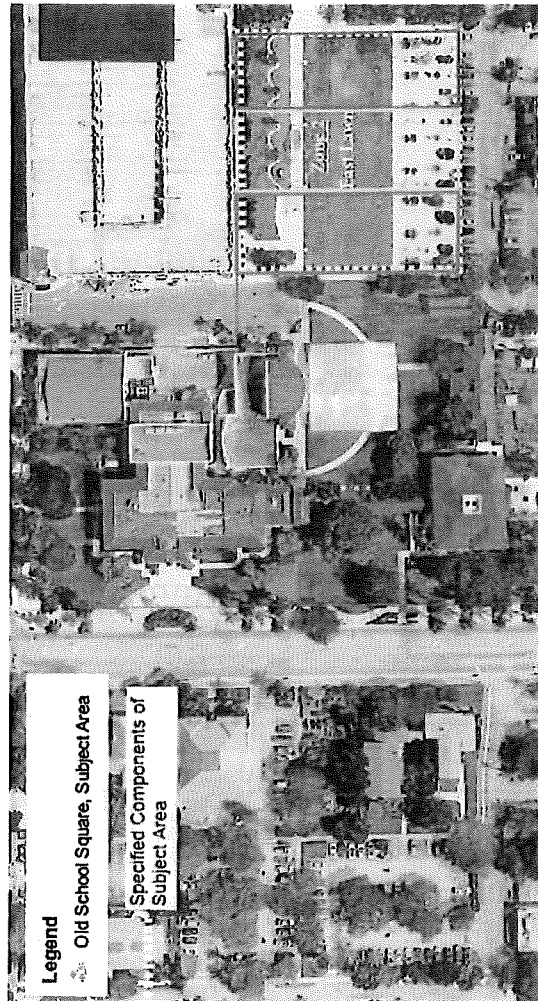
**EXHIBIT "A-3"**  
**Area B: Pavilion**

Exhibit A-3: Pavilion



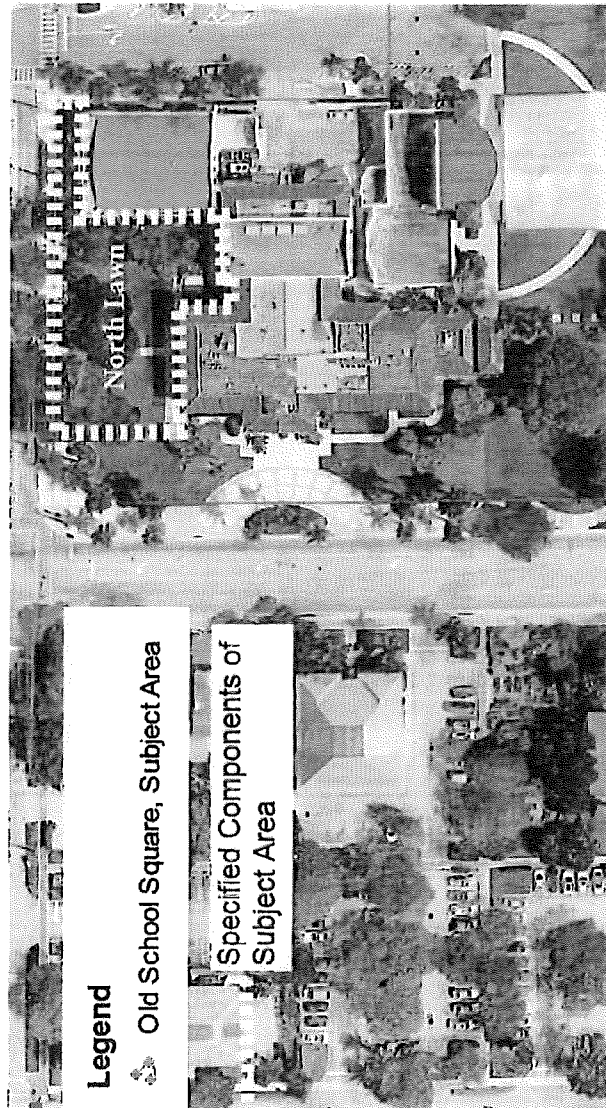
**EXHIBIT "A-4"**  
**Area C: East Lawn**

Exhibit A-4: East Lawn



**EXHIBIT "A-5"**  
**Area D: North Lawn**

Exhibit A-5: North Lawn



**Exhibit A-5: Old School Square Perimeter**



**EXHIBIT "B"**  
**Basic Level of Service and Performance Standards**

**I. Operating Commitments**

(a) **Mission.** Lessee's mission is to be the community's cultural center and gathering place for enriching the lives of all people by providing a total arts experience through visual and performing arts, education, and entertainment, while preserving the Premises as a National Historic Site.

(b) **Services.** As part of its mission, Lessee shall manage the Premises and its programming, exhibits, and events in order to fulfill this mission, subject to the restrictions and obligations of Lessee which are contained in this Lease. Specifically, and without limitation, Lessee shall be responsible for:

- (i) Programming matters, including exhibits as well as coordinating and scheduling the use of the facilities by other artistic and cultural organizations, community or civic groups and governmental bodies, etc. Lessee shall present to the City a list of projected program uses of the facilities each year
- (ii) Fundraising from both public and private sources.
- (iii) Submission of applications for grants and awards.

(c) **Personnel.** Lessee represents that it has, or will secure at its own expense, all necessary personnel required to perform the Operating Commitments. Such personnel shall not be employees of or have any contractual relationship with the City. All personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Lessee will endeavor to perform all services with skilled personnel to the highest professional standards in the field.

Lessee shall perform criminal background screening as set forth in this Paragraph on its officers, employees, (paid or unpaid), agents, volunteers, or subcontractors who will be providing any services to the public on the Premises prior to the performance of such services. Screening shall not be required for any officers, employees (paid or unpaid), agents, volunteers, or subcontractors who do not provide services to the Public. In addition, Volunteers who assist on an occasional basis for an average of less than 10 hours per month do not need to be screened, as long as a person who meets the screening requirement is always present and has the volunteer in his/her sight. Lessee's criminal background screening shall, at a minimum, include screening to prohibit any person who is listed as a sexual predator or sexual offender on the Florida Department of Law Enforcement, Sexual Offenders and Predators Website or the United States Department of Justice, National Sex Offender Public Website, to provide any services for Lessee. All persons subject to the criminal background screening under this requirement shall be rescreened annually based on the date of initial screening. Lessee shall maintain copies of the results of the criminal background screening for the term of this Lease and promptly forward copies of same to City, upon its request.



(d) **Conflict.** In the event of a conflict between the terms and conditions contained in this Exhibit "B" and the Lease, the terms and conditions contained in this Exhibit "B" shall control.

## **II. Performance standards**

(a) Minimum Performance Standards. In addition to fulfillment of the mission, as determined by qualitative indicators and those quantitative indicators reported pursuant to Lessor's Reporting Commitments, Lessor shall:

1. Serve 10,000 guests at high quality indoor events per year;
2. Serve 5,000 guests at indoor events per year.
3. Serve 5,000 student-guests per year.
4. Provide 3,000 of low or no cost events for students.
5. Provide 30 programs, exhibits and discounted event hosting services for community groups and underserved populations who would not otherwise be able to afford to participate in activities at the Premises.
6. Develop customer survey or utilize other tools to measure customer satisfaction.

**EXHIBIT "C"**  
**Special Warranty Deed**

MAR-28-1989 02:49pm 89-086329

PREPARED BY AND RETURN TO:  
WILL CALL #69  
JulieAnn Rico, Esq.  
Boose, Casey, Ciklin, Lubitz  
Martens, McBane & O'Connell  
Northbridge Tower I - 19th Floor  
515 North Flagler Drive  
West Palm Beach, Florida 33402

ORB 6012 Pg 559

Con 10.00 Doc .55  
JOHN B DUNKLE, CLERK - PB COUNTY, FL

**SPECIAL WARRANTY DEED**

THIS SPECIAL WARRANTY DEED, made this 16<sup>th</sup> day of March, 1989, between the SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, a corporate body politic, having an address at 3323 Belvedere Road, West Palm Beach, FL 33402, hereinafter referred to as "Grantor", and the CITY OF DELRAY BEACH, FLORIDA, a municipal corporation, whose Post Office address is 310 S.E. First Street, Delray Beach, FL 33483, hereinafter referred to as "Grantee."

WITNESSETH: That the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations, receipt whereof is hereby acknowledged, has granted, bargained and sold to Grantee, and Grantee's heirs, legal representatives, successors and assigns forever, the following described land, situate, lying and being in Palm Beach County, Florida:

SEE EXHIBIT "A" attached hereto  
AND MADE A PART HEREOF BY REFERENCE

This conveyance is subject to, and the Grantee by acceptance of this deed of conveyance, hereby covenants and agrees that it shall use the above referenced property for cultural, civic, public, or governmental purposes; that the foregoing conditions and covenants of this deed of conveyance are for the benefit of the Grantor, and in the event that the real property conveyed herein ceases to be used for cultural, civic, public, or governmental purposes in the future, title to said real property shall immediately revert to and vest in Grantor, its successors and assigns.

SUBJECT ALSO to taxes and assessments, hereditaments, and appurtenances thereto belonging or in anywise appertaining.

TOGETHER with all tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND the Grantor hereby covenants with said Grantee that Grantor is lawfully seized of said land in fee simple; that Grantor has good right and lawful authority to sell and convey said land; that Grantor hereby warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under Grantor.

"Grantor" and "Grantee" are used for singular or plural as context requires.

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal the day and year first above written..

Signed, sealed and delivered  
in the presence of:

SCHOOL BOARD OF PALM BEACH  
COUNTY, FLORIDA

Jeann Kuehn

By: Arthur Anderson  
Arthur Anderson, Chairman

Howard J. Phillips

Attest: Thomas J. Mills  
Thomas J. Mills, Secretary

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this  
15th day of March, 1989, by Arthur Anderson,  
Chairman and Thomas J. Mills, Secretary, on behalf of the School  
Board of Palm Beach County, Florida, a corporate body politic.

Patricia F. Cobb  
Notary Public

My Commission Expires:

Notary Public  
My Commission Expires: 12/31/91  
Please Print Your Signature



This is not a certified copy

EXHIBIT "A"

LEGAL DESCRIPTION

Lots 1, 2, 3, 4, 5, 6, 7, and 8 in Block 68, of TOWN OF DELRAY, according to the Plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 1, page 3.

and

That Block of land labelled "Park and School" bounded North by Pearl Street; west by Swinton Avenue; South by Atlantic Avenue; East by Gaillard Street as per map of Linton, Florida, which was filed in the office of the Clerk of the Circuit Court in Dade County, Florida, on July 29, 1896, the same being the land upon which the public school at Linton is now located, the said above described land being in the southwest corner of the Northwest Quarter of Sec. 16, Twp. 46 S., Rge. 43 E.

LESS AND EXCEPTING THE FOLLOWING TWO PARCELS:

The South Ten (10) feet of Block 68, TOWN OF DELRAY, as shown in Plat Book 1, page 3, Public Records of Palm Beach County, Florida.

and

A part of Lot 1, Block 68, Plat of Delray Beach (formerly Linton), as said Plat is recorded in Plat Book 1, page 3, sheet 2 of the Public Records of Palm Beach County, Florida, said part being more particularly described as follows:

Beginning at the Northwest corner of said Lot 1 of Block 68; thence east, on an assumed bearing, along the North line of said Lot 1, being also the South right of Way line of Northeast First Street, a distance of 19.75 feet, thence S 16 degrees, 08' 07" W, a distance of 67.54 feet to an intersection with the West line of said Lot 1, of Block 68, said West line being also the East right of way line of Swinton Avenue, thence N 0 degrees, 51', 47" W, along said West line of Lot 1 and said East right of way line of Swinton Avenue, a distance of 64.89 feet to the Point of Beginning.

RECORD VERIFIED  
PALM BEACH COUNTY, FLA.  
JOHN B. DUNKLE  
CLERK CIRCUIT COURT

## EXHIBIT "D"

### Permit Fee Schedule for OSS events including 501(c)(3) events hosted by OSS

[illegible]

**EXHIBIT "E"**  
**Lessee's Property**

**Lessee's Property**

1. Built in refrigeration equipment
2. All Theatrical rigging related equipment
3. All Theatrical sound systems components
4. All Theatrical lighting system components
5. Specialized shelving systems
6. Phone Systems
7. Computer related equipment
8. Window treatments
9. Appliances
10. Alarm equipment
11. Security cameras
12. Specialized Museum lighting
13. Closed circuit monitors
14. LED displays
15. Projection screens
16. Digital projectors