

LEASE

THIS LEASE is entered into effective October 20, 2015, between City of Ocala, a Florida municipal corporation ("Landlord"); and Marion Cultural Alliance, Inc., a Florida not for profit corporation ("Tenant").

WHEREAS:

- A. Landlord owns a building known as the "Brick City Center for the Arts" (the "Building") located at 23 SW Broadway St, Ocala, Florida 34471 on certain real property ("Property") described as follows: See **Exhibit A**.
- B. Landlord seeks to promote downtown redevelopment, and finds it desirable and in the public interest to continue its support of the "Arts" in downtown Ocala.
- C. Tenant is a Florida not-for-profit corporation whose mission is to be the catalyst and the advocate of increased cultural impact in the community by supporting activities relating to the arts, fine arts, historical and scientific museums, and specific education.
- D. The "Brick City Center for the Arts" was established as a comprehensive art center, to engage in activities including art education, art exhibition, and commissioned sale of original art.
- E. Pursuant to a lease, as amended by three amendments thereto, (the "Prior Lease"), Landlord leased to Tenant the Property (including the Building, and the courtyard adjacent to the Building (the "Courtyard"), and all other improvements on the Property (all collectively the "Premises") for the purposes set forth therein.
- F. The Prior Lease is expiring on February 28, 2016.
- G. Under paragraph 20 of the Prior Lease, Landlord and Tenant agree to negotiate a new lease. The parties have done so and desire to enter into this Lease pursuant to such negotiations.

IN CONSIDERATION of the exchange of the mutual promises set forth herein, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

1. **Lease of Premises.** Landlord leases to the Tenant, and the Tenant leases from Landlord, the Premises.
2. **Term.**
 - 2.1. **Initial Term.** The term of this Lease is five years, beginning on February 29, 2016, and ending at 5:00 pm on February 28, 2021.
 - 2.2. **Renewal Term.**
 - 2.2.1. So long as Tenant is not in default of any of the provisions of this Lease, Tenant has the option of renewing or extending this Lease for one additional term of five (5) years. To exercise this option, the Tenant must give to the Landlord written notice not less than 120 days before the

expiration date of the initial term of this Lease. The extension of this Lease will be on the same terms and conditions as the original Lease. Any reference herein to the "term of the Lease," the "Lease term" or similar phrases shall be deemed to include references to any renewal term.

3. **Rent.**

- 3.1. **Rent.** The Tenant shall pay base rent in equal, consecutive, monthly installments of \$100.00 per month.
- 3.2. **Payment of Rent.** The rent is payable without Landlord's demand on the first day of each calendar month during the Lease term. If this Lease commences on a day other than the first day of a calendar month, or terminates on a day other than the last day of a calendar month, the rent will be prorated on a daily basis.

4. **Additional Payments.**

- 4.1. **Additional Rent Payments.** In addition to the base rent under paragraph 3.1, all other payments that the Tenant makes under this Lease are considered additional rent, regardless of whether the payments are so designated. All additional payments are due and payable: (i) if an express time for payment is set forth herein, as and when required; or (ii) if no express time for payment is set forth herein, within thirty (30) days following the time the Landlord demands payment or at the time the next succeeding rent installment is due, whichever occurs last. Landlord shall have the same remedies for Tenant's failure to pay additional rent as it does for Tenant's failure to pay base rent. All further references to "rent" shall include both base rent (as described in paragraph 3.1) and additional rent. The provisions for this paragraph are for determining remedies only and not for the purpose of calculating sales and use taxes due upon rent paid by Tenant.
- 4.2. **Utility or Service Charges.** The Tenant agrees to pay all charges for gas, electricity or other illumination, heating, air conditioning, water, sewer, telephone service and other utilities attributed to the Premises.
- 4.3. **Ad Valorem Taxes and Assessments.** Tenant shall pay all ad valorem taxes and assessments, if any, on the Premises that accrue during the Lease term. If the term of this Lease commences on any day other than January 1, or ends on a day other than December 31, the ad valorem taxes and assessments will be prorated according to the number of days of the term that occur within the calendar year.
- 4.4. **Sales and Use Taxes.** At the time rental payments are made, the Tenant agrees to pay to the Landlord all sales and use taxes, if any, that arise because of payment of rent to the Landlord.
- 4.5. **Tenant's Taxes.** Tenant further covenants and agrees to pay promptly when due all taxes, if any, assessed against all fixtures, furnishings, equipment and stock-in-trade placed in or on the Premises during the term of this Lease.
- 4.6. **Amounts Advanced by Landlord.** Any amount advanced by Landlord pursuant to the terms and provisions of this Lease shall be repaid to Landlord by Tenant within

thirty (30) days following the date of such advance unless otherwise specifically provided in this Lease.

- 4.7. Past Due Rent. If Tenant shall fail to pay any rent when due, Tenant shall also pay to Landlord an initial late payment service charge covering administrative and overhead expenses equal to \$.05 for each \$1.00 so overdue, plus an additional late payment charge of \$50.00 per day for every day the payment is late. A payment is considered late for purposes of this paragraph if received five (5) business days or more after such payment is due. (This is not a grace period; any payment not received when due is a default.) If payment made by check is dishonored by Tenant's bank, the amount due shall be deemed a "late payment" and treated as set forth herein.
- 4.8. Contesting Taxes. Tenant may, at its own expense, contest any tax or assessment for which the taxing authority claims Tenant is responsible. Tenant shall pay all claims pending resolution of Tenant's contest of the tax, assessment or charge. Prior to being excused from paying any tax specified hereunder, Tenant shall provide Landlord with proof, satisfactory to Landlord in its reasonable discretion, that Tenant is not subject to the tax.

5. **Deposit.**

- 5.1. Amount and Purpose of Deposit.
 - 5.1.1. Upon execution of this Lease, Tenant shall deposit with the Landlord a security deposit (the "Deposit") in the amount of Eight Thousand Dollars and 00/100 (\$8,000.00) as security for the Tenant's faithful performance and observance of the Lease terms, conditions, and provisions, including without limitation, surrender of possession of the Premises to the Landlord. The Deposit does not constitute prepayment of the last month's rent or of rent for any month during the term of this Lease.
 - 5.1.2. In lieu of cash, the Deposit may be in the form of a letter of credit in form and substance acceptable to Landlord in the exercise of its sole discretion, or a certificate of deposit pursuant to paragraph 5.1.3.
 - 5.1.3. If Tenant desires to provide the Deposit in the form of a certificate of deposit:
 - a. The certificate of deposit must be in the amount of at least the amount of the Deposit required under this Lease and be issued by a FDIC-insured bank with office in Marion County, Florida.
 - b. Tenant must execute and deliver to Landlord a Pledge of, Collateral Assignment of, and Security Agreement Concerning, certificate of deposit ("Security Agreement"), in substantially the form attached hereto as **Exhibit B**. The attached form of Security Agreement may be modified upon the concurrence of the City Manager and City Attorney in their sole discretion.

- c. The bank issuing the certificate of deposit must execute either the Acknowledgment set forth in the Security Agreement or a similar instrument acceptable to the City Manager and City Attorney in their sole discretion.
- d. If Tenant thereafter desires to discontinue using the certificate of deposit as the Deposit, Landlord shall, upon the delivery of a replacement Deposit in the form permitted by this Lease, terminate the Security Agreement.
- e. Tenant shall pay all costs and expenses associated with the Security Agreement including, without limitation, attorneys' fees incurred by the City in connection with the preparation thereof and for the filing of a financing statement pursuant to applicable law.

5.2. **Application or Retention of Deposit.** If the Tenant defaults on any of the terms, conditions, or provisions of this Lease, including but not limited to the payment of rent, the Landlord may apply or retain all or part of the security deposited to the extent required to pay the delinquent rent or additional payments or to reimburse the Landlord for all sums incurred or expended because of the Tenant's default. Reimbursable sums include but are not limited to any damages or deficiencies that result from reletting the Premises. Such damages or deficiencies are reimbursable to the Landlord regardless of whether they occur before or after the Landlord's summary proceedings or other reentry. If the Landlord applies or retains any part of the security deposited, the Tenant shall immediately deposit with the Landlord an equal amount to replace that which has been applied or retained so that the Landlord has a full deposit at all times during the terms of this Lease. The replacement amount is payable on the Landlord's demand.

5.3. **Interest.** No interest shall be paid or be payable on the Deposit. Tenant hereby irrevocably waives the benefit of any provision of law requiring the Deposit to be held in escrow or by a third party, and such Deposit shall be deemed to be the property of Landlord and may be co-mingled by Landlord, with Landlord's own funds. Landlord may deliver or credit the funds deposited hereunder by Tenant to a buyer of Landlord's interest in the Premises in the event that such interest is sold and, thereupon, Landlord shall be fully, finally, and absolutely discharged from any further liability with respect to such Deposit and all other obligations and liabilities hereunder, and this provision shall also apply to the benefit of any and all subsequent transferees. Tenant agrees that Tenant will look solely to the Landlord or its successor in interest, as applicable, for the return of its Deposit.

5.4. **Return of Deposit.** If the Tenant complies fully with all the terms, provisions, covenants, and conditions of this Lease, the Landlord shall return the Deposit to the Tenant 30 days after the date on which this Lease terminates and after the Tenant delivers possession of the Premises to the Landlord.

6. **Annual Reports.** The Tenant shall provide the Landlord with annual written reports on each anniversary of the date of this Lease outlining the type of activities and events that occurred at the Premises during the previous year. The reports should be detailed and should include information about revenue, number of groups using the Premises, approximate number of persons visiting the Premises, hours of operation, operating

expenses and maintenance costs. The Tenant shall also provide the Landlord with its annual organizational audit.

7. **Use of Premises.**

- 7.1. The Premises shall be used and occupied by Tenant solely for the continued operation of a comprehensive art center, which activities will include art education, art exhibition, commissioned sale of original art, and other such related uses as are necessary for the accomplishment of this purpose, and for no other use without Landlord's written consent which may be withheld or conditioned by Landlord in the exercise of its sole discretion.
- 7.2. Tenant agrees that no business shall be carried on, nor any act or acts done or permitted to be done on the Premises that in any manner conflicts with any applicable valid law or regulation of the City of Ocala, County of Marion, State of Florida, the United States or any department, bureau or agency thereof. Tenant will not do or suffer to be done in or upon the Premises any act or thing which amounts to a nuisance or creates waste to the Premises.
- 7.3. Tenant shall not vacate nor abandon the Premises at any time during the Lease Term, nor permit the Premises to remain unoccupied for a period longer than ten (10) consecutive days during the Lease Term. If the Tenant shall abandon, vacate or surrender the Premises, or be dispossessed by process of law or otherwise, any personal property belonging to Tenant and left on the Premises shall after thirty (30) days' notice to Tenant and an opportunity to cure such default, at the option of the Landlord and in addition to all other remedies available to Landlord, be deemed abandoned and may be used, sold (without public notice or auction), destroyed or otherwise disposed of by Landlord without accountability whatsoever to Tenant.
- 7.4. Tenant agrees to hire and maintain a full-time (minimum of 32 hours per week) gallery manager to implement program activities set forth in paragraph 7.1.

7.5. **Nuisance/Hazardous Substances.**

- 7.5.1. Tenant shall not commit any nuisance, nor permit the admission of any objectionable noise, or odor, nor burn any trash or refuse within the Premises, nor bring on, deposit or allow to be brought on or deposited on the Premises any asbestos materials or any other Hazardous Substance or materials as the same may be defined by State, Federal or local laws, rules, statutes, or regulations; nor make any use of the Premises or any part thereof or equipment therein which is improper, offensive or contrary to any law.
- 7.5.2. Tenant shall not cause or commit any Hazardous Substance to be used, stored, generated or disposed of on or in the Premises by Tenant, Tenant's agents, employees, contractors, or invitees, without first obtaining Landlord's written consent. If Hazardous Substances are used, stored, generated, or disposed of on or in the Premises except as permitted above, or if the Premises become contaminated in any manner for which Tenant is legally liable, Tenant shall indemnify and hold harmless the Landlord

from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, but without limitation, a decrease in value of the Premises, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees, and costs) arising during or after the Lease Term and arising as a result of such contamination by Tenant. Without limitation of the foregoing, if Tenant causes or permits the presence of any Hazardous Substance on the Premises and such results in contamination, Tenant shall promptly, at its sole expense, take any and all actions necessary to return the Premises to the condition existing prior to the presence of any such Hazardous Substance on the Premises. Tenant shall first obtain Landlord's approval for any such remedial action.

- 7.5.3. As used herein "Hazardous Substance" means any substance which is toxic, ignitable, reactive, or corrosive and which is regulated by any local government, the State of Florida, or the United States Government. "Hazardous Substance" includes any and all material or substances which are defined as "Hazardous Substance" pursuant to State, Federal, or local government law. "Hazardous Substance" includes, but is not restricted to, asbestos, polychlorobiphenyls ("PCB's") and petroleum.
- 7.6. **AS IS.** Tenant agrees to accept the Premises in its physical condition "AS IS." Landlord has afforded Tenant the opportunity for full and complete investigation, examination and inspection of the Premises, and Tenant has personally inspected the Premises. Landlord makes, and has made, no representations or warranties to Tenant or Tenant's agents with respect to the Premises, except as are specifically set forth in this Lease Agreement unless otherwise agreed in writing, Landlord has made all corrections, repairs, improvements, alterations and additions to the Premises required by Tenant prior to entering into this Lease Agreement. Tenant shall not make any claim against Landlord for any defects known to Tenant, of which Tenant is aware as of the date of this Lease Agreement. Tenant has fully inspected the Premises to Tenant's satisfaction prior to signing this Lease Agreement and Tenant shall deliver the Premises at the expiration or earlier termination of this Lease Agreement in like order and condition, reasonable wear and tear excepted.
- 7.7. No artwork or other item that Landlord, in its reasonable discretion, deems inappropriate or objectionable may be displayed at, or viewed by the public on, the Premises. Prior to claiming a default under this paragraph, Landlord shall notify the Tenant that it claims an artwork or other item is inappropriate or objectionable, and, if Tenant no longer shows such artwork or other item, no default shall have occurred.
- 7.8. No smoking shall be allowed in the Building.
- 7.9. Tenant shall permit Landlord to use the Premises as follows:
 - 7.9.1. Landlord may reserve use of the Premises for no more than twelve (12) occasions during each calendar year. Landlord and Tenant shall cooperate

in scheduling such events so as to accommodate Landlord's desires for dates without interfering with Tenant's scheduled events.

7.9.2. Landlord may use the Premises on additional dates if all of the following conditions occur:

- a. Tenant has no event scheduled for the Premises during the time period Landlord desires to use the Premises and Landlord's use of the Premises would not interfere with pending events by Tenant (e.g., preclude Tenant from setting up for an event the following morning); and
- b. Landlord provides Tenant with at least 48 hours oral or written notice of the need to use the Premises.

7.9.3. Any use of the Premises by Landlord under this paragraph shall be at no cost to Landlord but Landlord shall clean the Premises following such use, repair any damage caused by Landlord, and assume all risk associated with such use.

7.10. At the request of Landlord, Tenant shall permit Landlord to sponsor certain events at the Premises, shall recognize Landlord as the sponsor thereof and shall promote the event as a Landlord-sponsored event.

8. **Improvements.**

8.1. **Name of Building.** On giving Tenant reasonable notice, Landlord shall have the right to change the name, number, or designation by which the Building is known.

8.1.1.1 Tenant may, subject to Landlord's written approval, which shall not be unreasonably withheld, change the name or designation by which the Building is known to accommodate reasonable requests from any sponsors of Tenant's activities.

8.1.1.2 On giving Tenant reasonable notice, Landlord shall have the right to change the name, number, or designation by which the Building is known, but shall not change the name or designation from any name or designation selected by Tenant pursuant to paragraph 8.1.1 without the written approval of Tenant, which shall not be unreasonably withheld.

8.2. **Tenant Improvements.**

8.2.1. ***Generally.*** Tenant may not make any improvements, alterations or additions to the Premises, including but not limited to cutting the walls, ceiling, roofs, or floors, changing the exterior color, or altering the architecture, without on each occasion obtaining the Landlord's prior written consent that may be withheld or conditioned upon such conditions as Landlord deems appropriate in its sole discretion. The Tenant shall submit to the Landlord plans and specifications for all alterations and additions at the time the Landlord's consent is sought.

8.2.2. *Consent of Landlord.* In the event Tenant desires to make any improvements, alterations or additions to the Premises, Tenant shall give written notice to Landlord accompanied by plans and specifications, and Landlord shall have 15 days after receipt of such written notice within which to state in writing any objections to such request, which objection may be based strictly on aesthetics. In the event Landlord shall fail to give written objections to Tenant within such 15 day period, Landlord shall be deemed to have approved such improvements.

8.2.3. *Completion of Tenant's Work.* Upon completion of any alterations, improvements or additions by Tenant, Tenant shall: (i) deliver to Landlord an affidavit by Tenant stating that Tenant's alterations, improvements or additions have been completed in accordance with the plans and specifications approved in writing by Landlord, and deliver to Landlord a final release of lien from Tenant's general contractor, together with an affidavit from such general contractor that all bills for labor and materials furnished to the Premises have been paid, which affidavit shall also state the names and addresses of all those in privity with such general contractor. It is understood that any deliberately false statement by Tenant therein shall constitute a breach of this Lease; (ii) deliver to Landlord the affidavit of the general contractor performing Tenant's alterations, improvements or additions, stating that Tenant's alterations, improvements or additions have been completed substantially in accordance with the plans and specifications approved by Landlord, that all subcontractors, sub-subcontractors, laborers and materialmen supplying labor or materials for Tenant's alterations, improvements or additions have been paid in full, and that all liens therefor that have been or might be filed have been discharged of record or waived, and that no security interests relating thereto are outstanding; and (iii) deliver to Landlord written certifications and approvals with respect to Tenant's alterations, improvements or additions and Tenant's right to use and occupy the Premises that may be required by any government authority, Landlord's mortgagees and any board of fire underwriters or similar body.

8.2.4. *Restoration.* Tenant shall promptly restore the Premises to the condition that existed prior to the making of any alterations, improvements or additions that have not been approved in writing by Landlord.

8.2.5. *Property of Landlord.* All fixtures installed, and permanent alterations, improvements or additions made, by Tenant shall become the property of Landlord upon the expiration or earlier termination of this Lease or, if so elected in writing by Landlord within 90 days prior to the expiration of the Lease term, Tenant shall remove all its trade fixtures and any alterations, improvements or additions which Landlord requests to be removed before surrendering the Premises and shall repair any damage to the Premises caused thereby. Tenant hereby agrees to waive any claim for improvement or betterment made to the Premises, upon expiration or termination of this Lease. Tenant's inventory, machinery, equipment and all signs installed by Tenant shall be excluded from the term "fixtures and permanent alterations, improvements or additions." Provided Tenant is not in default under the terms and conditions of this Lease, Tenant shall be entitled to

remove Tenant's machinery, equipment, inventory, signs, and other personal property (other than fixtures), on or before the date of expiration of this Lease. Failure of Tenant to remove such items within such time shall, at the sole option of Landlord, be considered an abandonment of any such items by Tenant, with time declared to be of the essence.

8.3. Signs.

- 8.3.1. Tenant may not remove the existing marquee sign currently located on the exterior of the Premises. Tenant, may, however, at its sole expense, change the text on such sign, pursuant to the consent process and other provisions of paragraph 8.2.
- 8.3.2. All signs must conform to all requirements of applicable codes and regulations and any restrictions or covenants concerning the Premises or the Property.

9. **Condition Of Premises.**

- 9.1. Tenant's Acceptance and Maintenance of Premises. Upon Tenant's occupancy of the Premises, Tenant will be deemed to have accepted the Premises in the condition they are in on that date. Subject to Landlord's obligations set forth in this Lease, Tenant agrees to maintain the Premises in the same condition, order, and repair as they are on that date, except for reasonable wear and tear arising from the use specified in this Lease.

9.2. Obligations to Repair.

- 9.2.1. Landlord will, at its own expense and risk, but subject to paragraph 9.3, maintain, repair or replace the foundation, exterior walls, ceilings, elevator and roof of the Premises, and any other non-routine repair or replacement of any capital component of the Premises the cost of which is reasonably anticipated to exceed \$2,500.00. Landlord is entitled to reimbursement from Tenant for any expenses reasonably incurred in connection with any maintenance, repair, or replacement required of Landlord under this paragraph 9.2.1 if the need for the maintenance, repair, or replacement resulted from the negligence or fault of Tenant or its agents, servants, officers, or employees.
- 9.2.2. Landlord will at its own expense and risk, maintain the trees in the Courtyard.
- 9.2.3. Tenant will, at its own cost and expense, perform all other maintenance, repairs and replacement which are not Landlord's responsibility, and replace broken glass in the Premises. Prior to making any such repairs or replacing broken glass, Tenant shall, where practical, advise Landlord by email or telephone (to be confirmed by email) of the need to make the repairs or replacement, and comply with the reasonable instructions of Landlord concerning such repairs or replacement; if Tenant is unable to so advise Landlord prior to making the repairs or replacement, it shall do so immediately after making the repairs or replacement.

- 9.2.4. Landlord shall not be liable for any damage or inconvenience that may arise through repair or alterations of any part of the Premises; provided that Landlord, to the extent practical, shall endeavor to make any repairs or alterations in such a manner to minimize any inconvenience to any Tenant.
- 9.2.5. If either party fails to perform its obligation to repair or maintain according to the provisions of the preceding subparagraphs above within a reasonable time after notice from the other party of the need for such repair or maintenance, the other party may, in addition to all other remedies available under this Lease, make the repairs or perform the maintenance, or have the repairs made or maintenance performed at its own expense. The party required to make the repair or to perform the maintenance shall, within ten days of demand of the other party, reimburse the other party for the reasonable expense of the repair or maintenance.

- 9.3. Notwithstanding paragraph 9.2.1, Landlord may, in lieu of performing the maintenance, repair or replacement obligations in paragraph 9.2.1, terminate this Lease if Landlord (through the Ocala City Council) determines that the cost of such maintenance, repair or replacement is excessive in light of the condition of the remaining Premises, the remaining duration of this Lease, the value of the Premises, and other considerations of the public interest, and pursuant to the following procedure:
 - 9.3.1. Prior to terminating the Lease, Landlord's staff shall provide Tenant with notice of its intent to recommend that the Ocala City Council terminate this Lease under paragraph 9.3 as well as an itemization of the items that need to be maintained, repaired or replaced, and any documentation in Landlord's possession concerning the condition of such items and estimates of the cost of performing the work.
 - 9.3.2. Tenant shall thereafter have a period of 30 days to provide written notice to Landlord of its willingness to perform the work at its sole cost and expense and to Landlord's reasonable satisfaction. If Tenant provides such notice, Landlord shall not terminate this Lease under paragraph 9.3 based on the need for such work, and Tenant shall thereafter promptly commence such work and pursue them with due diligence.
 - 9.3.3. If Tenant does not provide such notice, Landlord's staff will provide a notice to Tenant that it is recommending that the Ocala City Council terminate this Lease under paragraph 9.3. Such notice shall be provided to Tenant at least 10 days' prior to the City Council meeting at which the renewal will be considered. Tenant will be provided with an opportunity to address City Council at such meeting. The decision of whether to terminate this Lease shall be determined by majority vote of the Ocala City Council at such meeting or any continuation thereof.
- 9.4. Damage to Premises. On the Landlord's demand, the Tenant shall pay for all damages the Premises, the Building or any portion thereof that are caused by the act or neglect of the Tenant, its invitees, or any persons in the Tenant's employ or control.

- 9.5. **Condition at End of Term.** Except as set forth in paragraph 8.2.5, at the earlier of the expiration of this Lease term or the termination of this Lease, Tenant shall surrender the Premises in the same condition as the Premises were in upon delivery of possession to the Tenant under this Lease, reasonable wear arising from Tenant's permitted use of the Premises as specified herein excepted, and shall surrender all keys for the Premises to Landlord. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease.
- 9.6. **Damage to Premises.** Except for the negligence of Landlord or Landlord's employees, agents or contractors, Landlord shall not be responsible for any damage to property of Tenant or of others located in or about the Premises or the Common Areas, nor for the loss of or damage to any property of Tenant or of others by theft or misappropriation or otherwise. Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or leaks from any part of the Premises or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatever nature. Landlord shall not be liable for any such damage caused by occupants of adjacent property, occupants of the Building, or the public, except for any latent defect in the Premises or the Building.

10. **Entry and Inspection of Premises.**

- 10.1. The Landlord is entitled to enter the Premises during all reasonable hours for the following reasons:
 - 10.1.1. To provide services or fulfill other obligations hereunder.
 - 10.1.2. To examine the Premises.
 - 10.1.3. To make all repairs, additions, or alterations that the Landlord or agent deems necessary for safety, comfort, or preservation of the Premises or of the building.
 - 10.1.4. To display: a "For Sale" sign on the Premises at any time; and any time within six (6) months prior to the expiration of the term of this Lease, a "For Rent" and/or "For Lease" sign(s), and all of such signs shall be placed upon such part of the Premises, as Landlord shall require. Subject to approval by Tenant as to time and date, such approval not to be unreasonably withheld by Tenant, Landlord or Landlord's designated agent may show the Premises to prospective purchasers or Tenants.
 - 10.1.5. To remove signs, fixtures, alterations, or additions that do not conform to this Lease.
- 10.2. Landlord shall at all times have and retain a key with which to unlock all doors in and on the Premises, excluding Tenant's vaults, safes and file cabinets.
- 10.3. Landlord shall have the right to use any means that Landlord may deem proper to open doors in an emergency to obtain entry to the Premises. Tenant waives any

claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss in, upon, or arising from Landlord's entry onto the Premises in an emergency.

- 10.4. Tenant shall allow entry, during normal business hours, by authorized government representatives or representative of insurance companies to make inspections of the Premises for public health and safety, or insurance, purposes.
- 10.5. Any entry to the Premises obtained by Landlord for any of the above stated purposes and by any of such means, or otherwise, shall not be construed or deemed a forcible or unlawful entry onto the Premises, or an eviction of Tenant from the Premises or any part of the Premises.

11. **Insurance.**

- 11.1. **Liability.** Tenant agrees that Landlord shall not be held responsible or liable to Tenant, Tenant's employees, customers, invitees, licensees, or others for any damage to personal property or personal injury caused by or arising out of Tenant's operation, conduct and use of the Premises, or the acts or omissions of Tenant, its employees, clients, invitees, licensees or others or by catastrophe. Tenant shall hold the Landlord harmless and indemnify Landlord from and against any and all liability, damages, out of pocket costs and reasonable attorneys' fees, injury, actions or causes of action whatsoever suffered or occasioned upon the Premises or arising out of the operation, conduct and use of the Premises, except those caused or created by Landlord its agent, employees and contractors.

11.2. **Comprehensive, Fire, and Extended Insurance on Premises.**

11.2.1. The Tenant shall maintain the following insurance coverage:

- a. General Liability Insurance with combined single limits of not less than \$1 million per occurrence and \$2 million aggregate shall be provided and maintained by the Tenant. The Landlord shall be shown as additional insured.
- b. Extended coverage insurance on the improvements presently existing or subsequently built on the Premises. The insurance must be for the full insurable value of the improvements against loss or damage by fire and any other risks that may be insured now or in the future by extended coverage. These risks include but are not limited to flood and windstorm. All such insurance must provide that the proceeds are to be paid as follows: \$1.00 shall be paid to Tenant; and the remainder shall be paid to Landlord. If the Tenant fails to have these insurance policies issued, the Landlord may obtain them and may pay premiums for them when payment is due. On the Landlord's demand, the Tenant shall repay the Landlord for the premiums so paid.

11.2.2. Insurance of the Tenant shall include or be endorsed to include a severability of interest/cross liability provision so that the Landlord, where named as additional insured, will be treated as if a separate policy were in existence but without increasing the policy limits.

- 11.2.3. The Tenant's deductibles/self-insured retentions shall be disclosed to the Landlord and may be disapproved by the Landlord. The Tenant is responsible for the amount of any deductible or self-insured retention.
- 11.2.4. These insurance requirements shall not relieve or limit the liability of the Tenant. The Landlord does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Tenant's interest or liabilities.
- 11.3. Required Provisions of Insurance. Landlord and its designees must be named as additional insured in all policies of insurance. All policies must be delivered to Landlord, together with evidence of premium payment, not less than 10 days before the start of the Lease term. All renewal policies must be delivered to Landlord not less than 30 days before expiration of the policy. No policy of insurance will be subject to cancellation or reduction in amount unless at least 30 days' written notice is given to Landlord. All insurance required hereunder shall be in addition to insurance maintained by Tenant on other locations, or shall provide separate limits of liability for the Premises.
- 11.4. Prohibited Conduct Effecting Insurance. Tenant may not perform or fail to do any act with respect to the Premises, may not use or occupy the Premises, and may not conduct or operate the Tenant's business, in any manner that causes Landlord's insurance carriers to void or suspend any insurance, or that causes them to increase the premiums above the amounts that would usually have been in effect for the occupancy under this Lease. Tenant may not permit or suffer another person to do so with respect to the Premises. Landlord agrees that Tenant's use as of the commencement date shall not be deemed to cause any such cancellation or increase.
- 11.5. Tenant's Insurance. Tenant shall be responsible for carrying such insurance as Tenant may desire to protect Tenant's own equipment, contents, personal property and other property on the Premises, and business loss insurance.
- 11.6. Indemnification. Tenant agrees to indemnify and save Landlord harmless from and against any and all liabilities or damages for any injury to or death of any person or persons or damage to property caused by the negligence or willful misconduct of Tenant, its invitees, agents and employees, or by a default by Tenant under this Lease. Tenant agrees to indemnify Landlord against all loss, claims, fines, penalties or damages resulting from any generation, use, treatment, storage or release of any hazardous or toxic materials or substances or wastes at the Premises during the Lease Term or resulting from any violation during the Lease Term of any environmental laws, rules or regulations applicable to the Premises or any operation conducted thereon. Tenant's grant of indemnity to Landlord hereby survives expiration of this Lease.
- 11.7. Waiver of Subrogation. Landlord and Tenant hereby release each other from any and all liability or responsibility (to the other or any one claiming through or under them by way of subrogation or otherwise) for any loss or damage to property caused by fire or any of the extended coverage or supplementary insurance contract casualties covered by the insurance on the Premises, even if such fire or other casualty shall have been caused by the fault or negligence of the other party or

anyone for whom such party may be responsible; provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the releasor's insurance policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair or prejudice the right to the releasor to recover thereunder. Landlord and Tenant each agree that their policies will include such clause or endorsement so long as the same is obtainable and if not obtainable, shall so advise the other in writing and such notice shall release both parties from the obligation to obtain such a clause or endorsement.

12. **Liens and Mortgages on Premises.**

- 12.1. **Construction Liens Incurred by Tenant.** The Tenant shall not subject the Landlord's interest or estate to any liability under any construction or other lien law. Upon request of Landlord, Tenant agrees to execute, acknowledge and deliver without charge a memorandum of lease in recordable form, containing a confirmation that the interest of Landlord shall not be subject to liens as set forth herein. No provisions of this Lease may be construed as to imply that the Landlord has consented to the Tenant incurring such a lien. If any construction lien, lis pendens, or other lien is filed against the Premises or the building for any work, labor, services, or materials that a lienor claims to have performed or furnished for the Tenant or any person holding through or under the Tenant, the Tenant must cause that lien to be canceled and discharged of record within thirty days after the Landlord gives notice to the Tenant. If such a lien is filed, the Landlord may satisfy the lien after giving notice to the Tenant as provided in this paragraph and without limiting the Landlord's rights or remedies under this Lease. The Tenant shall promptly reimburse the Landlord for any amounts expended to satisfy the lien and for any expenses incurred in connection with that satisfaction. The Tenant has no right of setoff against the Landlord. The Tenant's failure to cancel and discharge of record any lien under to this paragraph is a default by the Tenant under the provisions of this Lease.
- 12.2. **Subordination and Attornment.** This Lease is subject and subordinate to all existing and future mortgages that may affect the real property of which the Premises is a part, to all existing or future advances made under all the mortgages, and to all renewals, modifications, consolidations, and replacements of the mortgages. Although the Tenant need not take any action to render this subordination effective, the Tenant shall execute and deliver all further instruments that confirm this subordination as may be desired by the mortgage holders.
- 12.3. **Memorandum of Lease.** If so requested by the Landlord, the Tenant shall execute a short form or memorandum of this Lease, which may, in the Landlord's discretion be recorded in the Public Records for the purpose of protecting the Landlord's estate from construction liens, as provided in Section 713.10, Florida Statutes. In the event such short form or Memorandum of Lease is executed, the Tenant shall simultaneously execute and deliver to the Landlord an instrument terminating the Tenant's interest in the Property upon which the Premises are located, which instrument may be recorded by the Landlord at the expiration of the term of this Lease, or such earlier termination hereof. The Deposit paid by the Tenant may be used by the Landlord for the satisfaction or transfer of any construction claim of lien, as provided in this paragraph.

13. **Assignments and Sublets.**

- 13.1. **Permissible Assignments and Sublets.** The Tenant may not assign this Lease, nor sublet, license, or grant any concession for the use of the Premises, to another person without obtaining the Landlord's prior written consent. The Landlord may withhold such consent in the exercise of its sole discretion.
- 13.2. **Continued Liability of Tenant.** If the Tenant makes any assignment, sublease, license, or grant of a concession under the preceding paragraph, Tenant will nevertheless remain unconditionally liable for the performance and financial obligations of all of the terms, conditions, and covenants of this Lease.
- 13.3. **Landlord's Right to Collect Rent From Any Occupant.** If the Tenant is in default on any payments under this Lease and any other person is subletting or occupying the Premises, or if the Tenant assigns this Lease, the Landlord may collect rent from the assignee, subtenant, or occupant. The Landlord may apply the net amount collected to the rent required under this Lease. The Landlord's collection of the rent does not waive the covenant against assignment and subletting under this Lease nor does it constitute the Landlord's acceptance of the assignee, subtenant, or occupant as a tenant, nor the Landlord's waiver of the Tenant's further performance of the covenants contained in this Lease.
- 13.4. **Assignment by Landlord.** If Landlord assigns this Lease in conjunction with a transfer of the ownership of the Property, then the rights and obligations of the Landlord shall be automatically transferred and assigned to the transferee of the Property, and the Tenant shall therefore look solely and exclusively to the assignee of the Landlord for all future performances by the Landlord. Such transfer and assignment shall operate as a complete release of the Landlord under this Lease.

14. **Default By Tenant.**

- 14.1. **Events of Default.** Upon the happening of one or more of the events set forth below (any of which is referred to hereinafter as an "Event of Default"), Landlord shall have any and all rights and remedies hereinafter set forth:
 - 14.1.1. If Tenant should fail to pay any one or more payments of rent as and when the same become due;
 - 14.1.2. If Tenant violates any other term, condition or covenant herein on the part of Tenant to be performed and such failure continues for 30 days after Landlord provides Tenant with written notice of such failure; provided, however, if the default is one which cannot be cured within such time period, Tenant will have such additional time as may be required so long as Tenant diligently pursues the remedy. Notwithstanding the foregoing, if Tenant has previously violated a term, condition, or covenant of this Lease, and is provided with notice of and an opportunity to cure such violation, any subsequent violation of the same term, condition, or covenant shall constitute an Event of Default without further notice or opportunity to cure;

14.1.3. If a petition in bankruptcy under any present or future bankruptcy laws (including but not limited to reorganization proceedings) be filed by or against the Tenant and such petition is not dismissed within thirty (30) days from the filing thereof, or if Tenant is adjudged a bankrupt;

14.1.4. If an assignment for the benefit of creditors is made by Tenant; or

14.1.5. If of an appointment by any court of a receiver or other court officer of Tenant's property and such receivership is not dismissed within thirty (30) days from such appointment.

14.2. Landlord's Remedies.

14.2.1. Generally. If any Event of Default occurs, Landlord shall have the right, at its option, to pursue one or more of the following remedies, in addition to all other remedies available at law or equity:

- a. Accelerate all remaining rent due for the duration of the term of the Lease;
- b. Terminate this Lease and thereupon reenter and take possession of the Premises with or without legal process;
- c. Without terminating this Lease, reenter and relet the Premises, or any part thereof, with or without legal process, for the account of Tenant upon such terms and conditions as Landlord may deem advisable or satisfactory.

1). If the premises are relet, the rents received on such reletting shall be applied:

- a). First, to the expenses of such reletting and collection including but not limited to, necessary renovation and alterations of the Premises, reasonable attorney's fees, any real estate commissions paid;
- b). Second, toward payment of all sums due or to become due Landlord hereunder; and
- c). Third, if a sufficient sum shall not be thus realized or secured to pay such sums and other charges due Landlord, then, Tenant shall pay Landlord any deficiency monthly, and Landlord may bring an action therefor as such monthly deficiency shall arise.

2). Nothing herein, however, shall be construed to require Landlord to reenter and relet in any event. Landlord shall not, in any event, be required to pay Tenant any surplus of any sums received by Landlord on a reletting of the Premises in excess of the rent provided in this Lease.

- d. Remove all or any part of the Tenant's property from the Premises and any property removed may be stored in any public warehouse or elsewhere at the cost of, and for the account of Tenant, and Landlord shall not be responsible for the care or safekeeping thereof whether in transport, storage or otherwise. Tenant hereby waives any and all claim against Landlord for loss, destruction and/or damage or injury that may be occasioned by any of the aforesaid acts.
- e. No reentry or taking possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention is given to Tenant. Notwithstanding any such reletting without termination, Landlord may at all times thereafter elect to terminate this Lease for such previous default. Tenant shall allow any such reentry without hindrance, and Landlord shall not be liable in damages for any such reentry, or guilty of trespass or forcible entry.

14.2.2. Landlord May Cure Tenant's Defaults. If Tenant shall default in the performing of any covenant or condition of this Lease, Landlord may, at its sole discretion, perform the same for the account of Tenant and Tenant shall reimburse Landlord for any expense incurred therefore together with interest thereon at the highest legal rate. This provision imposes no duty on Landlord nor waives any right of Landlord otherwise provided in this Lease.

15. **Default By Landlord.**

- 15.1. Landlord's Default. Landlord will be deemed in default of this Lease if Landlord fails to perform or observe any agreement or condition of this Lease on its part to be performed or observed and if such failure continues for thirty days after Tenant provides Landlord with written notice of such failure. If the default is one that cannot be cured within thirty days, Landlord will have such additional time as may be required so long as Landlord diligently pursues the remedy.
- 15.2. Remedies upon Landlord's Default. If Landlord defaults in the performance of any of the obligations or conditions required to be performed by Landlord under this Lease, Tenant may, after giving notice as provided above, either cure the default and deduct the cost thereof from rent subsequently becoming due hereunder, or elect to terminate this Lease. In that event, this Lease shall terminate upon the date specified in the notice, unless Landlord has meanwhile cured the default to the satisfaction of Tenant.

16. **Destruction or Damage to Leased Premises from Casualty.**

- 16.1. In the event of any damage to the Building or any part thereof, which damages are not so extensive as to prohibit Tenant's operation of its business from the Building for a period in excess of fourteen (14) days, which damage: (a) Tenant is not required to repair under the terms hereof, (b) is caused by fire, wind, water, or similar casualty, and (c) is covered and insured against by the extended fire insurance coverage agreed to be maintained during the term or until the sooner termination hereof by Tenant, this Lease shall remain in full force and effect and

Tenant shall pay each month, as base rental for such part of the Premises as shall be reasonably fit for use and occupancy by Tenant until the damage be repaired, an amount in the same proportion to the base rent reserved herein as the area of the Building reasonably fit for use and occupancy by Tenant bears to the total area of the Building. Landlord shall have no obligation or liability whatsoever to Tenant because of such casualty or for interruption in Tenant's quiet enjoyment (unless the destruction was caused by negligence of Landlord) and Tenant shall not be entitled to, nor recover any damages whatsoever against Landlord for any loss occasioned by such injury or damage, (unless the destruction was caused by the negligence of Landlord), but Landlord shall with reasonable diligence after the occurrence of the event causing such damage, cause such Building to be repaired and restored to the same general condition to which it existed at the time of the occurrence of such event no later than one hundred twenty (120) days thereafter. The Landlord shall not in any event be under any obligation to repair or restore such Building if the damage is substantial or destruction occurs during the last one (1) year of the original term of this Lease or during any renewal term of this Lease unless the Tenant agrees to extend the term of this Lease for at least five (5) years from the date the Building is completely repaired or restored. Should Tenant elect not to extend this Lease, it shall give written notice to Landlord within thirty (30) days of the occurrence and this Lease shall terminate as of the date of such notice.

- 16.2. If the Building is destroyed or damaged by fire or other casualty during the Lease term and the Building is rendered untenantable, Landlord shall have the option to either rebuild the Building, or terminate this Lease. Such option shall be exercised by notice in writing to the Tenant within 90 days following the casualty.
 - 16.2.1. If Landlord elects to rebuild, then Landlord shall proceed without unnecessary delay in such rebuilding. During such period of repair, this Lease shall remain in full force and effect but the base rent hereunder shall abate: (a) entirely, if the whole Building is untenantable and Tenant determines in good faith that Tenant cannot economically conduct business from the undamaged portion of the Building; and (b) proportionately to the extent of the damage, if only a portion is untenantable and Tenant is able to conduct its business from the undamaged portion of the Building. Such abatement shall cease at such time as the Building shall be restored to a tenantable condition.
 - 16.2.2. If Landlord elects to terminate this Lease, all obligations of Tenant to pay base rent from the date of the casualty shall be deemed forgiven, and the Lease shall be cancelled effective the date of Landlord's notice of such termination.
- 16.3. The reduction for abatement of base rent under this paragraph shall not affect Tenant's obligation to pay additional rent (as defined in paragraph 4.1) hereunder.
17. **Quiet Enjoyment.** The Landlord covenants that so long as the Tenant is not in default beyond any applicable cure period, the Tenant is entitled to peaceful and quiet possession and enjoyment of the Premises for the Lease term, subject to the Lease provisions.
18. **Eminent Domain.**

- 18.1. If the whole or a "Substantial" part of the Premises hereby leased shall be taken by any public authority under the power of eminent domain then at the option of Tenant the term of this Lease shall cease as of the day possession shall be taken by such public authority and the rent shall be paid up to that day with a proportionate refund by Landlord of such rent as may have been paid in advance. "Substantial" shall be defined as the taking of any part of the Improvements or twenty percent (20%) or more of the Premises.
- 18.2. If an "Insubstantial" part of the Premises shall be taken under eminent domain, all of the Lease Terms herein provided shall continue in effect.
- 18.3. Except as provided in this paragraph, no other taking, appropriation or condemnation shall cause this Lease to be terminated. No such appropriation or condemnation proceeding shall operate as or be deemed an eviction of Tenant or a breach of Landlord's covenant of quiet enjoyment.
- 18.4. All damages awarded and any good faith deposit made by the condemning authority for such taking under the power of eminent domain whether for the whole or a part of the Premises shall belong to and be the sole property of Landlord whether such damages shall be awarded as compensation for the taking of the fee or diminution in value to the leasehold or to the fee of the Premises; provided, however, that Tenant shall be entitled to any part of a damage award or separate award for Tenant's business damages. Any award (excluding business damages) will be paid to Landlord, and amount of the purchase price to be paid by Tenant upon the exercise of its option will be reduced accordingly.

19. **Subordination.**

- 19.1. This Lease shall be subject to and subordinate to the lien of any present or future mortgage or mortgages upon the Premises or any property of which the Premises are a part, irrespective of the time of execution or the time of recording of such mortgage or mortgages. The word "mortgage" as used in this Agreement includes mortgages, deeds of trust or other similar instruments and their modifications, extensions, renewals and replacements and any modifications, extensions, renewals and replacements and any advancements under such instruments. Tenant covenants and agrees to execute upon demand of the Landlord, instruments subordinating this Lease to the lien or any mortgage or mortgages in accordance with the provisions of this paragraph.
- 19.2. If a mortgage holder or a purchaser at foreclosure succeeds to the Landlord's rights under this Lease, the Tenant agrees to attorn to any owner, holder, purchaser, or Tenant of the real property from time to time, at the demand of the owner of the real property, and on the executory terms and conditions of this Lease existing at that time.
- 19.3. Tenant shall, at any time, and from time to time, upon not less than ten (10) days prior written notice from Landlord, execute, acknowledge and deliver to Landlord a statement, in form reasonably required by Landlord: (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified, is in full force and effect) and the dates to which the rental and other charges are paid in advance, if

any; (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any as are claimed; and (iii) any other certification reasonably required by any mortgagee, including agreements of no offset and release of liability as to such mortgagee and its successors. Any such statement may be relied upon by any prospective purchaser or mortgagee of all or any portion of the Real Property of which the Premises are a part. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant, (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one (1) month's rental has been paid in advance.

- 19.4. Tenant hereby irrevocably appoints Landlord as Attorney-in-Fact for the Tenant with the power to execute and deliver, without subjecting Landlord to liability of any kind, such instrument or instruments for and in the name of Tenant, in the event Tenant shall fail to execute such instruments within ten (10) days after written notice to do so is given to Tenant.

20. Effect on Prior Lease.

- 20.1. Except as expressly set forth in this paragraph 20, this Lease replaces the Prior Lease in its entirety and therefore the Prior Lease shall have no further force or effect.
- 20.2. Notwithstanding paragraph 20.1:
 - 20.2.1. Tenant shall remain obligated to repair any damages caused to the Premises during the term of the Prior Lease.
 - 20.2.2. Tenant's indemnification obligations under paragraph 11.6 of the Prior Lease shall remain effective.
 - 20.2.3. Any Deposit placed by Tenant pursuant to the Prior Lease shall remain in the possession of Landlord and shall constitute the Deposit hereunder.

21. Miscellaneous Provisions.

- 21.1. Recording of Lease. Except as set forth in paragraph 12.3, neither this Lease nor any notice or memorandum of this Lease shall be recorded in the public records.
- 21.2. Accord and Satisfaction. If the Tenant pays or the Landlord receives any amount that is less than the amount stipulated to be paid under any Lease provision, that payment is considered to be made only on account of an earlier payment of that stipulated amount. No endorsement or statement on any check or letter may be deemed an accord and satisfaction. The Landlord may accept any check or payment without prejudice to the Landlord's right to recover the balance due or to pursue any other available remedy.
- 21.3. RADON GAS. 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.

21.4. Broker Representation.

21.4.1. Landlord covenants to and represents to Tenant that Landlord has not dealt with any real estate broker, sales person, or agent in connection with this Lease, and agrees to indemnify and hold harmless the Tenant from and against any real estate brokers claiming by, through or under Landlord.

21.4.2. Tenants covenants to and represents to Landlord that Tenant has not dealt with any real estate broker, sales person, or agent in connection with this Lease, and agrees to indemnify and hold harmless Landlord from and against any real estate brokers claiming by, through or under Tenant.

21.5. Entity Tenant. If Tenant is a corporation or other entity, the persons executing this Lease on behalf of Tenant hereby covenant, represent and warrant that Tenant is duly organized or duly qualified (if foreign) entity and is authorized to do business in the State where the Premises is located (a copy of evidence thereof to be supplied to Landlord upon request); and that the person or persons executing this Lease on behalf of Tenant is duly authorized to execute, acknowledge, and deliver this Lease to Landlord (a copy of a resolution to that effect to be supplied to Landlord upon request).

21.6. Enforcement. All of the terms and provisions of this Lease, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, heirs, estates, successors and permitted assigns.

21.7. Exclusive Venue. The parties agree that the exclusive venue for any litigation, suit, action, counterclaim, or proceeding, whether at law or in equity, which arises out of concerns, or relates to this Lease, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, shall be in Marion County, Florida.

21.8. JURY WAIVER. EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF CONCERNs, OR RELATES TO THIS LEASE, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS LEASE WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED

UPON ANY ORAL REPRESENTATIONS TO OR BY THE OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

21.9. Notices.

21.9.1. All notices, requests, consents and other communications (each a "Communication") required or permitted under this Agreement shall be in writing (including faxed Communications) and shall be (as elected by the person giving such Communication) hand delivered by messenger or courier service, faxed, or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed to the following or to such other addresses as any party may designate by Communication complying with the terms of this paragraph:

a. If to Tenant:

- 1). Mailing Address: Marion Cultural Alliance, Inc., Post Office Box 2915, Ocala FL 34478.
- 2). Physical Address: Marion Film and Visual Arts Foundation, Inc., 23 SW Broadway Street, Ocala, Florida, 34478.

b. If to Landlord: City Manager, 110 SE Watula Street, Ocala, FL 34471

- 1). With a copy to: City Planning Director, 201 SE Third Street (2nd Floor) Ocala, FL 34471.

21.9.2. Each such Communication shall be deemed delivered:

- a. On the date delivered if by personal delivery;
- b. On the date of facsimile transmission if by facsimile; and
- c. If the Communication is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; (b) the date upon which delivery is refused; (c) the date upon which Communication is designated by the postal authorities as not having been delivered; or (d) the third business day after mailing.
- d. Notwithstanding the foregoing, service by personal delivery, or by facsimile sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.

21.9.3. If a Communication is delivered by multiple means, the Communication shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.

21.9.4. If the above provisions require Communication to be delivered to more than one person (including a copy), the Communication shall be deemed

delivered to all such persons on the earliest date it is delivered to any of such persons.

- 21.10. Governing Laws. This Lease and all transactions contemplated by this Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to principles of conflicts of laws.
- 21.11. Attorney's Fees. If any legal action or other proceeding (including, without limitation, appeals or bankruptcy proceedings) whether at law or in equity, which: arises out of, concerns, or relates to this Lease, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby; or is brought for the enforcement of this Lease, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Lease, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses even if not taxable as court costs, incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.
- 21.12. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 21.13. Remedies. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.
- 21.14. Severability Clause. Provisions contained in this Lease that are contrary to, prohibited by or invalid under applicable laws or regulations shall be deemed omitted from this document and shall not invalidate the remaining provisions thereof.
- 21.15. Waiver.
 - 21.15.1. A failure to assert any rights or remedies available to a party under the terms of this agreement, or a waiver of the right to remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under this agreement, unless such waiver of such right or remedy is contained in a writing signed by the party alleged to have waived his other rights or remedies.
 - 21.15.2. No payment by Tenant or receipt by Landlord or its agents of a lesser amount than the rent and other charges stipulated in this Lease shall be deemed to be other than a payment on account thereof, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord or its agents may accept such check or payment without prejudice to Landlord's right to recover the balance of the amount due or to pursue any other remedy provided in this Lease or by applicable law.

21.16. Entire Understanding. This Lease represents the entire understanding and Lease between the parties with respect to the subject matter hereof, and supersedes all other negotiations (if any) made by and between the parties. The provisions of this Lease may not be amended, supplemented, waived, or changed orally but only by a writing making specific reference to this Lease signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought.

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SIGNATURES START ON NEXT PAGE**

IN WITNESS WHEREOF, the parties have executed this Lease on the dates set forth below.

LANDLORD

CITY OF OCALA, a Florida municipal corporation

By: Jay A. Musleh
Jay A. Musleh
President, Ocala City Council

Witness

Roseann J. Fusco
Print Witness Name

Witness

Helen Ruano
Print Witness Name

ATTEST:

Angel B. Jacobs
City Clerk

Approved as to form and legality

Patrick G. Gilligan
City Attorney



ACCEPTED BY CITY COUNCIL
October 20, 2015
DATE
OFFICE OF THE CITY CLERK

COPY

TENANT

Marion Cultural Alliance, Inc., a Florida not for
profit corporation

By: Angie Lewis
Angie Lewis as President

Jeanne E. Bowman
Witness

Jeanne E. Bowman
Print Witness Name

Jennifer L. Lewis
Witness

Jennifer L. Lewis
Print Witness Name

EXHIBIT A

The South 61 feet of the East 47 feet of the West 57 feet of Lot 3, Block 45, OLD SURVEY OF THE CITY OF OCALA, FLORIDA, as recorded in Plat Book E, page 1, public records of Marion County, Florida.

and

Commencing at the Southeast corner of the West 57 feet of Lot 3, Block 45, OLD SURVEY OF THE CITY OF OCALA, FLORIDA, as recorded in Plat Book E, page 1, public records of Marion County, Florida, thence N. 00°00'13" E. along the East boundary of said West 57 feet of Lot 3 a distance of 61.00 feet to the Northeast corner of the South 61 feet of the West 57 feet of said Lot 3; thence departing from said East boundary S. 89°52'54" E. 18.71 feet; thence S. 00°05'47" W. 9.60 feet; thence S. 89°52'54" E. 12.11 feet; thence S. 00°07'39" E. 1.23 feet; thence N. 89°52'21" E. 11.70 feet; thence S. 00°05'55" E. 50.22 feet to an intersection with the South boundary of aforesaid Lot 3; thence N. 89°52'54" W. along said South boundary 42.60 feet to the Point of Beginning.

SUBJECT TO: Taxes for the year 1994 and subsequent years; Party Wall Agreement recorded September 9, 1941, in Deed Book 243, page 501, public records of Marion County, Florida; the encroachments of other buildings on the subject property and encroachment of the subject property's building onto the City's property.

Subject to: (a) taxes for the current year; and (b) easements, limitations, covenants, restrictions and other matters of record, if any, but provided, however, that such reference shall not serve to reimpose same.

EXHIBIT B
SECURITY AGREEMENT

See attached.

E:\CITY\Planning\General\MCA Lease\2015\MCA Lease JG 9-22-15.docx

**PLEDGE OF, COLLATERAL ASSIGNMENT OF, AND SECURITY
AGREEMENT CONCERNING, CERTIFICATE OF DEPOSIT**

THIS AGREEMENT is entered into effective 10/20, 2015 between Marion Cultural Alliance, Inc., a Florida not for profit corporation ("Debtor"), whose mailing address is P.O. Box 1571, Ocala, FL 34478, and City of Ocala, a Florida municipal corporation (the "Secured Party"), whose mailing address is PO Box 1270, Ocala, FL 34478. Debtor and Secured Party agree as follows:

1. **Collateral.** For value received, Debtor pledges to Secured Party, collaterally transfers and assigns to Secured Party, and grants to Secured Party a security interest in, Certificate of Deposit Number 190008520 issued by Centerstate Bank ("Bank") in the original principal amount of \$ 8,000 -, and all substitutions, renewals, rollovers, replacements, extensions thereof, all additions thereto, and the products and proceeds thereof (all collectively the "Collateral").
2. **Obligations Secured.** This Collateral shall secure:
 - 2.1. All obligations of Debtor under that certain Lease between Debtor, as Tenant, and Secured Party, as Landlord, dated 10/20, 2015, as it may be hereafter amended or modified (the "Lease"). The Collateral shall serve as the security deposit due under the Lease.
 - 2.2. All expenditures incurred by Secured Party in the collection and enforcement of the Lease or this Security Agreement
3. **Control.**
 - 3.1. **Generally.** To perfect the security interest arising hereunder, the Debtor hereby delivers possession of the Collateral to Secured Party to provide Secured Party with "control" over the Collateral pursuant to Section 679.1061, Florida Statutes.
 - 3.2. **Possession.**
 - 3.2.1. To the extent that the Collateral is represented by certificates, Debtor has delivered or shall deliver the certificates to Secured Party and consents to Secured Party maintaining possession of the certificates, including replacements thereof, either personally or through an agent (including counsel for Secured Party who may, for such purpose, be deemed an agent of Secured Party). Further, upon request of Secured Party, Debtor will endorse the certificates for the Collateral in blank and deliver them to the Secured Party. If the Bank issues any replacements for the certificates, Debtor shall immediately deliver them to Secured Party.
 - 3.2.2. In the event that Bank will not permit any entity other than Bank to retain the certificates, Bank shall do so as bailee for Secured Party.
 - 3.3. **Payment of Loan.** On payment, as and when due, of all amounts secured hereby, the Secured Party will transfer to the Debtor all the Collateral and all rights or certificates received by the Secured Party hereunder.

4. **Warranties.** The Debtor warrants as follows:
 - 4.1. **Title.** The Debtor has full title to the Collateral free from any lien, security interest, encumbrance, or claim, and the Debtor will, at the Debtor's cost and expense, defend any action that may affect the Secured Party's security interest in, or the Debtor's title to, the Collateral.
 - 4.2. **Financing Statement.** No financing statement covering the Collateral or any part of it or any proceeds of it is on file in any public office and, at the Secured Party's request, the Debtor will join in executing all necessary financing statements in forms satisfactory to the Secured Party and will further execute all other instruments deemed necessary by the Secured Party.
5. **Sale, Lease, or Disposition of Collateral.** The Debtor will not, without the written consent of the Secured Party, sell, contract to sell, lease, encumber, or dispose of the Collateral, or any interest in it, until this Security Agreement and all debts secured by it have been fully satisfied.
6. **Taxes.** The Debtor will pay promptly when due all taxes and assessments on the Collateral or for its use and operation.
7. **Security Interest in Proceeds and Accessions.** The Debtor grants to the Secured Party a security interest in and to all proceeds, increases, substitutions, replacements, additions, and accessions to the Collateral. This provision shall not be construed to mean that the Debtor is authorized to sell, lease, or dispose of the Collateral without the consent of the Secured Party.
8. **Reimbursement of Expenses.** At the option of the Secured Party, the Secured Party may discharge taxes, liens, or interest, or perform or cause to be performed for and on behalf of the Debtor any actions and conditions, obligations, or covenants that the Debtor has failed or refused to perform. The Secured Party may pay for the preservation of the Collateral. All sums so expended, including but not limited to, attorneys' fees, court costs, agent's fees, or commissions, or any other costs or expenses, shall bear interest from the date of payment at the maximum rate of interest allowed by law. Reimbursement of these expenses shall be payable at the place designated in the Lease and shall be secured by this Security Agreement.
9. **Payment.** The Debtor will pay amounts owed under the Lease, and any other indebtedness secured by this Agreement in accordance with the terms and provisions of the indebtedness. In addition, the Debtor will repay immediately all sums expended by the Secured Party in accordance with the terms and provisions of this Security Agreement.
10. **Change of Residence or Place of Business.** The Debtor will promptly notify the Secured Party of any change of the Debtor's residence or state of incorporation, chief place of business, or place where records concerning the collateral are kept.
11. **Attorney in Fact.** The Debtor appoints the Secured Party as the Debtor's attorney in fact to do any and every act that the Debtor is obligated by this Security Agreement to do, and to exercise all rights of the Debtor in the Collateral. The Secured Party may make

collections, execute any and all papers and instruments, and do all other things necessary to preserve and protect the Collateral and to make collections and to protect the Secured Party's security interest in the Collateral.

12. **Time of Performance and Waiver.** In performing any act under this Security Agreement, time shall be of the essence. The Secured Party's acceptance of partial or delinquent payments, or the failure of the Secured Party to exercise any right or remedy, shall not be a waiver of any obligation of the Debtor or right of the Secured Party or a waiver of any other similar default that occurs later.
13. **Default.** The Debtor shall be in default under this Security Agreement on the occurrence of any of the following events or conditions:
 - 13.1. Default in the payment or performance of the Lease or this Agreement.
 - 13.2. Any representation or warranty of Debtor in this Agreement or in the Lease shall be or becomes materially inaccurate or misleading.
 - 13.3. The Debtor's death or termination of the Debtor's existence, whether by means of dissolution, merger, consolidation, or otherwise, the Debtor's insolvency or business failure, the appointment of a receiver for any part of the Collateral, any assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency law by or against the Debtor or any guarantor or surety for the Debtor.
 - 13.4. The creation of any lien (except a lien to Secured Party), on, the institution of any garnishment proceedings concerning, the seizure of, or the exercise by Bank of any security interest, lien or right of set-off concerning, the Collateral.
14. **Remedies.**
 - 14.1. On the occurrence of any default, and at any later time, the Secured Party may declare all obligations secured due and payable immediately and may proceed to enforce payment and exercise any and all of the rights and remedies provided by the Uniform Commercial Code as well as other rights and remedies either at law or in equity possessed by the Secured Party.
 - 14.2. Without limiting the foregoing, Secured Party shall have the following remedies:
 - 14.2.1. The right to immediately endorse and cash the Collateral without regard to the maturity thereof or penalties for early withdrawal.
 - 14.2.2. The right to notify Bank to make payments directly to Secured Party, and to take control of any proceeds of the Collateral.
 - 14.2.3. The right to demand, sue for collection and receive all monies due or to become due under the Collateral.
15. **Costs of Collection; Attorney's Fees.** If any dispute arises hereunder (whether or not suit be brought); or if any legal action or other proceeding (including, without limitation,

appeals or bankruptcy proceedings) whether at law or in equity, which arises out of, concerns, or relates to this agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby, or is brought for the enforcement of this agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this agreement, the successful or prevailing party or parties shall be entitled to recover all costs of collection including, without limitation, reasonable attorney's fees, court costs, all expenses (even if not taxable as court costs), and all collection agency expenses, commissions or charges, incurred in connection with the dispute, action or proceeding, in addition to any other relief to which such party or parties may be entitled.

16. **JURY WAIVER.** EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY THE OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

17. **Miscellaneous Provisions**

- 17.1. **Florida Law to Apply.** This Security Agreement shall be construed under and in accordance with the Uniform Commercial Code and other applicable laws of the State of Florida, and all obligations of the parties created under this Security Agreement are performable in Marion County, Florida.
- 17.2. **Parties Bound.** This Security Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns as permitted by this Security Agreement.
- 17.3. **Legal Construction.** In case any one or more of the provisions contained in this Security Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision of this Security Agreement and this Security Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.
- 17.4. **Definitions.** All terms used in this Security Agreement that are defined in the Uniform Commercial Code of Florida shall have the same meaning in this Security Agreement as in the Code.

IN WITNESS WHEREOF, the parties have executed this Agreement.

LANDLORD

City of Ocala, a Florida municipal corporation

Roseann J. Fusco
Witness

Roseann J. Fusco
Print Witness Name

Helen Ruano
Witness

Helen Ruano
Print Witness Name

ATTEST:

Angel B. Jacobs
Angel B. Jacobs
Interim City Clerk

Approved as to form and legality

Patrick G. Gilligan
Patrick G. Gilligan
City Attorney

By: Jay Danner

President, Ocala City Council



ACCEPTED BY CITY COUNCIL
October 20, 2015
DATE
OFFICE OF THE CITY CLERK

TENANT

Marion Cultural Alliance, Inc., a Florida not for profit corporation

By: Angie Lewis
as
President, MCA

Joanne E. Bowman
Witness
Joanne E. Bowman
Print Witness Name
Jennifer L. Toms
Witness
Jennifer L. Toms
Print Witness Name

ACKNOWLEDGMENT BY BANK

Centerstate Bank of Florida, a N.A.

("Bank"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby acknowledges and agrees as follows:

1. The Bank acknowledges that, pursuant to the foregoing instrument (the "Security Agreement"), Debtor has pledged to Secured Party that certain Certificate of Deposit Number 190008520 issued by Bank in the original principal of \$ 8,000 -, and all substitutions, renewals, rollovers, replacements, extensions thereof, all additions thereto, and the produces and proceeds thereof (all collectively "Certificate of Deposit"). A true and correct copy of the Certificate of Deposit, as it presently exists, is attached hereto.
2. The Certificate of Deposit may remain in Bank's possession only as limited agent and bailee holding the Certificate of Deposit on Debtor's behalf, until the indebtedness secured by the Security Agreement (the "Indebtedness") is paid in full, or that Secured Party may retain the Certificate of Deposit.
3. Unless and until written notice from Secured Party that all the Indebtedness has been paid in full, Bank will not, without Secured Party's written consent: (a) make any principal payments to Debtor or any party other than Secured Party, (b) fail to renew the Certificate of Deposit in accordance with its terms, (c) issue any replacements, substitutions or renewals of the Certificate of Deposit to any party other than Secured Party, or (d) accept any application for replacement of lost Certificate of Deposit from any person or entity other than Secured Party. Bank will immediately advise Secured Party of our receipt of any request for any of the foregoing. Interest earned on the Certificate of Deposit will be paid to the Debtor if so provided in the Certificate of Deposit and the Security Agreement unless Bank receives Secured Party's notice of the occurrence of a default (as defined in the Security Agreement), in which case such payments shall be payable to Secured Party. The Certificate of Deposit will be automatically renewed, on an annual basis, in accordance with its terms, unless Secured Party advises us otherwise in writing.
4. The Bank's records disclose a balance of \$ 8,000.00 under the Certificate of Deposit as of the date set forth below and no liens, assignments or claims of any kind against said Certificate of Deposit.
5. The Bank hereby waives any present or future rights it may have in and to the Certificate of Deposit, including, without limitation, liens, any rights of set-off or security interests, which might otherwise secure any of Debtor's indebtedness with Bank, and subordinates any interest that Bank may now or at any time have in the Certificate of Deposit to Secured Party's interests therein.
6. Upon receiving written notice of default from Secured Party, Bank will pay directly to Secured Party any and all amounts in respect of the Certificate of Deposit that would otherwise be payable to Debtor.

7. Bank understands that Secured Party is relying upon this Acknowledgment in connection with the transaction evidenced by the Security Agreement and that such reliance constitutes adequate consideration for this Acknowledgment.

CenterState Bank of FL, a
N.A.

SWalls

Witness

Tamara Walls

Print Witness Name

Charlotte Walker

Witness

Charlotte Walker

Print Witness Name

By: Maria Kusmierz
Maria Kusmierz as
VicePresident

Date: 10-15-15

CenterState Bank of Florida, NA

10/15/15

15:49:32

Certificate Inquiry

Current

Account Number	190008520	"Notes"	Short Name	MARION CULTURAL ALLI
Product Type	C08	CD 24 Month	Officer 1	MZK Maria Kusmierz
Branch Number	021	D/T Ocala	Officer 2	INB INDEPENDENT NATION

Balances	Dates	Codes	
Avail Int	12.94	Orig Issue 03/31/2009	Rate/APY .3000 % .30 %
Cur Bal	8,613.73	Orig Open 03/31/2009	Maturity Term 24M
Accrued *	1.06	Nxt Maturity 03/31/2017	Interest Period 1M
Penalty	12.72	Lst Renewal 03/31/2015	Interest Type Fixed
Pend W/H	.00	Nxt Int Pay 10/30/2015	Index C08 CD 24 Month
Close Out	8,601.01	Lst Int Pay 09/30/2015	Status O Open
Hold Amt	.00	Lst Activity 03/31/2009	Pen Type 180 180 DAY PENALTY
YTD Int	19.36	Lst Maint 06/16/2011	GL Type 08 CD 24 MONTH
YTD Fed	.00	Cust Contact 03/31/2009	Spc Attn
YTD ST	.00	Redeemed	Serial Nbr
Last Ren	8,600.79		Clsd Rsn Code
Per Diem	.07079		

* Accrued not in Close Out