

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and entered into to be effective as of the _____ day of _____ 2020, by and between the City of Pensacola, a municipal corporation of the State of Florida whose principal offices are located at 222 W. Main Street, Pensacola, FL 32502 (the "City" or "Lessor") and Monument to Women Veterans, Inc., (the "Lessee"), a Florida not-for-profit corporation whose principal offices are located at 1297 Ceylon Drive, Gulf Breeze, FL 32563.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, it is agreed by the City and the Lessee that the following Lease provisions shall be implemented:

1. STATEMENT OF PURPOSE

Lessor owns certain real property known as the Amtrak Train Station and parking lot, as more particularly described in Attachment A, attached hereto, City of Pensacola, Escambia County, Florida (the "Property"). Lessee intends to use the Property as a monument to women veterans, with a multipurpose museum, gift shop, conference center and cultural and educational center in furtherance of such purpose.

2. PREMISES LEASED

Lessor hereby leases to Lessee the Property subject to the terms, provisions, and conditions of this Lease.

3. TERM

The term of this Lease shall be for a period of thirty (30) years commencing on the date and year first above written.

4. RENEWAL

Upon mutual, written consent of the City and the Lessee, this lease may be extended with two additional ten (10) years renewal periods beyond its initial term. Renewal of this lease will not be unreasonably withheld by the Lessor.

5. TERMINATION

As reflected in Paragraph 6 (A), below, Lessee is being provided a period of Eighteen (18) months in which to engage in fundraising and construction planning activities in order to be in a position to renovate and improve the property in a manner suitable for its intended use. At the conclusion of the Eighteen (18) month period of time from the date of inception of this Lease, if the Lessee has failed to provide sufficient documentation to the Lessor of its financial, liquid assets in the amount of Eight Hundred Thousand Dollars (\$800,000.00) and a current, viable construction plan and timeline for Improvements to the Property, the Lessor may terminate this Lease in its entirety by giving Lessee written notice thereof. Lessor may make this determination in its sole

discretion. The Milestones in Paragraph 5 (A) below denote the method by which the assets are demonstrated.

A. Financial Milestones

At Six (6) months from the date of inception of this lease, Lessee shall provide to the Lessor sufficient documentation of financial assets in the amount of Three Hundred Thousand Dollars (\$300,000.00).

At Twelve (12) months from the date of inception of this lease, Lessee shall provide to the Lessor sufficient documentation of financial assets in the amount of Six Hundred Thousand (\$600,000.00), completed a 30% construction plan and complete timeline for property improvements.

At Eighteen (18) months from the date of inception of this lease, Lessee shall provide to the Lessor sufficient documentation of financial assets in the amount of Eight Hundred Thousand (\$800,000.00) and completed a 60% construction plan.

“In-kind” contributions or any other non-cash contributions will be evaluated per item on a case-by-case basis and accepted as an asset at the sole discretion of the Lessor. The “in-kind”, non-cash contributions shall not comprise more than 15% of the total amount of financial assets required in totality, or \$120,000.

6. LEASE PAYMENTS

A. Initial Lease Payments

The Lessor agrees to lease the subject property to Lessee at a monthly rate of \$1.00 for a period of Eighteen (18) months from commencement in order to provide Lessee with a reasonable period of time to obtain and secure the funding that will be required for renovation and improvement of the property in order effectively use it for its intended purposes.

B. Subsequent Lease Payments

Following the 18-month period of lease payments described in subsection A, above, the Lessor will establish the market rate lease amount for the property, and Lessee shall pay the market rate of lease payments. Credit for all documented funds which Lessee expends on Lessor-approved, improvements to the property will be applied towards the lease payments. It is contemplated that the Lessee will have in hand substantial funds on an ongoing basis for construction and improvements of the property, and that the expenditure of such funds for that purpose will fully satisfy the Lessee’s obligation to pay market rate lease payments.

C. Triple Net Lease

The parties agree that this is a triple net lease and that the Lessee is responsible for all expenses such as capital expenses, maintenance expenses, operation expenses, insurance, any applicable taxes and utilities.

D. Prior Approval

All expenditures for improvements and maintenance repairs and construction in the amount of \$10,000.00 or more shall receive prior approval from the Mayor or his designee. Lessee understands that approval of such improvements is necessary for credit towards the lease payments referenced in Paragraph 6 (B).

All improvements shall be completed to the satisfaction of the Lessor.

7. USE OF PREMISES

The Property shall be used by Lessee solely for the purposes described herein, and any other uses must be approved by the Mayor.

8. LESSEE'S ACKNOWLEDGEMENTS AND REPRESENTATIONS

Lessee represents to and covenants with Lessor that the representations made by it are true and correct and that Lessee shall use the Property only for such purposes as described.

9. CONSTRUCTION OF IMPROVEMENTS AND CONSTRUCTION PLANS

Lessee shall submit design plans and specifications for the Improvements on the Property to the Mayor or Mayor's designee for all improvements that will exceed the amount of \$10,000.00. Once the lessee has received approval from the Mayor or his designee, the lessor may commence with the improvement.

Lessee shall be fully responsible for the cost and development of the Improvements to the Property at Lessee's sole cost and expense, pursuant to the terms and conditions of this Lease Agreement.

10. TITLE TO IMPROVEMENTS

Title to Improvements that shall be placed upon the Property by Lessee shall vest in Lessor upon the completion of the Improvements, and Lessee acknowledges that it shall have no right to remove such fixed or permanent Improvements from the Property.

11. INSPECTION AND ACCESS TO PROPERTY

During the term of the Lease and any renewal or extension hereof, Lessee shall permit the representatives of Lessor access to the Property at all reasonable times deemed necessary for inspection. An inspection shall occur at least once per year by a representative of the City to document improvements and the condition of the property.

12. COVENANTS AND RESTRICTIONS

Lessor and Lessee agree that the following restrictions shall be covenants running with the land, and shall be binding on Lessor, Lessee, sublessees and the successors of the parties, and all other successors in interest to the Property, or any part thereof:

- A. That the Property shall be devoted only to the uses specified in this Lease or as approved in writing by Lessor.
- B. That the Lessee will maintain the exterior appearance (including landscaping) suitable to the area and the Property's uses.
- C. That in the event that the property, or any portion thereof, is required for use by Amtrak or related railroad purposes (including rail track repairs or similar), the Lessee will abate and terminate its use of the property on a temporary basis to the extent necessary to accommodate the requirements of Amtrak or any other railroad entity.

13. NO MORTGAGES OR ENCUMBRANCES

- A. Lessee shall not mortgage, encumber, or allow any liens to be placed against the Property or its leasehold interest therein.
- B. Lessee shall remove any liens or encumbrances placed against the Property on account of Lessee's activities or occupation of the Property during the term of this Lease or as it may be renewed. If Lessee fails to remove any such lien from the Property, within thirty (30) days of the recording or other reasonable notice of any lien or encumbrance, such failure shall constitute a breach of the Lease.

14. LESSOR'S WARRANTIES

Lessor warrants that Lessee may use and have the quiet enjoyment of the Property for its intended use, that Lessor has the right to enter into this Lease, and Lessee's possession will be superior to the assertions of third parties claiming title superior to Lessor (including lien claims).

15. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT IN FAVOR OF LESSOR

Lessee shall defend and indemnify Lessor, and save it harmless from any and all claims, suits, actions, damages, liability and expense in connection with loss of life, bodily or personal injury, or property damage arising from or out of any occurrence in, upon, at or about the Property or any part thereof, occasioned wholly or in part by any act or omission of Lessee, its successors and assigns, its agents, contractors, employees, servants, invitees, sublessees, licensees or concessionaires. The Lessee's obligation shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance.

16. INSURANCE REQUIRED

Lessee shall maintain insurance and provide Lessor with certificates in accordance with Attachment "B" during the life of this Lease Agreement as may be applicable under the circumstances. Lessor shall have the right to make reasonable increases to the minimum required limits of liability on Attachment "B" during the term of this Lease or any renewal or extension hereof. Lessee shall be responsible for all deductibles and self-insured retentions under its insurance policies.

17. NO DISCRIMINATION

Lessee agrees that it will not discriminate upon the basis of race, color, religion, national origin, sex, pregnancy, age, disability or handicap, familial status, marital status or any other legally protected class in the construction, subleasing, use, occupancy, or operation of the Property, or in the improvements to be erected thereon and that each contract, or agreement with respect thereto shall specifically contain the following provision:

"Equal Opportunity Provision"

- A. In the operation of the property, neither the Lessee nor any contractor or manager employed by Lessee shall discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, pregnancy, age, disability or handicap, familial status, marital status or any other legally protected class, and they shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, sex, pregnancy, age, disability or handicap, familial status, marital status or any other legally protected class. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Lessee setting forth the provisions of this Equal Opportunity Clause, and to cause any contractor, subcontractor or manager to do likewise.
- B. The Lessee and any contractor or manager shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, pregnancy, age, disability or handicap, familial status, marital status or any other legally protected class. They shall send to each labor union or representative of workers with which they, or any of them, have a collective bargaining agreement or other contract or understanding, a notice, to be provided by Lessee, advising the labor union or workers' representative of their commitments under this Equal Opportunity Clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

18. AD VALOREM TAXES AND UTILITIES

Lessee shall pay any and all ad valorem taxes, or other taxes that may be levied against the Property commencing as of the effective date hereof. Lessee shall pay all utilities for the Property.

19. WASTE

Lessee shall maintain the Property in a good, safe and substantial condition and shall use all reasonable precaution to prevent waste, damage or injury to the Property.

20. ENFORCEMENT OF LEASE, FORFEITURE DEFAULT, REMEDIES, NONWAIVER

Lessor may enforce the performance of this Lease in any manner provided by law, and this Lease shall be void upon the following events:

- A. If Lessee shall desert or vacate the Property;
- B. If default shall be made by Lessee in the payment of the Lease payments as specified in this Lease;
- C. If Lessee shall file a petition of bankruptcy, or make an assignment for the benefit of creditors, or be adjudicated a bankrupt, or take advantage of any insolvency act.

Lessor shall notify Lessee of any such default and of Lessor's intention to declare this Lease terminated which notice Lessor shall make in writing. Unless Lessee shall have removed or cured the default within ten (10) days if a monetary default or to maintain insurance as required by this Agreement or within thirty (30) days if a nonmonetary default, from the date of Lessor's notice of intention to declare the Lease terminated, this Lease shall come to an end as if the date established by notice from Lessor to Lessee, Lessor's agent or attorney shall have the right, without further notice or demand, to re-enter and remove Lessee and Lessee's property from the Property without being deemed guilty of any trespass.

The failure of Lessor to insist, in any one or more instances, on a strict performance of any of the terms or conditions of this Lease, or to exercise any option set forth in this Lease, shall not be construed as a future waiver or a relinquishment of the provision or option, but it shall continue and remain in full force and effect. The receipt by Lessor of rent, with knowledge of the breach of any term or condition hereof, shall not be deemed a waiver of the breach and no waiver by Lessor of any provision hereof shall be deemed to have been made unless expressed in writing and signed by Lessor.

21. NOTICES

All notices provided in this Lease shall be deemed sufficient when sent by U.S. Certified Mail, Return Receipt Requested, postage prepaid, to the following address:

Lessor: The City of Pensacola
c/o City Administrator
City Hall
222 West Main Street
Pensacola, Florida 32502

Lessee: Monument to Women Veterans
c/o Michelle Caldwell
1297 Ceylon Drive
Gulf Breeze, Florida 32563

22. PROVISIONS BINDING

The terms and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto, including sublessees, and, their successors, respectively.

23. AMENDMENT

This Lease may not be altered, changed or amended except by an instrument in writing, signed by the parties hereto.

24. SEVERABILITY

If any provisions of this Lease shall be declared in contravention of law or void as against public policy, such provisions shall be considered severable and the remaining provisions of this Lease shall continue in full force and effect.

25. PARAGRAPH HEADINGS

The paragraph headings in this Lease are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this Lease or any of its provisions.

26. ENTIRE AGREEMENT

This instrument constitutes the entire agreement between Lessor and Lessee on the subject of this Lease, and all prior to contemporaneous oral or written agreements, or representation of any nature with reference to the subject matter of this Lease are canceled and superseded by the provisions of this Lease.

27. WAIVER

Failure on the part of Lessor to complain of any action or non-action on the part of Lessee, no matter how long it may continue, shall not be deemed to be a waiver by Lessor of any of its rights under this Lease. Further, it is covenanted and agreed that no waiver at any time of any of the provisions of this Lease by Lessor shall be construed as a waiver at any subsequent time of the same provisions. The consent or approval by Lessor to or of any action by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent or approval to or of any subsequent similar act by Lessee.

28. TIME OF THE ESSENCE

Time is of the essence of each and every provision, covenant and condition of this Lease on the part of Lessor and Lessee to be done and performed.

29. GOVERNING LAW

This Lease is subject to and shall be governed by the laws of the State of Florida.

30. VENUE

Venue for any claim, action or proceeding arising out of the Lease shall be Escambia County, Florida.

31. ASSIGNMENT

Lessee shall not assign this Lease without prior written approval by Lessor.

32. SUBLETTING

Lessee may sublet portions of the Property upon obtaining prior written approval from Lessor.

EXECUTED in multiple original copies to be effective as of the day and year first above written.

CITY OF PENSACOLA
A municipal corporation, Lessor

MONUMENT TO WOMEN VETERANS
INC., Non-profit organization, Lessee

By: _____
Grover C. Robinson, IV, Mayor

By: _____
Michelle Caldwell, President

Witnesses:

Witnesses:

Signature _____
Printed Name _____

Signature _____
Printed Name _____

Signature _____
Printed Name _____

Signature _____
Printed Name _____

Attest:

Attest:

Ericka L. Burnett, City Clerk

Secretary

STATE OF FLORIDA
COUNTY OF ESCAMBIA

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Grover C. Robinson, IV, the Mayor of the City of Pensacola, a municipal corporation, for an on behalf of the City, and who is personally known to me.

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Michelle Caldwell, the President of Monument to Women Veterans, a Florida not for profit corporation, for and on behalf of the corporation and who is personally known to me or has produced _____ as identification.

GIVEN under my hand and official seal this _____ day of _____, 2020.

GIVEN under my hand and official seal this _____ day of _____, 2020.

NOTARY PUBLIC

NOTARY PUBLIC

Name

Name

[Type or print Name]
My Commission Expires:

[Type or print Name]
My Commission Expires:

EXHIBIT A

Parcel Description of Real Property for Lease – 980 E. Heinberg Street

A parcel of land in Escambia County, Florida being more particularly described as follows:

The East 30.24 feet of Lot 8, all of Lots 9 and 10, Block 49, and the West 69.76 feet of the vacated 15th Avenue lying between the Southerly right-of-way line of Wright Street (100' R/W) and the Northerly right-of-way line of Heinberg Street (50' R/W), New City Tract, according to the Map of the City of Pensacola, copyrighted by Thomas C. Watson in 1906.

Specifics of Property Leased for Use by Lessee

Leased property includes the main building and its parking lot. Leased property does not include the train platforms, railroad tracks, nor any external components attached to or above the platforms and railroad tracks.

EXHIBIT B

INSURANCE AND INDEMNIFICATION

GENERAL

Before starting and until termination of the lease, Lessee shall procure and maintain insurance of the types and limits specified.

The term City, as is used in this section, is defined to mean the City of Pensacola, itself, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives and agents.

COVERAGE

Insurance shall be issued by an insurer whose business reputation, financial stability and claims payment reputation is satisfactory to the City, for the City's protection only. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements.

Worker's Compensation

The Lessee shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation as legally required. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least \$100,000 each person – accident, \$100,000 each person – disease, \$500,000 aggregate – disease.

Commercial General and Umbrella Liability Coverages

The Lessee shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability filed by the Insurance Services Office. **The City of Pensacola shall be an Additional Insured** and such coverage shall be at least as broad as that provided to the Named Insured under the policy for the terms and conditions of this lease. The City shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. Minimum limits of \$1,000,000 per occurrence, and per accident, for liability must be provided, with umbrella insurance coverage making up any difference between the policy limits of underlying policies coverage and the total amount of coverage required. If the required limits of liability afforded should become impaired by reason of any claim, then the Lessee agrees to have such limits of \$1,000,000 per occurrence, reinstated under the policy.

Commercial General Liability coverage must be provided, including bodily injury and property damage liability for premises, operations, products and completed operations (including pollution related claims), independent contractors, and property damage resulting from, collapse or underground (c,u) exposures. The coverage shall be written on occurrence-type basis.

Umbrella Liability Insurance coverage shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

Fire Legal Liability Insurance coverage shall not be less than \$850,000 per occurrence. The City of Pensacola will be listed as a loss payee.

CERTIFICATES OF INSURANCE

Required insurance shall be documented in the Certificates of Insurance which provide that the City shall be notified at least thirty (30) days in advance of cancellation, non-renewal or adverse change or restriction in coverage. **The City shall be named as an Additional Insured.** If required by the City, the Lessee shall furnish copies of the Lessee's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by the City, an ACORD 25. **Any wording in a Certificate which would make notification of cancellation, adverse change or restriction in coverage to the City an option shall be deleted or crossed out by the insurance carrier or the insurance carrier's agent or employee.** If on an ACORD 25 or similar form, the words "endeavor to" and "but failure..." shall be deleted so that the sentence ends with the word "left" or signed endorsements for the cancellation clauses MUST accompany Certificate(s) of Insurance. The Lessee shall replace any canceled, adversely changed, restricted or non-renewed policies with the new policies acceptable to the City and shall file with the City, Certificate of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the City, the Lessee shall, upon instructions of the City, cease all operations under the Lease until directed by the City in writing, to resume operations.

INSURANCE OF THE LESSEE PRIMARY

The Lessee required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above the Lessee's coverage. The Lessee's policies of coverage will be considered primary as relates to all provisions of the lease.

LOSS CONTROL AND SAFETY

The Lessee shall retain control over its employees, agents, volunteers, servants, and subcontractors, as well as control over its invitees, and its activities on and about the subject premises and the manner in which such activities shall be undertaken and to that end, the Lessee shall not be deemed to be an agent of the City. Precaution shall be exercised at all times by the Lessee for the protection of all persons, including employees and property. The Lessee shall make special effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.

HOLD HARMLESS

The Lessee shall indemnify and hold harmless the City of Pensacola, its officers and employees, from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Lessee and persons employed or utilized by the Lessee. The Lessee's obligation shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance.

PAY ON BEHALF OF THE CITY

The Lessee agrees to pay on behalf of the City, as well as provide a legal defense for the City, both of which will be done only if and when requested by the City, for all claims as described in the Hold Harmless paragraph. Such payment on the behalf of the City shall be in addition to any and all other legal remedies available to the City and shall not be considered to be the City's exclusive remedy.

Governing Law and Venue

This lease is governed and construed in accordance with laws of the State of Florida. The law of the State of Florida shall be the law applied in the resolution of any claim, actions or proceedings arising out of the lease. Venue for any claim, actions or proceedings arising out of this lease shall be Escambia County, Florida.