

**SECOND AMENDED AND RESTATED
LEASE AGREEMENT BETWEEN THE CITY OF PENSACOLA AND GENERAL
DANIEL CHAPPIE JAMES FLIGHT ACADEMY, INC.**

THIS SECOND AMENDED AND RESTATED LEASE AGREEMENT (“Lease”) effective this ___ day of _____, 202_, by and between the City of Pensacola (“City”), a municipal corporation of the State of Florida and General Daniel Chappie James Flight Academy, Inc. (“Lessee”), a registered not-for-profit, each at times referred to as a “party” or collectively as “Parties.”

WHEREAS, the City and the Lessee entered into a lease agreement dated August 1, 2017 (“Original Lease”), which lease was amended on March 12, 2018; and

WHEREAS, City intends to expand the footprint of the Leased Premises with major additions and capital renovations (the “Expansion Project”); and

WHEREAS, the Property includes common areas shared with another Lessee of the Property, which as of the date of this Lease is the Chappie James Museum of Pensacola, Inc. (the “Museum”); and

WHEREAS, an African American Cultural and Historical Grant (the “AACH Grant”) has been received by the Museum to support the Expansion Project; and

WHEREAS, the AACH Grant was awarded to the Museum on the basis that the Expansion Project would support the operations of the Museum and Lessee within the Property; and

WHEREAS, the AACH Grant requires that a restrictive covenant be placed on the portion of the Property addressed as 1606 Dr. Martin Luther King, Jr. Blvd, Pensacola, Florida, which is occupied by the Museum (the “Covenant”); and

WHEREAS, the Covenant requires that 1606 Dr. Martin Luther King, Jr. Blvd, Pensacola, Florida be used for the cultural purposes defined in the AACH Grant Agreement for a period of ten (10) years beginning from the date of recordation of the Covenant; and

WHEREAS, to facilitate the long-term occupancy and use of the Property by the Lessee and Museum, in compliance with the Covenant, the Lessee desires and City agrees to reestablish the term of the Lease for a period of ten (10) years beginning from the date of recordation of the Covenant with an option to renew for one (1) five (5) year term; and

WHEREAS, to clarify the extent of the City’s planned expansion project and to reestablish the term of the lease, the Parties intend by this Agreement to amend the existing lease agreement and to restate the Agreement herein by this Amended and Restated Lease Agreement, the execution of which shall supersede and take effect in place of the existing provisions of the Original Lease and its first amendment recited above.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, it is agreed by the City and the Lessee that the Original Lease, as amended, shall be Amended and

fully restated by the following, superseding agreement: the mutual promises herein, the parties agree as follows:

1. RECITALS.

The parties agree the recitals above are true and correct and are hereby incorporated as material terms of this Lease by this reference.

2. STATEMENT OF PURPOSE.

City owns certain real property known as the General Daniel “Chappie” James Memorial Park located at 1606 and 1608 Dr. Martin Luther King, Jr. Drive, Pensacola Florida, 32503, City of Pensacola, Escambia County, Florida (“Property”). Lessee leases a portion of the space at the Property, as described below, as the base for a community-based youth flight academy program whose mission is to introduce disadvantaged children to aviation career fields, and such purposes as further described in Exhibit A attached hereto and incorporated herein by this reference.

3. PREMISES LEASED.

City hereby leases to Lessee for the Lessee’s exclusive use the space depicted on Exhibit B attached hereto and incorporated by this reference (the “Leased Premises”). Lessee hereby understands and agrees, that upon completion of the Expansion Project described in Section 12, the Leased Premises shall be modified as depicted on Exhibit C, attached hereto and incorporated by this reference, subject to the terms, provisions and conditions of this Lease. Lessee may also reasonably access the common areas, pursuant to applicable terms and conditions herein, and otherwise any access to the Property to be in the City’s sole discretion.

4. TERM AND RENEWALS.

The term of this Lease shall commence upon the date first written above, and shall continue for a period of ten (10) years (“Term”). This Lease shall be renewable, in the sole discretion of the Mayor of the City, for up to one (1) five (5) year renewal term (“Renewal Terms”).

5. LEASE PAYMENTS.

The City agrees to lease the Leased Premises to Lessee at an annual rent of One Hundred Dollars (\$100) on or prior to January 1 of each year.

6. LIMITATIONS ON USE OF PREMISES AND CONDITIONS OF USE.

The Leased Premises shall be used by Lessee solely for the non-profit youth flight academy program described in Exhibit “A”. Use of common areas is restricted to use by the building tenants only. Use of any other portions of the Property are subject to prior written City approval. Lessee shall keep the Leased Premises in good operating condition and repair at all times, as required in this Lease, and shall conform as required in this Lease respecting any potential shared use of the common areas or Property.

7. INSTALLATION OF LEASEHOLD IMPROVEMENTS.

Lessee shall submit to City the design plans and specifications for any proposed leasehold improvements on the Leased Premises. Any improvements performed by the Lessee shall be in compliance with the requirements and provisions of the Covenant. Upon approval of the

City, Lessee shall commence installation of the improvements on the Leased Premises, and Lessee shall be fully responsible for the cost and development of the leasehold improvements to the Leased Premises at Lessee's sole cost and expense and shall comply with all applicable building regulations pursuant to the terms and conditions of this Lease.

8. TITLE TO IMPROVEMENTS.

Title to leasehold improvements upon the Leased Premises by Lessee shall vest in City upon termination of the Lease. Lessee acknowledges and agrees that Lessee shall have no right to remove such fixed or permanent leasehold improvements, however, Lessee shall, upon City request, remove any improvements and restore the Leased Premises to the original condition at the time of commencement of the Lease, normal wear and tear excepted.

9. CITY ACCESS.

During the term of the Lease and any renewal or extension hereof, Lessee shall permit the representatives of City access to the Leased Premises at all times deemed necessary by the City.

10. NO MORTGAGES OR ENCUMBRANCES.

Lessee shall not mortgage, encumber, or allow any liens to be placed against any portion of the Property, the Leased Premises or Lessee's leasehold interest therein. Lessee shall immediately remove any liens or encumbrances placed against the Leased Premises 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, and the City may, in the City's sole discretion, terminate the lease immediately upon written notice to Lessee, and further, upon receipt of such notice, Lessee shall immediately surrender to the City the Leased Premises and all fixtures and equipment thereon.

11. UTILITIES, REPAIRS, AND MAINTENANCE.

- (i) The City will provide electrical, gas, water, sewer and garbage services for the Leased Premises, therefore, the City reserves the right to install, maintain, repair, replace, or remove and replace any utility lines for or about the Leased Premises, along with the right to enter the Leased Premises in order to accomplish the foregoing, or to accomplish any need of the City, provided, however, that City shall take reasonable precautions to avoid the disruption of the Lessee's authorized activity under this Lease.
- (ii) The City will perform structural repairs to the roof, floor, exterior walls and windows of the Leased Premises unless damage is due to the Lessee's actions or omissions, limited general maintenance and upkeep of the grounds, and pest control services for the Leased Premises, provided however, should the City be required to make any repairs or improvements under the provisions herein contained, the City shall not be liable to Lessee for any cause or damage arising from such repair or improvements.
- (iii) The City will provide limited custodial services, provided however, Lessee shall keep all interior and exterior areas of the Leased Premises and the common areas or surrounding Property in a neat, clean, safe, sanitary and orderly condition and

attractive appearance, and free at all times of all paper, rubbish and debris, with all trash and debris resulting from its operations in its premises deposited by Lessee in containers approved by the City.

- (iv) In the event Lessee fails to maintain the Leased Premises or common areas or other portions of the Property in accordance with this Lease for more than three (3) days following date of receipt of written notice from City to Lessee of such failure to maintain, the City reserves the right to take any action to cure said failure, in the City's sole discretion and Lessee shall pay to the City an amount equal to the City's cost for such actions plus a ten percent (10%) administrative charge.

12. EXPANSION OF LEASED PREMISES.

The City intends to construct major additions and capital improvements upon the Property. Such additions and improvement will modify the Property and the leased space exclusively available to the Lessee as depicted in Exhibit C ("Expansion Project"). The City reserves the right to enter the Leased Premises to accomplish the foregoing, provided, however, that the City shall take reasonable precautions to avoid the disruption of the Lessee's authorized activity under this Lease. Lessee shall fully cooperate with the City and any other lessees of the Property to facilitate completion of the Expansion Project.

13. INSURANCE AND INDEMNIFICATION.

General:

The Lessee shall insure its contents and personal property within the building and shall procure and maintain insurance of the types and to the limits specified.

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

The Lessee and the City understand and agree that the minimum limits and types of insurance herein required may become inadequate during the term of the Lease. The Lessee agrees that it will increase or change such coverage as required by the City within ninety (90) days upon receipt of written notice from the City.

Property Insurance:

To the extent it is available, the City will maintain property insurance on the insurable portions of the City owned Property. The City will not purchase or maintain property insurance on the Lessee's contents, Lessee's personal property.

14. INSURANCE REQUIREMENTS.

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 obligations 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 Insurance – Including Fire Legal Liability: The Lessee shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability Policy filed by the Insurance Services Office. 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, must be provided. Coverage must be provided which includes bodily injury and property damage liability for premises, operations, contractual, products and completed operations, and independent contractors. The coverage shall be written on an occurrence-type basis. Fire Legal Liability coverage must be included with a minimum limit of \$100,000 per occurrence. The City shall be listed as 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 agreement.

Builder's Risk Insurance:

If the Lessee constructs improvements on the Leased Premises, the Lessee or its contractor must provide Builder's Risk Insurance afforded on an Inland Marine "All-Risk" type form which includes collapse coverage.

The Amount of Insurance is to be 100% of the completed value of the work. Such coverage will additionally include an amount equal to 10% of the Amount of Insurance of the completed value of the work for materials and equipment stored off the construction site, in transit or delivery, including loading and unloading.

The policy must be specifically endorsed to eliminate any "Occupancy" clause or similar warranty or representation that the premises in the course of construction shall not be occupied or used without specific endorsement of the policy. The policy must be endorsed to provide that the Builder's Risk Coverage will continue to apply until final acceptance of the work. Acceptance shall not be deemed to have been made solely on account of occupancy of any portion of the premises.

The City shall be listed as Additional Insured by endorsement on the policy as well as the Certificate of Insurance.

The policy shall contain a "Waiver of Subrogation" clause in favor of the City, any subsidiaries or affiliates, its elected and appointed officials, employees, volunteers, representatives, and agents which would waive any subrogation against any of them.

The policy shall contain no exclusion which would exclude damage or loss caused by breakage, freezing, temperature extremes or temperature change, water, flood, leakage, or seepage.

Certificates of Insurance:

Required insurance shall be documented in the Certificates of Insurance that provide that the City shall be notified in advance of cancellation, non-renewal or adverse change or restriction in coverage. This Lease shall be listed on each Certificate. 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. The Lessee shall replace any canceled, adversely changed, restricted or non-renewed policies with new policies acceptable to the City and shall file with the City Certificates 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. The "Certificate Holder" address should read: City of Pensacola, Risk Management, Post Office Box 12910, Pensacola, FL 32521.

Insurance of the Lessee Primary:

The Lessee's 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, 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.

15. BACKGROUND CHECKS.

Lessee shall cause all Lessee's Board Members, employees, volunteers, invitees and affiliates who will have contact with children to undertake and pass a Level Two (2) Background Check at Lessee's expense prior to any contact with children. Lessee shall immediately provide all such background checks, as updated accordingly, now and in the future, of any individuals that may have such contact, to the City's Parks and Recreation Director.

16. 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 in the performance of this agreement. The Lessee's obligation shall not be limited by, or in any way to, insurance coverage or by any provision in or exclusion or omission from any policy of insurance.

17. SIGNS.

Lessee shall not permit signs, logos, or advertising displays placed or erected in any manner upon the Leased Premises, or in or on any improvements or additions on the Leased Premises, without the prior written approval of the City's Parks and Recreation Director. Signs identifying Lessee shall conform to reasonable standards established by the City, with respect to type, size, design, condition and location.

18. NO ASSIGNMENT, NO SUBLETTING.

Lessee shall not assign or sublet any portion of this Lease. Any assignment or sublet of this Lease is prohibited and shall be null and void and of no effect.

19. NO WAIVER BY CITY.

A failure by City to take any action with respect to any default or violation by Lessee of any of the terms, covenants, or conditions of this Lease shall not in any respect limit, prejudice, diminish or constitute a waiver of any rights or remedies of City to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default. The acceptance by City of payment for any period or periods after a default or violation of any of the terms, conditions, and covenants of this Lease shall not constitute a waiver or diminution of, nor create any limitation upon any right of City pursuant to this Lease to terminate this Lease for subsequent violation or default, or for continuation or repetition of the original violation or default.

20. SURRENDER UPON TERMINATION.

Upon the expiration or termination of this Lease, for any reason whatsoever, Lessee shall peaceably surrender to the City possession of the Leased Premises. Lessee warrants to City that any and all improvements, alterations, or fixtures previously constructed by Lessee shall remain free and clear of any claims or interests of Lessee, Lessee's contractors or subcontractors, creditors, invitees, or any other third party. Should Lessee violate this provision, without waiver of other action by City for City's own benefit, Lessee shall pay to remove any encumbrance, lien or debt associated with Lessee's occupation of the Leased Premises and hereby warrants that Lessee shall hold the City harmless therefrom. Excepting personal Property of Lessee, upon surrender, City may in the Parks and Recreation Director's sole discretion, assume ownership of any fixture or Property within the Leased Premises or require Lessee, at Lessee's sole cost and expense to remove any Property or fixture.

21. ATTORNEY'S FEES.

The prevailing Party in any action, claim or proceeding arising out of this Lease shall be entitled to attorney's fees and costs from the losing Party.

22. FORCE MAJEURE.

Neither the City nor Lessee shall be deemed in violation of this Lease if it is prevented from performing any of the obligations hereunder by any reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, weather conditions, or for any other circumstance for which it is not responsible or which is not within its control.

23. RELATIONSHIP OF PARTIES.

Lessee represents and warrants Lessee is not in any way or for any purpose a partner or joint venture with or agent of the City. Lessee shall act as an independent contractor in the performance of its duties pursuant to this Lease.

24. BOARD MEMBERSHIP.

Lessee shall maintain an active board membership list, including board member names and contact information, and shall provide such list, in writing, to the City’s Parks and Recreation Director. Any changes to board membership shall be documented and an updated list provided to the City’s Parks and Recreation Director upon occurrence.

25. NOTICES.

All notices by either party to the other shall be made either by utilizing the registered or certified mail of the United States of America, postage prepaid, or by utilizing any other method of delivery requiring signature for receipt, and such notice shall be deemed to have been delivered and received on the date of such utilization.

All notices to the City shall be mailed to:

Parks and Recreation Director
City of Pensacola
222 W. Main Street
Pensacola, Florida 32502

With an additional copies to:
City Administrator
City of Pensacola
222 West Main Street
Pensacola, Florida 32502

CRA Manager
City of Pensacola
222 West Main Street
Pensacola, Florida 32502

All notices to Lessee shall be mailed to:

Clifton Curtis, President
General Daniel Chappie James Flight Academy, Inc.
1608 Dr. Martin King, Jr.
Pensacola, FL 32503

The parties from time to time may designate in writing changes in the address stated.

26. ENTIRE LEASE.

This writing, together with all the attached exhibits, constitutes the entire agreement of the parties. This Lease supersedes all prior agreements, if any, between the City and Lessee, and no representations, warranties, inducements, or oral agreements that may have been previously made between the parties shall continue in effect unless stated herein. This Lease shall not be modified except in writing, signed by the City and Lessee.

27. PARTIAL INVALIDITY.

If any term or condition of this Lease or the application thereof to any person or event shall to any extent be deemed invalid and unenforceable, the remainder of this Lease and the application of such term, covenant, or condition to persons or events other than those to which it is held unenforceable shall not be affected, and each term, covenant and condition of this Lease shall be valid and enforced to the fullest extent permitted by law.

28. SUCCESSOR.

The provisions, covenants and conditions of this Lease shall bind and inure to the benefit of the legal representatives, successors and assigns of each of the parties.

29. CONSENTS AND APPROVALS.

Where this Lease requires approval from the City, prior written approval from the Parks and Recreation Director shall be considered to fulfill such requirements.

30. GOVERNING LAW.

This Lease is governed and construed in accordance with the 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 this Lease.

31. VENUE.

Venue for any claim, actions or proceedings arising out of this Lease shall be Escambia County, Florida.

32. HEADINGS.

The headings contained in this Lease are inserted only as matter of convenience and for reference and do not define or limit the scope or intent of any provision of this Lease and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction of said terms and provisions.

33. PUBLIC RECORDS ACT.

The parties acknowledge and agree to fulfill all obligations respecting required contract provisions in any contract entered into or amended after July 1, 2016, in full compliance pursuant to Section 119.0701, *Florida Statutes*, and obligations respecting termination of a contract for failure to provide public access to public records. The parties expressly agree specifically that the contracting parties hereto shall comply with the requirements within Attachment "A" attached hereto and incorporated by reference.

34. MANDATORY USE OF E-VERIFY SYSTEM

In compliance with the provisions of F.S. 448.095, the parties to this contract and any subcontractors engaged in the performance of this contract hereby certify that they have registered with and shall use the E-Verify system of the United States Department of Homeland Security to verify the work authorization status of all newly hired employees, within the meaning of the statute.

IN WITNESS WHEREOF, the parties hereto have signed this instrument the day and year first above written.

Attest:

City of Pensacola,
a Florida municipal corporation

Ericka Burnett, City Clerk

By: _____
D.C. Reeves, Mayor

General Daniel Chappie James Flight Academy, Inc.,
a Not for Profit Organization

Attest:

By: _____
Printed Name: Clifton Curtis, Jr.
Title: President

Corporate Secretary

Approved As To Form and Execution:

Approved As To Content:

By: _____
City Attorney

By: _____
CRA Manager

Attachment "A"

PUBLIC RECORDS: Consultant/Contractor/Vendor shall comply with Chapter 119, Florida Statutes. Specifically, Consultant/ Contractor/Vendor shall:

- A. Keep and maintain public records required by the City to perform the service.
- B. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following the completion of the Agreement if Consultant/ Contractor/Vendor does not transfer the records to the City.
- D. Upon completion of the Agreement, transfer, at no cost, to City, all public records in possession of Consultant/Contractor/Vendor or keep and maintain public records required by the City to perform the service. If Consultant/Contractor/Vendor transfers all public records to City upon completion of the Agreement, Consultant/ Contractor/Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant/Contractor/Vendor keeps and maintains public records upon completion of the Agreement, Consultant/Contractor/Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request of the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Failure by Consultant/Contractor/Vendor to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by City.

IF CONSULTANT/CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: THE OFFICE OF THE CITY ATTORNEY, (850) 435-1715, PUBLICRECORDS@CITYOFPENSACOLA.COM, 222 WEST MAIN STREET, PENSACOLA, FL 32502.

EXHIBIT A
STATEMENT OF PURPOSE

Lessee intends to use the premises for the following purposes: Aviation Career Education, Tutoring and Community Outreach.

Lessee shall supply, equip, maintain and staff the facility and all programs at the Chappie James Memorial home site to serve as the base for the Summer Flight Academy program and its support operations throughout the year. The Flight Academy program's five areas of primary focus are: Aviation Basics/Aerodynamics; Academic Excellence; Independent Thinking/Decision-Making; Presentation/Public Speaking Skills; and Financial Life Skills. The Academy offers first level exposure to the aviation industry, providing aviation career exploration for middle and high school students. The program is designed to expose youth to the wide variety of career opportunities in aviation, provide STEM tutoring and introductory aviation training services to targeted youth.

EXHIBIT B
LEASED PREMISES

EXHIBIT C
LEASED PREMISES – POST EXPANSION