

AMENDED AND RESTATED LEASE AGREEMENT

STATE OF FLORIDA
COUNTY OF ESCAMBIA

THIS LEASE AGREEMENT (the “Lease”) is made and entered into to be effective as of the _____ day of _____ 2019, 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 First City Arts Alliance, Inc., d/b/a First City Arts Center (the “Lessee”), a Florida not-for-profit corporation whose principal offices are located at 1060 N. Guillimard Street, Pensacola FL 32501.

WHEREAS, the City and the Lessee entered into a Lease Agreement (the “Original Lease”) on June 6, 2012, recorded at OR 7463/844-857, which lease was amended on May 30, 2014, recorded at OR 7463/858-862, and further amended on October 19, 2015, recorded at OR 7463/863-871; and

WHEREAS, in order to extend the term of the lease, clarify certain provisions of the lease, and amend the process of accounting for the payment of lease fees and credits allowed and the accrual of lease payment credits, the parties intend by this Agreement to amend the existing lease agreement and 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 two amendments 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:

1. STATEMENT OF PURPOSE

Lessor owns certain real property more particularly described as Lots 1 through 12, 22-24, Block 47, Belmont Tract, City of Pensacola, Escambia County, Florida (the “Property”). Lessee intends to use the Property as a multipurpose arts, 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 ten (10) years commencing on the date and year first above written.

4. RENEWAL AND RIGHT TO PURCHASE

A. RENEWAL

While Lessor is under no obligation to renew this Lease at the end of the lease terms, Lessor shall give favorable consideration to such a renewal taking into consideration Lessee's favorable impact upon the City and any capital expenditures to improve the property.

B. RIGHT TO PURCHASE PROPERTY RIGHT OF FIRST REFUSAL

In the event that the City determines to sell the property during the term of this Lease Agreement, for one dollar and other good and valuable consideration received from Lessee, Lessor grants Lessee the right of first refusal to purchase the property during the lease term of ten (10) years. Any sale of the property by Lessor to a third party during the term of this Lease is subject to the Lease. Lessor has the exclusive right in its discretion to determine if an offer to purchase the Property is acceptable to Lessor.

5. LEASE PAYMENTS

The Lessor agrees to lease the subject property to Lessee at a monthly rate of \$1.00 in recognition for previous years of investments for capital improvements and substantial maintenance projects by Lessee.

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, taxes and utilities.

All expenditures for improvements and maintenance repairs and construction in the amount of \$5000.00 or more shall receive prior approval from the Mayor or his designee.

All improvements shall be completed to the satisfaction of the Lessor pursuant to Section 8 below.

6. USE OF PREMISES

The Property shall be used by Lessee and its sublessees solely for non-profit art center as well as neighborhood revitalization and community service activities.

7. 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.

8. 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 \$5000.00.

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.

9. 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.

10. 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.

11. 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.

12. 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.
- C. 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.

13. 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).

14. 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.

15. INSURANCE REQUIRED

Less shall maintain insurance and provide Lessor with certificates in accordance with Exhibit "A" 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 Exhibit "A" 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.

16. NO DISCRIMINATION

Lessee agrees that it will not discriminate upon the basis of race, creed, color, national origin, age, or sex 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, age, sex or national origin, 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, age, sex or national origin. 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, age, sex or national origin. 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.

17. 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.

18. 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.

19. 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.

20. 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 Mayor
 City Hall
 222 West Main Street
 Pensacola, Florida 32502

Lessee: First City Arts Alliance, Inc., d/b/a First City Arts Center
 Current address: 1060 North Guillemard
 Pensacola, FL 32501

21. 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.

22. AMENDMENT

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

23. 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.

24. 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.

25. ENTIRE AGREEMENT

This instrument constitutes in 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.

26. 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 waiver or render unnecessary Lessor’s consent or approval to or of any subsequent similar act by Lessee.

27. 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.

28. GOVERNING LAW

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

29. VENUE

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

30. ASSIGNMENT

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

31. 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

By: _____
Grover C. Robinson, IV
Mayor

Attest:

Ericka L. Burnett, City Clerk

First City Arts Alliance, Inc., d/b/a
First City Arts Center, a Florida
Not For Profit Corporation, Lessee

By: _____
President

Attest:

Secretary

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Grover C. Robinson, IV, and Ericka L. Burnett, the Mayor and City Clerk, respectively, of the City of Pensacola, a municipal corporation, for an on behalf of the City, and who are personally known to me.

GIVEN under my hand and official seal this _____ day of _____, 2019.

NOTARY PUBLIC

Name

[Type or print Name]
My Commission Expires:

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by the President of First City Arts Alliance, Inc., d/b/a First City Arts Center, 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 _____, 2019.

NOTARY PUBLIC

Name

[Type or print Name]
My Commission Expires: