

RESTATED AND AMENDED LEASE AGREEMENT

THIS LEASE AGREEMENT, entered into as of this ____ day of _____, 2019, between the City of Hollywood, Florida, hereinafter called the "City" or the "Lessor", party of the first part, and Hollywood Art and Culture Center, Inc., a Florida not-for-profit corporation, hereinafter called the "Lessee", party of the second part:

WHEREAS, the Hollywood Art and Culture Center, Inc., is organized exclusively for charitable purposes as described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which may include, but are not limited to, to engage in, among other things, (i) actions to aid, support, encourage and develop art and culture programs in the City of Hollywood and Broward County generally, including, but not limited to, the receipt of gifts, grants, bequests, transfers of money, property, art and other things of value and disbursements of such funds for the accomplishment of the ends and goals of Hollywood Art & Culture Center, Inc., (ii) actions to promote the visual and performing arts in the City of Hollywood, and Broward County, Florida, and other cities and towns in the State of Florida, (iii) to lease and operate the Art & Culture Center of Hollywood, and (iv) to do all manner of things which are authorized under law for a corporation; and

WHEREAS on _____, 2019_Lessee's Executive Committee of the Board of Trustees approved this Lease and authorized its execution by Lessee's officers; and

WHEREAS, the City owns certain real property and improvements, as more particularly described herein, and is desirous of leasing the subject property to Lessee upon certain terms and conditions specified herein and by virtue of the representations herein made, the City of Hollywood does hereby lease to Lessee, the following real properties and improvements existing thereon, including all additional buildings and improvements, located at 1650 Harrison Street and 1628 Harrison Street, in Hollywood,

Broward County, Florida, to house its project to be known as the "Hollywood Art and Culture Center," which real properties are legally described as follows, respectively:

Lots 23, 24, 25, 26, 27, 28, 29 and 30 of Block 71 of the TOWN OF HOLLYWOOD, according to the Plat thereof, recorded in Plat Book 1, Page 21, of the Public Records of Broward County, Florida,

And

Lots 21 and 22 of Block 7 of the TOWN OF HOLLYWOOD, according to the Plat thereof, recorded in Plat Book 1, Page 21 of the Public Records of Broward County, Florida.

Hereinafter collectively referred to as the "Leased Properties"; and

WHEREAS on January 8, 1992, the City entered into a Business Lease relating to the Leased Properties between City and Lessee, a copy of which is attached as Exhibit A; and

WHEREAS, the parties wish to execute an amended and restated Lease Agreement;

NOW, THEREFORE, the terms, conditions, covenants and agreements of this Lease are as follows:

SECTION 1: LEASE TO LESSEE OF LEASED PROPERTIES

The City hereby leases the Leased Properties to the Lessee for the sum of \$1.00 per year for the number of years set forth below and on the other terms and conditions stated herein. The Lessee shall use the Leased Properties exclusively for a program of activities, classes, and exhibits designed to promote and provide art and culture for the residents in the City of Hollywood, Broward County, and other cities and communities in the State of Florida. As more particularly set forth in herein, Lessee shall not use or sublease or allow any third party to use all or a portion of the Leased Properties for any other purpose or use except as set forth above without approval by the City.

SECTION 2: TERM AND TERMINATION OF LEASE

Unless sooner terminated or extended in accordance with the terms and conditions hereof, this lease of the Leased Properties shall be for a period of 30 years. The City shall have the right to terminate this Lease upon the occurrence of an “event of default” by Lessee as defined herein, which “event of default” remains uncured for a period in excess of 30 days after the Lessee receives notice of such default from the City.

SECTION 3: SALE OR TRANSFER OF LEASED PROPERTIES

City shall retain its right to sell or otherwise transfer ownership of either or both of the Leased Properties during the term of this Lease, in accordance with the applicable provisions of the City Charter and Code; provided however, that any such sale or transfer to a third party shall be subject to the leasehold interest of Lessee under this Lease; and provided further, that prior to any such sale or transfer by City, if the Lessee is not then in default of this Lease then Lessee shall have a right of first refusal to purchase the Lease Properties on the same terms and conditions and same price as the City would otherwise propose to sell or transfer either or both of the Leased Properties. If Lessee fails to exercise its right of first refusal in a timely manner, then City shall have the right to consummate the sale or transfer of the Leased Properties to a third party subject to Lessee’s leasehold interest hereunder. City reserves the right to make the final decision as to the official name of the Leased Properties and the buildings thereon.

SECTION 4: TAXES AND UTILITIES

Lessee hereby agrees to be responsible for and shall timely pay for all utilities, including, without limitation telecom and networking fees, and all applicable taxes in a timely manner in connection with its use of the Leased Properties throughout the term of this Lease. The parties recognize that the Leased Properties are exempt from property taxes in accordance with Florida law and City and Lessee shall make

all necessary filings to maintain such exemptions. Lessee shall maintain such property tax exemptions by continuing to use the Leased Properties to serve a “valid public purpose” within the meaning of Chapter 196, Florida Statutes.

SECTION 5: TELECOM AND NETWORKING SERVICES

Lessee hereby agrees to be responsible for and shall timely pay for all telecom and networking fees along with maintaining associated equipment. Associated equipment may include but not limited to; computers, laptops, printers, hard drives, expansive drives, WIFI devices, gigabit switches, servers and backup power devices. The City is responsible for supporting the existing phone system and configurations, the wiring infrastructure and the video security system infrastructure. The Lessee is expected to first contact their communication vendor (e.g. AT&T or Comcast) for service interruption. If the vendor indicates service interruption is due to the infrastructure, the Lessee will report the issue to the City.

SECTION 6: LESSEE’S ACCEPTANCE OF LEASED PROPERTIES/LESSEE’S OBLIGATION TO REPAIR AND MAINTAIN SAME

The Lessee hereby accepts each of the Leased Properties and the improvements thereon in their “as is” condition at the beginning of this Lease. City makes no representation or warranties to Lessee as to the condition of the Leased Properties or as to their habitability or fitness for a particular use or purpose and Lessee assumes all risk with respect to same. Lessee agrees to maintain the Leased Properties in a safe and sanitary and clean condition throughout the term of this Lease. The Lessee shall at its sole expense maintain the Leased Properties in good operating order, repair, condition, and appearance other than normal wear and tear and furnish all required labor, parts, replacements, and repairs and at all times during the term. Lessee agrees to make the necessary repairs and improvements in accordance with

applicable City Codes and to meet all applicable permit and inspection requirements. Failure of Lessee to meet its obligations under this Section 5 shall constitute a material default of this Lease.

Maintenance/Repair shall include but not limited to; mechanical, electrical, plumbing, roof and pest control and security system maintenance. Landscaping shall include but not limited to; mowing, edging, fertilizing and irrigation system. Annually (fiscal year) the Lessor will pay the initial \$10,000 of such expenses. Any amount in excess of \$10,000 annually (fiscal year) the Lessor and Lessee will share expense payments; Lessor 50% and Lessee 50%. City personnel cost will not be calculated into the annual expense.

SECTION 7: CAPITAL IMPROVEMENTS

Lessor shall, within 12 – 18 months of execution of this Lease Agreement, conduct a building assessment of the existing buildings. Once completed, Lessor and Lessee shall meet to discuss the assessment and negotiate an addendum to this Lease Agreement stipulating how capital improvement projects will be addressed for the duration of this Lease Agreement. Capital Improvements Projects shall include but not limited to; floor replacement, roof/ceiling replacement, mechanical systems replacement. Until an addendum to this Lease Agreement is executed, capital improvements will be handled on a case by case basis to be negotiated by the parties.

SECTION 8: FUTURE CONSTRUCTION

Lessee acknowledges that at the Lessor's election, the Leased Properties may include the construction of additional buildings and improvements. Lessee is entering into this Lease with a full understanding of the possible ramifications/effects of such future development work on its tenancy and the rent charged herein takes such factors into account. Lessee further acknowledges and agrees that Lessor may, from time to time, at its sole election, construct (including, without limitation, additional buildings), reconstruct (including without limitation the replacement of certain improvements with other

improvements), improve, modify, expand, or otherwise alter the Leased Properties (collectively, "Construction Work"), or portions thereof (in no event however will Lessor have any obligation to do so). Lessee acknowledges that any such Construction Work will necessarily involve, among other things, the generation of noise, dust, and vibrations, barricading portions of the Leased Properties and the placement of scaffolding, demolition, structural alterations, storage of materials and equipment, and the presence of workmen within the Leased Properties, all of which may require the rearrangement of, including, without limitation, landscaping, parking areas (which may include the provision of temporary parking areas during periods of construction), roadways, lighting facilities, and the re-direction of vehicular and pedestrian traffic. Additionally, it is anticipated that the parking serving the Leased Properties may be closed during the construction of further improvements above such parking. The results of such closure will include, among other things, the temporary relocation of Lessee's parking to other portions of the Leased Properties or to nearby property. Lessee waives any and all claims, defenses, rights of offset, or deductions based upon any inconvenience suffered by Lessee or any interruption of or interference with Lessee's business including, without limitation, any loss of business, damage to property, loss of electronic information, or inconvenience to Lessee or Lessee's Invitees as a result of or relating to such Construction Work. Lessor will use its good faith efforts to minimize any unreasonable interference with Lessee's use, occupancy, or enjoyment of the Leased Properties as contemplated by this Lease Agreement. In the event that the new building is designated with a new address, that address shall be automatically included in this Lease.

SECTION 9: SECURITY SYSTEM

Lessee agrees to have at its expense an electronic security surveillance system adequate to protect the Leased Properties and their contents and Lessee shall pay monthly maintenance charges applicable thereto. Nothing herein shall prevent the Lessee from changing vendors if advantageous to

the Lessee. This provision is not intended to create an additional obligation of indemnity on behalf of Lessee to Lessor not otherwise contained in this Lease.

SECTION 10: SALE OF MERCHANDISE TO SUPPORT LESSEE'S OPERATIONS

The Lessee shall have the right to sell art or art related materials on the Leased Properties provided that the net profits of such sales will be allocated solely for the support of the Art and Culture Center and its programs.

SECTION 11: LIABILITY INSURANCE

The Lessee shall maintain commercial general liability insurance and property insurance covering the Leased Properties and its contents in the minimum limits of One Million Dollars (\$1,000,000) each occurrence, premises operations, product completed operations and personal injury liability. Said insurance shall name the City as an Additional Insured. Coverage shall be maintained throughout the life of this lease. Certificates of insurance shall be forwarded to the City's Risk Manager for approval. Lessee shall not allow said policies to lapse during the term of this Lease and the annual premiums shall be paid for by Lessee in a timely manner. Failure of Lessee to maintain such insurance policies shall constitute a material default of this Lease.

SECTION 12: MAINTENANCE OF PARKING AREA AND SIDEWALK AREA

Lessee shall be responsible for maintaining and keeping the adjacent parking lots and sidewalk areas abutting the Leased Properties and any landscaped areas on same in a clean, neat, sanitary and safe condition at all times.

SECTION 13: PERSONAL PROPERTY

All personal property placed, moved or displayed in the Leased Properties shall be at the risk of the Lessee and the respective owner thereof, and the City shall not be responsible or liable for any damage

to said personal property, arising from an Act of God or from the bursting or leaking of water pipes, or from any act of negligence of Lessee or invitee or occupants of the Leased Properties or of any other person whomsoever, or because of any act of theft or vandalism by third parties. Lessee shall be responsible to maintain, repair, or replace, as necessary, all City owned personal property being used by Lessee in the Leased Properties.

SECTION 14: PROHIBITED USE OF LEASED PROPERTIES

The Lessee hereby further covenants and agrees with this City that the Leased Properties and any improvements existing thereon, including all additional buildings and improvements shall be used only for the proper, legitimate and lawful purposes as set forth in Section 2 hereof, and that the Lessee will not use or cause to be used or permit any other person or third party to use in any manner whatsoever, the Leased Properties or any improvement thereon or any portion thereof, for any use or purpose in contravention of Section 2 hereof or in contravention of the laws of the State of Florida, or the City of Hollywood or any other lawful authority having jurisdiction thereover. Lessee shall remain fully responsible and indemnify and hold the City harmless for the actions or negligence of any sublessee of the Leased Properties. Lessee's is strictly prohibited from assigning this Lease in whole or in part. Lessee is strictly prohibited from subleasing this Lease in whole or in part, except for short-term subleases of 1 (one) month or less consistent with the purposes of Section 2 hereof, subject to City Manager review and approval which will not be unreasonably withheld.

SECTION 15: CITY'S RIGHT TO INSPECT PREMISES

The City, acting through the City Manager or his designees, including, without limitation, the City Fire Marshall and the City Neighborhood Improvement Officers, shall have the right to enter either or both of the Leased Properties during all reasonable hours, to examine the same and to make such reports to the Commission and Lessee on the condition of the Leased Properties and to require Lessee to make

such repairs, or alterations as may be deemed necessary in order to ensure the public's safety and preservation thereof.

SECTION 16: ANNUAL FINANCIAL REPORTING

Within 120 days of the end of Lessee's fiscal year, Lessee shall provide City with a copy of its audited annual financial report reflecting Lessee's annual revenues, expenses, reserves, fund balances, grants and donations. Lessee shall also provide City with such other financial information of Lessee, as may be requested from time to time by the City Commission, City Manager or City Attorney.

SECTION 17: NO WAIVER OF RIGHTS

The rights of the City under this Lease Agreement shall be cumulative, and failure on the part of the City to exercise promptly any rights given hereunder shall not operate to forfeit or waive any of the City's rights.

SECTION 18: NOTICE

It is understood and agreed between the parties hereto that written notice addressed to Lessee's Executive Director mailed or hand-delivered to the Leased Properties hereunder shall constitute sufficient notice to the Lessee and written notice mailed or hand-delivered to the Office of the City Manager, 2600 Hollywood Boulevard, Hollywood, Florida 33020 with a copy to the Office of the City Attorney at the same address shall constitute sufficient notice to the City, to comply with the terms of this Agreement.

SECTION 19: COMPLIANCE WITH APPLICABLE LAWS

The Lessee shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and City Government and of any and all their departments and bureaus applicable to the Leased Properties and any improvements thereon. Lessee

shall also be and remain in compliance with all rules, regulations and ordinances of the City of Hollywood and any other governmental entity or agency established for protection against or prevention or fines.

SECTION 20: INDEMNITY AND HOLD HARMLESS

The Lessee shall indemnify, save harmless and defend the City, its officers, employees and agents from and against all claims, suits, actions, damages or causes of action arising during the term of this Agreement for any personal injury, loss of life or damage to property sustained by reason or as a result of the use of the Leased Properties and improvements thereon for which this Lease Agreement is entered into or its agents, employees, invitees, and all other persons, and from and against any orders, judgments or decrees, which may be entered thereto, and from and against all costs, attorney's fees, expenses and liabilities incurred in or by reason of the defense of any such claim, suit or action, and the investigation thereof. During the construction and remodeling period of the Leased Premises all volunteers, agents or others under the direction or control of the Lessee shall execute an indemnification and hold harmless agreement in favor of the City of Hollywood, with terms substantially similar to those contained in this paragraph, in the form of Exhibit B attached hereto. Any permitted sublessee of Lessee shall be required to sign an indemnity and hold harmless agreement substantially in the form of Exhibit B hereto. Nothing in this Lease shall be deemed to affect or waive the rights, privileges and immunities of the City, as are set forth in Florida Statutes, Section 786.28.

SECTION 21: WATER DAMAGE

It is expressly agreed and understood by and between the parties to this Agreement, that the City shall not be liable for any damage or injury by water, which may be sustained by the Lessee or any other person or for any other damage or injury resulting from the carelessness, negligence, or improper conduct on the part of the Lessee or its agents, or employees, or by reason of the breakage, leakage, or obstruction

of the water, sewer or soil pipes, or other leakage in or about the Leased Properties and buildings and improvements thereon.

SECTION 22: ABANDONMENT OF PREMISES

If the Lessee shall abandon or vacate the Leased Properties before the end of the term of this Lease, or shall be in default as provided below, after notice of such default, the City may, at its sole option, forthwith cancel and terminate this Lease or it may enter the leased premises as the agent of the Lessee, by force or otherwise, without being liable in any way therefor, and re-let the premises with or without any furniture that may be therein, as the agent of the Lessee, at such price and upon such terms and for such duration of time as the City may determine, and receive the rent therefor.

SECTION 23: CITY'S RIGHTS TO TERMINATE LEASE UPON DEFAULT

The prompt payment by the Lessee of the rent when due and the timely observance by the Lessee of the terms and conditions stated in this Lease, and which are hereby made a part of this covenant, are the terms and conditions upon which the Lease is made and accepted by Lessee and City and any failure on the part of this Lessee to comply with the terms and conditions of this Lease, shall at the option of the City, constitute a default by Lessee or this Lease Agreement. In the event of any such default of Lease, City shall give Lessee notice and thirty (30) days to cure such default. If such default is reasonably capable of being cured but continues to exist after the thirty (30) day cure period, then at City's option, City can terminate this Lease. To the event that the default is not reasonably curable within 30 days, provided Lessee has made good faith efforts to cure the event, Lessee shall have the minimal amount of additional time as determined by the City beyond 30 days necessary to cure the default. In the event of an uncured default, upon proper legal process the City, its agents or attorneys, shall have the right to enter the Leased Properties, and remove all persons therefrom forcibly or otherwise, and the Lessee thereby expressly

waives a default by Lessee with respect to one of the Leased Properties shall be deemed a default of all Leased Properties hereunder.

SECTION 24: SUCCESSORS AND ASSIGNS

This Agreement shall bind the City and its assigns or successors, and the Lessee and its administrators, legal representatives, or successors, if any, as the case may be.

SECTION 25: ENTIRE AGREEMENT

This document, together with the Exhibits hereto, shall constitute the entire agreement between the parties. The parties agree that there is no other agreement, understanding or document which governs the relationship between the Lessee and the City apart from this Lease Agreement and the Exhibits hereto.

SECTION 26: FLORIDA LAW GOVERNS

This Agreement shall be enforced and interpreted under the laws of the State of Florida. Venue for all legal actions shall be in the Circuit Court of Broward County. Both parties waive their rights to a jury trial.

SECTION 27: CAPTIONS/COUNTERPARTS

The captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this Agreement or any provision hereof. This Lease Agreement may be executed in one or more counterparts, each of which when executed by a party hereto shall constitute an original.

SECTION 28: FORCE MAJEURE

A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either party is delayed in performance of any act or obligation pursuant to or required by this Lease Agreement by reason of a Force Majeure Event, the time required for completion of such act or obligation shall be extended for the number of days equal to the total number of days, if any, that such party is actually delayed by such Force Majeure Event. The party seeking delay in performance shall give notice to the other party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other party to overcome any delay that has resulted.

CITY OF HOLLYWOOD, FLORIDA, a municipal
corporation of the State of Florida

ATTEST:

By: _____
Dr. Wazir Ishmael, City Manager

Patricia A. Cerny, MMC
City Clerk

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY for the use and reliance of
the City of Hollywood, Florida only.

Douglas R. Gonzales, City Attorney

Hollywood Art and Culture Center, Inc.
By: _____

Name typed, printed or stamped
Title: _____