

LEASE AGREEMENT

THIS LEASE AGREEMENT (the “Agreement”), is entered into as of the Effective Date defined in Section 39, below, by and between **POLK COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners (the “Landlord”), 330 West Church Street, Bartow, Florida 33830, and **THE ARTS ENSEMBLE EDUCATION FOUNDATION INC.**, a Florida not for profit corporation (the “Tenant”), 1000 American Superior Boulevard, Winter Haven, Florida 33880.

RECITALS

WHEREAS, the Tenant is an organization whose mission is to support the development of young people while providing life skills education, programming and creative escape in the arts by, among other matters, providing arts-related programs, services and special events (collectively, the “Programs”) that include, but are not limited, to multi-generational art instruction, after-school programming, summer programming, and multi-generational educational programming; and

WHEREAS, the Tenant is in need of suitable space to conduct the Programs, all of which benefit the greater Eloise community that, based upon U.S. Housing and Urban Development Community Block Grant Program Guidelines, includes the Wahneta, Eagle Lake, and Lake Shipp communities; and

WHEREAS, the Landlord currently has approximately 3,600 square feet of unused class room and office space identified as **Rooms 132, 135, 136, 141, 144 and 145** (collectively, the “Premises”) and depicted on the floor plan attached as Exhibit “A” to this Agreement of the building (the “Building”) commonly known as the Johnny and Freda Brooks Eloise Resource Center located at 710 Snively Avenue, Eloise, Florida 33880, that is located on real property described on Exhibit “B” that is attached to this Agreement; and

WHEREAS, pursuant to and in accordance with Section 125.38, Florida Statutes, the Tenant has applied to the Landlord’s Board of County Commissioners for a lease of the Premises as a location to conduct the Programs; and

WHEREAS, the Landlord’s Board of County Commissioners has determined that (i) it is satisfied the Tenant requires the Premises as a location to conduct the Programs; (ii) the Premises is not currently needed for county purposes; and (iii) Polk County will lease the Premises to the Tenant for the price and in accordance with the terms and conditions stated in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants stated herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree, as follows:

1. **RECITALS.** The foregoing recitals are true and correct and are incorporated into this Agreement.
2. **LEASE OF PREMISES; USE OF BUILDING COMMON AREAS.**
 - (a) Landlord hereby leases and rents the Premises to the Tenant, and the Tenant does hereby lease and rent the Premises from Landlord, in accordance with the terms and conditions stated in this Agreement.

- (b) During the Term, the Landlord also grants the Tenant the right to use the Building common lobby area so that its employees, representatives, volunteers, and participants may access the Premises.
- (c) During the Term, the Landlord grants the Tenant a limited right to use the Building kitchen and multi-purpose room subject to the use rights of the Landlord and other Building tenants or occupants. The Tenant may only use the kitchen and multi-purpose room when the Tenant's requested use is scheduled in advance with the Landlord.

3. TERM.

- (a) Initial Term. The term (the "Initial Term") of this lease Agreement shall commence on May 1, 2013, (the "Commencement Date") and shall terminate on December 31, 2014 unless sooner terminated in accordance with another provision of this Agreement, or extended as stated in Section 3(b), below.
- (b) Renewal Term(s). Provided the Tenant is not in default of this Agreement (or any other agreement with the Landlord), the Tenant may renew this Agreement for two (2) additional one (1) year terms (each a "Renewal Term"). Each Renewal Term shall be in accordance with the terms and conditions stated in this Agreement. To exercise its ability to extend the Agreement for a Renewal Term, the Tenant must provide the County written notice no later than ninety (90) days prior to the expiration of the Initial Term or the Renewal Term (as applicable). If the Tenant elects not to renew the Agreement for any available Renewal Term, or fails to timely exercise its right to a Renewal Term, then upon either circumstance, the Tenant's right to any remaining Renewal Terms shall immediately be extinguished.
- (c) Early Termination. Either party may terminate this Agreement at any time by delivering sixty (60) days prior written notice to the other party. Upon termination of the Agreement the Tenant shall surrender possession of the Premises to the Landlord in accordance with Section 23, below. An early termination pursuant to this Section 3(c) extinguishes the Tenant right to any remaining Renewal Terms granted in Section 3(b), above.
- (d) The Initial Term and each Renewal Term are collectively, the "Term."

4. RENT. The term "Rent" as used in this Agreement shall mean Base Rent and Additional Rent, both as defined in this Section 4, together with any and all other amounts that are payable from the Tenant to the Landlord pursuant to this Agreement.

- (a) Base Rent. On or before the Commencement Date, and thereafter on January 1st of each year this Agreement is in effect, the Tenant shall pay Landlord an annualized base rent of One Dollar (\$1.00) for the use and occupancy of the Premises. Upon any termination of this Agreement, the Tenant shall not be entitled to any pro-rated refund of the annual base rent amount.
- (b) Additional Rent. The Tenant shall pay as "Additional Rent" all other sums due from the Tenant to the Landlord in accordance with this Agreement.

5. UTILITIES.

- (a) The Landlord, at the Landlord's cost and expense, shall provide electric, water and sewer service to the Premises in conjunction with its providing the same services to the Building.
- (b) The Tenant shall obtain any and all other necessary utility services to the Premises including, but not limited, to telephone, cable, and internet service, in its name and shall timely pay any and all fees, deposits, charges or other assessments for such utilities.

6. ACCEPTANCE OF PREMISES. The Tenant has examined the condition of the Premises and the Building, determined that the Premises are acceptable for its intended use, and waives any and all defects that may exist within the Premises and within the Building. Accordingly, the Landlord is not required or obligated to make any repair or improvement to the Premises or the Building except as stated in Section 11, below. Further, the Landlord shall not be responsible to the Tenant, its officers, agents, employees, guests or invitees, for any damage or injury caused by or due to the Premises or any other portion of the Building, or any appurtenance thereof being improperly constructed or being out of repair, unless such damage or injury results from the sole negligence of the Landlord, and then only to the extent permitted in accordance with Section 768.28, Florida Statutes.

7. USE OF PREMISES; TENANT DUTIES; RESTRICTIONS; ACCESS.

- (a) The Tenant shall use the Premises solely for the purpose of providing the Programs to benefit the greater Eloise community and for no other purpose whatsoever without obtaining the Landlord's prior written consent which consent may be withheld at the Landlord's discretion. The Tenant shall offer the Programs to Eloise community residents at no cost or for only a nominal cost. The Tenant's agreement to provide the Programs in the Building is a material inducement for the Landlord to enter into this Agreement with the Tenant. The Tenant's failure to regularly and continuously provide the Programs during the Term is a material breach of the Lease.
- (b) The Tenant shall use and conduct its Programs within the Premises in accordance with the terms and conditions of the Polk County Community Center Policy, the current copy of which is attached as Exhibit "C" to this Agreement, as the Landlord may update and revise the policy from time to time during the Term. If the Landlord revises the Policy during the Term, it shall provide the Tenant thirty (30) days prior notice of such revisions.
- (c) The Tenant shall use the Premises and conduct its Programs in accordance with all applicable federal, state and local laws, statutes, regulations, ordinances, codes, and orders including, but not limited, to those pertaining to the Community Development Block Grant Program, the funds of which assisted in financing the Building. Additionally, the Tenant's use of the Premises shall comply with the requirements of the National Fire Protection Agency's NFPA 101, the Life Safety Code.

- (d) The Tenant shall assist the Landlord in meeting all Community Development Block Grant Program reporting and record-keeping requirements by, among other matters the Landlord may reasonably request from time to time, providing the Landlord a list of all individuals who attend each Program and each individual's home address.
- (e) The Tenant shall comply with all local, state and federal requirements for child and elderly safety including, but not limited, to conducting required background checks for all its employees and volunteers.
- (f) The Tenant shall be responsible for the conduct and behavior of all Program participants. While within or inside the Building, the Tenant shall ensure that Program participants do not verbally abuse, sexually harass, fight, threaten or menace any other Program participant, Program staff member, Polk County employee, or any Building visitor or member of the public. The Tenant shall ensure that Program participants do not litter, vandalize, damage or destroy the property of the Landlord or of any other person. The Tenant's Program coordinator shall immediately report to the Landlord any occurrence or incident that violates the foregoing prohibitions. The Tenant's failure to control the conduct and behavior of all Program participants is a material breach of this Agreement.
- (g) The Tenant shall not use the Premises in any manner that would (i) create a nuisance or trespass; (ii) vitiate or increase the rate of the Landlord's insurance on the Premises; or (iii) impair previously authorized Community Development Block Grant Program funding or provide a reason to deny the future award of a Community Development Block Grant Program.
- (h) The Tenant shall not permit the consumption of any food or drinks within the Premises or Building except for within the Building multi-purpose room, the use of which the Tenant must schedule in advance with the Landlord.
- (i) The Tenant must provide any furnishings, office and other equipment, and supplies necessary for the Tenant to provide the Programs.
- (j) The Tenant may have access to the Premises twenty-four (24) hours per day, seven (7) days per week. However, the Tenant may only conduct its Programs and other operations at the Premises during the Building standard operating hours which currently are 8:00 a.m. through 5:00 p.m., Monday through Friday, except for those days designated as holidays for Polk County employees. During the Term, the Landlord may change the Building standard operating hours and if it does, the Landlord will provide the Tenant two weeks prior notice of all such changes. If the Tenant desires to conduct operations at any time other than the Building standard operating hours, it must receive the Landlord's prior written approval to do so at least two weeks prior to the proposed dates.
- (k) On the Commencement Date, the Landlord will deliver to the Tenant two (2) keys to the Building front door and two (2) keys to each of the various rooms that comprise the Premises. The Tenant shall not deliver or provide anyone other than its employees access to the keys. The Tenant shall maintain strict control and

accountability of the keys. The Tenant shall not duplicate or allow anyone else to duplicate the keys. If the Tenant loses or is otherwise unable to account for any key, then it shall immediately notify the Landlord. If the Landlord determines that the Tenant's failure to account for the key jeopardizes Building security, then the Landlord may replace the affected locks at the Tenant's sole cost and expense. If the Landlord determines that an affected lock does not require replacement, then the Landlord will replace a lost key for the price of the key and the cost to conform the key to the affected lock. Upon request, the Landlord will also replace a damaged key for the price of the key and the cost to conform the key to the affected lock.

- (l) Among other measures, the Building is secured by a monitored surveillance system. If a Tenant representative is the last person to leave the Building at the end of the day, the Tenant representative must activate the surveillance system. The Tenant shall be responsible for all loss occurring because of its representative's failure to properly activate the surveillance system. If a Tenant representative accesses the Building and fails to timely deactivate the surveillance system resulting in liability under an applicable false alarm ordinance, then the Tenant shall be fully responsible for paying the resulting fine and all other associated costs. If the Landlord must pay any portion of the fine or costs, then within thirty (30) days after Landlord delivers notice, the Tenant shall pay the full amount to the Landlord as Additional Rent.
 - (m) The Landlord may enter the Premises at reasonable hours and upon providing the Tenant reasonable prior notice (and if in the opinion of the Landlord any emergency exists, at any time and without notice): (i) to make repairs, perform maintenance and provide other required services to the Premises or to the Building; (ii) to inspect the Premises to ensure that the Tenant is complying with all the terms and conditions of this Agreement; and (iii) to make Building and safety inspections required by the Community Development Block Grant Program and by other applicable federal, state, and other government entity or agency programs. The Landlord may take all material into and upon the Premises that may be required to make any repairs, improvements, additions, or alterations without such actions being deemed a trespass or a constructive eviction of the Tenant. The Rent shall not abate while any such repairs, improvements, additions, or alterations are being made and the Tenant shall not be entitled to a set-off or claim for damages against Landlord based upon any interruption caused by Landlord's prosecution of any such work.
- 8. PARKING.** This Agreement does not grant the Tenant the right to use specific parking spaces. The Tenant, its employees and invitees, may use available parking spaces in and around the Building in common with the other Building occupants, tenants and their respective employees and invitees.
 - 9. SIGNAGE.** The Tenant shall not paint or place any signs, placards, or any other notice or advertisement (collectively, "Signage") of any type or character upon the doors, walls or windows of the Premises without the prior written consent of the Landlord which the Landlord may withhold in its discretion. The Tenant shall not place any Signage upon the outside walls, common areas, roof, or upon any other location in or on the vicinity of

the Building without the prior written consent of the Landlord, which the Landlord may withhold in its discretion, and, if necessary, without obtaining all necessary approvals from the City of Winter Haven for placing such Signage.

10. ALTERATIONS AND IMPROVEMENTS. Tenant shall not make or permit anyone to make any alterations, improvements, installations, or additions (any such act an "Alteration") in or to the Premises of any kind or nature whatsoever without the prior express written consent of Landlord, which the Landlord may withhold in its discretion. Any permissible Alteration that the Tenant may make to the Premises shall, at the sole election of the Landlord, either: (i) remain in and be surrendered with the Premises and shall become the property of the Landlord at the expiration or early termination of this Agreement, free and clear of any claims, liens, mortgages or encumbrances; or (ii) be removed by Tenant upon termination of this Agreement with Tenant restoring the Premises to the same condition that existed on the Commencement Date, reasonable wear and tear excepted. This Section 10 shall survive expiration or any termination of this Agreement.

11. MAINTENANCE AND REPAIR.

- (a) The Landlord shall maintain in good repair the Building exterior walls, roof, common areas, foundation, structural portions and the central portions of the Building's mechanical, electrical, plumbing, heating, ventilating and air-conditioning systems, all in a manner consistent with similar local government office space located in the Bartow, Florida area, provided the need for any such repairs does not result from the action or inaction of the Tenant, its invitees, employees, or anyone under the Tenant's direction or control.
- (b) The Tenant shall at its own cost and expense, repair all physical damage to the Premises caused by the Tenant, its invitees, employees, or anyone under the Tenant's direction or control. In the event that any repair or replacement costs are covered and paid for by Tenant's insurance, Tenant shall pay all deductibles and other sums not covered and paid for by such insurance policies. The Landlord is not responsible for maintaining or repairing any part of the Tenant's improvements or additions to the Premises.
- (c) The Tenant shall at its own cost and expense keep the Premises safe, clean, well-maintained, and in good order and repair at all times. In association with its contracted services for the Building, the Landlord will provide janitorial services to the Premises. The Tenant shall be responsible for the removal of all other garbage, trash, rubbish or other refuse from the Premises and deposit them into Building collection containers that the Landlord will provide at its cost and expense.
- (d) The Landlord will provide pest control services to the Premises in association with its providing those services to the other portions of the Building.
- (e) The Landlord shall not be liable to Tenant for any interruption of Tenant's operations or for any inconvenience suffered by Tenant, its assigns, contractors, successors, invitees, employees, licensees or others, or for any other loss or damage resulting from the Landlord's performance of any necessary maintenance

or repairs to any portion of the Premises. Further, any resulting interruption or inconvenience shall not constitute a constructive or other eviction of the Tenant, and the Rent shall not abate as a result of same.

12. INSURANCE.

- (a) Tenant shall pay for and maintain, at all times, the following minimum levels of insurance:
 - i. A policy of comprehensive general liability insurance in the sum of ONE MILLION DOLLARS (\$1,000,000.00) combined single limit of liability for bodily injuries, death, property damage, and personal injury resulting from any one occurrence, whether in, on, and around the Premises, or elsewhere.
 - ii. Workers Compensation. The Tenant shall provide and maintain a policy of workers compensation insurance on all employees, its agents or subcontractors as required by Florida Statutes (to include required Employers Liability coverage).
 - iii. “Tenant” or “Lessee” Insurance. The Tenant shall provide and maintain an “all-risk” policy of “Tenant” or “Lessee” insurance coverage in an amount equal to the full replacement cost of the Tenant’s personal property, furnishings, equipment, fixtures, and inventory.
- (b) The Landlord shall be named as an additional insured on all Tenant policies. The policies shall contain a waiver of subrogation in favor of Polk County. All insurance coverage shall be written with an insurer having an A.M. Best Rating of at least the “A” category and size category of VIII. The Tenant shall promptly notify the Landlord if an insurance policy is modified or canceled. The Tenant’s self-insured retention or deductible per line of coverage shall not exceed \$25,000.00 without the permission of the Landlord.
- (c) Landlord shall be named as an additional insured on all policies the Tenant must obtain in accordance with this Section 12. On or before the Commencement Date, the Tenant shall deliver to the Landlord a current Certificate of Insurance issued by an insurance company licensed to do business in the State of Florida that evidences Tenant’s compliance with the foregoing insurance requirements. Thereafter, the Tenant shall annually deliver to the Landlord a Certificate of Insurance satisfactory to the Landlord evidencing that the Tenant maintains such insurance coverage and policies.
- (d) The Tenant’s failure to maintain appropriate insurance coverage throughout the Term is a material breach of this Agreement. If the Tenant fails to maintain the required insurance coverage, then the Landlord, in its sole discretion, may obtain the required insurance on the Tenant’s behalf with all premiums the Landlord pays on such policies being Additional Rent that the Tenant shall pay Landlord in accordance with Section 4, above. The Landlord, however, has no duty to obtain any insurance on the Tenant’s behalf.
- (e) Notwithstanding the coverage amounts stated in this Section 12, the County may from time to time adjust the required coverage amounts based upon the County’s

Risk Manager's reasonable determination that the coverage amounts are inadequate to sufficiently protect the County's interests.

13. INDEMNITY. The Tenant shall indemnify, defend (by counsel reasonably acceptable to the Landlord), protect and hold the Landlord and its commissioners, officers, employees and agents, harmless from and against any and all claims, actions, causes of action, penalties, forfeitures, damages, losses, expenses and liabilities whatsoever (including, without limitation, attorneys' fees, costs and expenses incurred during negotiation, through litigation and all appeals therefrom) caused by, incident to, resulting from, arising out of, or occurring in connection with, directly or indirectly, (i) the Tenant's performance, non-performance, or breach of its duties and obligations under this Agreement, (ii) the use and occupation of the Premises by the Tenant, its officers, employees, agents, guests, licensees, or invitees, and (iii) the negligent acts, errors or omissions, or the intentional or willful misconduct of the Tenant, its officers, employees, agents, guests, licensees, invitees, or anyone for whose acts any of them may be liable. This Section 13 shall survive the expiration or early termination of this Agreement.

14. DEFAULT.

- (a) Except as stated in the following sentence, if the Landlord materially defaults in any of its duties or obligations stated in this Agreement and fails to cure the same within thirty (30) days after the date that the Tenant delivers written notice to the Landlord of any such default, then the Tenant may terminate this Agreement. If, however, the Landlord's material default is such that it cannot be reasonably cured within thirty (30) days, then the Tenant shall not have the right to terminate this Agreement for such default if the Landlord commences the necessary curative actions within a reasonable time after receiving Tenant's notice and thereafter diligently pursues the cure to completion.
- (b) Except as stated in the following sentence, if the Tenant materially defaults in any of its duties and obligations under this Agreement and fails to cure such default within thirty (30) days after the date Landlord delivers written notice to the Tenant of any such default, then the Landlord may terminate this Agreement, resume possession of the Premises for its own account, and pursue any other remedy or remedies provided by law or equity, without any further notice or demand to the Tenant. If however, the Tenant's material default of any Agreement duty or obligation is such that it cannot be reasonably cured within thirty (30) days, then the Landlord shall not have the right to pursue a remedy for such default if the Tenant commences the necessary curative actions within a reasonable time after receiving the Landlord's notice and thereafter diligently pursues the cure to completion.
- (c) The Landlord will not be liable for any loss or damage suffered by Tenant resulting from the Landlord's exercise of its rights pursuant to this Section 14.

15. LIABILITY LIMIT. IN NO EVENT, SHALL THE LANDLORD BE LIABLE TO THE TENANT FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR

BREACH OF THIS AGREEMENT BY THE LANDLORD WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

16. ATTORNEYS' FEES AND COSTS. In connection with any dispute or any litigation arising out of, or relating to this Agreement, each party shall be responsible for its own legal and attorneys' fees, costs and expenses, including attorneys' fees, costs, and expenses incurred for any appellate proceedings.

17. DAMAGE OR DESTRUCTION.

(a) If the Premises are wholly destroyed by fire or by other casualty not caused by the Tenant, its invitees, employees, or anyone under the Tenant's direction or control, then this Agreement shall immediately terminate. If the Premises or the Building are partially damaged or destroyed so as to render more than thirty percent (30%) of the Premises unusable for a time period that the Landlord reasonably estimates will exceed sixty (60) days, then either party may terminate the Agreement by giving written notice to the other party within seven (7) days after the date the Landlord notifies Tenant of the estimated time that the damaged portion of the Premises will be unusable.

(b) Intentionally Omitted.

(c) If the Premises are wholly destroyed by fire or by other casualty caused by the Tenant, its invitees, employees, or anyone under the Tenant's direction or control, then the Tenant shall be responsible to pay the costs and expense to repair all resulting physical damage to the Premises.

(d) The Landlord shall have a reasonable time after any casualty to make the necessary repairs and restoration to the Premises and if such repairs and restoration are not completed within a reasonable time then the Tenant may terminate this Agreement by delivering written notice to the Landlord prior to its substantial completion of the necessary repairs and restoration.

18. EMINENT DOMAIN. If the whole of the Building, the Premises, or such portion thereof as will make the Premises unusable to the Tenant for its intended purpose, is condemned or taken by any legally constituted authority for any public use or purpose, then in either of these events, this Agreement shall terminate and the lease of the Premises shall cease on the date when possession of the Premises is taken by the condemning authorities. If a portion of the Building or Premises is taken, but not an amount that would make the Premises unusable to the Tenant for its intended purpose, then this Agreement shall continue in full force and effect. The Tenant shall have no right or claim to any part of any award made to or received by the Landlord for such condemnation or taking, and all awards for the same shall be made solely to the Landlord. The Tenant shall, however, have the right to pursue any separate award that does not reduce the award to which the Landlord is entitled.

19. ASSIGNMENT. The Tenant shall not (i) assign this Agreement or any interest therein; (ii) sublease the Premises or any portion thereof; or (iii) permit use of the Premises by any party other than the Tenant, all without the Landlord's prior written consent, which consent may be withheld in the Landlord's sole discretion.

20. ENCUMBRANCE. Tenant shall not mortgage, pledge or otherwise encumber its interests (i) in the Premises, and (ii) under this Agreement. Tenant, at its own cost and expense, shall at all times keep the Landlord's interests in and to the Premises free and clear from and against all claims, liens, and legal processes of the Tenant's creditors and the Tenant shall protect and defend the Landlord's interests against the same

21. SECURED PARTY RIGHTS; ATTORNMENT.

(a) This Agreement is and shall be subject to (i) any security instrument now or hereafter encumbering the Premises and all advances made or to be made which are secured by such instrument(s); and (ii) the Landlord's assignment of its interests in any leases and rents from the Premises. Upon the request of the Landlord or the holder of any such security instruments, the Tenant shall, at its cost and expense, execute and deliver any documents the Landlord or the holder deem reasonably necessary to evidence the subordination of the Agreement to any such security instrument.

(b) Notwithstanding the foregoing requirements of Section 21 (a), above, upon receipt of Landlord's request the Tenant shall, at its cost and expense, execute and deliver to Landlord any and all instruments that may be necessary to make this Agreement superior and prior to the lien and interest of any security instrument.

(c) Additionally, if the Landlord's interests in the Premises, or any portion thereof, is assigned or sold, or otherwise comes into the hands of a security instrument holder or any other person, then the Tenant shall attorn to the assignee, purchaser, holder, or such other person and recognize the same as the Landlord under this Agreement. Within ten (10) days after receipt of the Landlord's request, the Tenant shall execute and return an attornment agreement containing such provisions as are reasonably required to evidence the same.

22. HAZARDOUS MATERIALS. Tenant shall not knowingly or unknowingly generate, store, treat, dispose of, install or otherwise cause or permit any Hazardous Material (defined, below) to be brought upon, kept or used in or about the Premises by the Tenant, its guests, employees, contractors or invitees. If Tenant fails to comply with the foregoing covenant, then the Tenant shall be wholly responsible for (i) all costs incurred in connection with any investigation of site conditions and cleanup, remediation, removal, or restoration work required by any federal, state, or local governmental agency because of the presence of the Hazardous Materials; and (ii) all consequential damage or loss that the Landlord incurs, both regardless of whether such costs, damages or loss arise during or after the term of this Agreement. If Tenant must take any remedial action in accordance with this section, the Tenant shall first obtain Landlord's approval and then immediately take all actions (at the Tenant's sole expense) that are necessary to return the Premises to the condition existing prior to the introduction of such Hazardous Materials. The term "Hazardous Materials" is defined to include, but not be limited, to any and all substances, materials, wastes, pollutants, elements or compounds in such quantities as are currently or shall in the future be classified as hazardous, toxic, dangerous or capable of posing a risk of injury to health, safety, or property by any Federal, State or local statute, law, ordinance, code, rule, regulation, order, or decree. This Section 22 shall survive the expiration or the early termination of this Agreement.

Force Majeure, the affected party shall promptly, diligently, and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations under this Agreement. During any such time period the affected party shall keep the other party duly notified of all such actions required for it to be able to commence or resume performance of its obligations under this Agreement.

- 27. QUIET USE AND ENJOYMENT.** As long as the Tenant fully complies with the terms, conditions and covenants of this Agreement, the Landlord agrees that the Tenant shall and may peaceably have, hold and enjoy the leased Premises during the Term.
- 28. BROKERS.** Landlord and Tenant represent and warrant to each other that they have had no dealings with any broker or agent in connection with this Agreement and that no third party is due a commission, fee, or any other payment in association with the lease of the Premises to the Tenant. Each party shall be responsible to pay any claims made by anyone for any compensation, commissions, and charges claimed by any broker or agent with whom such party may have dealt with respect to this Agreement or the negotiations thereof.
- 29. NO DISCRIMINATION.** Both parties shall comply with the Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Americans with Disabilities Act of 1990, as amended. Specifically, in the carrying out of this Agreement, neither party shall discriminate in any way as to race, color, creed, national origin, or in any other respect which would violate the aforesaid acts.
- 30. RELATIONSHIP.** This Agreement creates a landlord-tenant relationship between the parties. Nothing in this Agreement shall be deemed or construed as creating any other relationship between the parties.
- 31. WAIVER.** The failure of a party to enforce any right hereunder shall not be deemed a waiver of such right. No covenant, condition, or provision of this Agreement can be waived except with the written consent of each party. Any such waiver by the parties in one instance shall not constitute a waiver of any subsequent similar condition, circumstance or default, unless specifically stated in the written consent.
- 32. SEVERABILITY.** If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstances shall to any extent, be deemed lawfully invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, and condition of this Agreement shall be valid and enforced to the fullest extent permitted by law. The Landlord and Tenant shall reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined void.
- 33. CONSTRUCTION; CAPTIONS.** This Agreement is the product of joint efforts of the parties and no provision shall be interpreted or construed in favor of either party by virtue of authorship of such provision. The captions in this Agreement are for convenience of reference only and shall not define or limit any the terms or provisions hereof.

- 34. MODIFICATION.** This Agreement may only be modified by a written amendment properly executed by the parties. No oral modifications will be effective or binding.
- 35. INTEGRATION.** Tenant and Landlord agree that this Agreement sets forth the entire agreement between the parties with respect to its subject matter and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications between the parties pertaining to the lease of the above described property, whether written or oral.
- 36. RADON.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.
- 37. COUNTERPARTS.** This Agreement may be executed in multiple counterparts each of which shall be an original, but which collectively shall form a single agreement.
- 38. GOVERNING LAW; VENUE.** This Agreement shall be governed and interpreted under the laws of the State of Florida. Venue for any action relating to the construction, interpretation, or enforcement of this Agreement shall be in or for the Tenth Judicial Circuit, Polk County, Florida.
- 39. EFFECTIVE DATE.** The Effective Date of this Agreement shall be the date that the later of the two parties executes the Agreement. The last party to execute the Agreement shall immediately notify the other party and deliver a fully executed copy (or counterpart, if applicable) to that party.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE
WITH THE PARTIES' SIGNATURES.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the Effective Date.

ATTEST:

STACY M. BUTTERFIELD, CLERK

POLK COUNTY,

a political subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Melony M. Bell, Chairman
Board of County Commissioners

Approved as to form and legal sufficiency:

Date: _____

County Attorney's Office

ATTEST:

**THE ARTS ENSEMBLE EDUCATION
FOUNDATION INC.,**

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