

LEASE AGREEMENT

THIS LEASE AGREEMENT (Agreement) is entered into as of December 7, 2012 (Commencement Date), between the **PALM COAST ARTS FOUNDATION, INC.** (Tenant), whose mailing address is 102C Brookhaven Ct. N., Palm Coast, Florida 32164 and the **CITY OF PALM COAST, FLORIDA** (Landlord), whose mailing address is 106 Cypress Point Parkway, Suite B-106, Palm Coast, Florida 32164.

WITNESSETH:

SECTION 1. PREMISES. Subject to the terms hereof, and to zoning and restrictions of record, and in consideration of the mutual benefits and obligations set forth hereafter, Landlord leases to Tenant and Tenant leases from Landlord the Premises located in Flagler County, Florida, more particularly described as follows (the "Premises"):

Lot 20, of the subdivision plat of Town Center at Palm Coast Phase 2, according to the plat thereof, as recorded in Map Book 35, Pages 63 through 68, of the Public Records of Flagler County, Florida.

Property Appraiser's Parcel ID #06-12-31-5825-00000-0200.

SECTION 2. TERM. This Agreement shall be for a term of five (5) years, commencing on the Commencement Date and expiring December 6, 2017; provided, however, that the parties may extend this Agreement for an additional five (5) years under said terms, conditions, and provisions as may be mutually agreed by the parties. Also, provided that this Agreement will terminate upon Tenant's filing with Landlord of an application for a building permit for the Premises, and the parties shall thereafter consider negotiating a new long-term lease of the Premises.

SECTION 3. RENT. Tenant shall pay to Landlord during the term of this Agreement, an annual Rent in the amount of ONE DOLLAR (\$1.00) in advance, without demand, reduction or set-off (the "Rent").

SECTION 4. USE. Tenant shall use and occupy the Premises only to erect a sign. Tenant must obtain all necessary government approvals for the sign. Tenant shall not use the Premises in a disreputable, hazardous or unlawful manner, or in any manner that would constitute a public or private nuisance. Tenant shall not perform any acts on the Premises that would generate noxious odors or annoying noises.

SECTION 5. HAZARDOUS SUBSTANCES. Tenant shall not use, store, generate, dispose of, release or otherwise handle or process any hazardous substance on or about the Premises. Should Tenant violate this provision, then Tenant shall indemnify, defend, and hold Landlord harmless from all claims, charges, penalties, fines, liabilities, costs (including clean-up costs), and all other obligations and expenses arising directly or indirectly from such violation.

SECTION 6. QUIET ENJOYMENT. Upon paying the Rent and performing all other covenants and obligations under this Agreement, Tenant shall hold the Premises free from disturbance.

SECTION 7. REDELIVERY. Tenant covenants that at the termination of this Agreement, whether by expiration, default or otherwise, Tenant shall promptly re-deliver the Premises to Landlord free from subtenancies and in the condition the Premises are presently in, reasonable use and wear excepted. Any personal property or trade fixtures remaining on the Premises three (3) days after termination shall be deemed abandoned by Tenant, and may be disposed of as Landlord deems fit at Tenant's expense. All personal property or fixtures located

in the Premises on the Commencement Date shall be redelivered in good condition with the Premises.

SECTION 8. ACCEPTANCE OF PREMISES. Tenant acknowledges that Landlord has made no representation or warranty that the Premises are fit for Tenant's intended use. Tenant has inspected the Premises, and Tenant accepts the Premises "as is".

SECTION 9. INDEMNIFICATION/LIABILITY/LOSS. The Landlord is protected by sovereign immunity. The Tenant shall indemnify, defend and save the Landlord harmless, from and against all claims, demands, obligations, liabilities, penalties, fines, charges, costs and expenses, including, but not limited to, attorney's fees, costs and expenses for the defense thereof, arising from occurrences on or about the Premises and from the Tenant's negligent activities thereon. Should claim be brought against the Landlord or the Landlord be made a party to any action relating to the Premises, then the Tenant shall reimburse the Landlord for all attorney's fees, costs and expenses incurred by the Landlord in connection with the claim or action. The Tenant shall provide premises and property liability insurance acceptable to the Landlord and naming the Landlord as an additional insured (and provide proof thereof) with coverage limits in an amount of no less than \$1,000,000.00 combined single limit.

SECTION 10. NO ASSIGNMENT WITHOUT CONSENT. Tenant cannot assign this Agreement or any of Tenant's rights hereunder, nor sublet the Premises or any portion thereof.

SECTION 11. DEFAULT. Landlord, at its option, may terminate this Agreement on three (3) days' notice to the Tenant: (a) if any Rent due hereunder is not paid when due; or (b) if the Premises are abandoned by Tenant or otherwise become and remain vacant or deserted for a period of ten (10) days or more; or (c) if the Premises are used for some

purpose other than the use authorized herein; or (d) if Tenant shall have failed to cure a default in the performance of any other provision of this Agreement or any rule or regulation set forth herein within ten (10) days after written notice thereof to Tenant from Landlord, or if such default cannot be completely cured in such time, if Tenant shall not promptly proceed in good faith to cure such default within said ten (10) days, or shall not complete the curing of such default with due diligence. In the event that Landlord elects to terminate this Agreement, then, upon the expiration of the aforesaid three (3) day notice period, Tenant shall remain liable for damages to the maximum extent provided herein or permitted by law.

SECTION 12. DESTRUCTION OF PREMISES. In the event that the Premises or a portion thereof is destroyed or damaged by fire or other casualty, then Landlord may or may not elect to repair or rebuild the Premises or to terminate this Agreement. If Landlord elects to terminate this Agreement, Tenant shall promptly surrender possession of the Premises to Landlord and neither Landlord nor Tenant shall have any remaining obligations hereunder, except any obligations owed by Tenant that accrued before the casualty, which obligations Tenant shall forthwith settle. Landlord shall not be liable for any damages, inconvenience, or annoyance to Tenant resulting from any damage to the Premises or from the repair or replacement thereof, and shall not be liable for any delay in restoring the Premises unless arising from the Landlord's negligent or wrongful action. If Tenant's negligence or the negligence of Tenant's agents, employees or invitees results in damage or destruction to the Premises, then notwithstanding any other provision of this Agreement, Tenant shall be obligated to pay the cost or repair, replacement or restoration that exceeds any available insurance proceeds therefore, and Rent shall not abate during the period of repair or restoration.

SECTION 13. LIABILITY FOR LOSS OF PERSONAL PROPERTY. All personal property placed or moved in the Premises shall be at the risk of Tenant. Landlord shall not be liable for any damage to person or to property occurring on the Premises or related to Tenant's use thereof including, but not limited to, damages arising from the bursting or leaking of water pipes.

SECTION 14. ALTERATIONS. Tenant shall not make any alterations to the Premises without first obtaining the written consent of Landlord. Any alterations so approved by Landlord shall (a) be made in a good and workmanlike manner; (b) be paid for in full by Tenant; (c) be made with materials of comparable or better quality than are already in place; and (d) not weaken the Premises or cause a reduction in fair market value of the Premises.

SECTION 15. ACCESS TO PREMISES. Landlord may enter the Premises at any time for the protection or preservation of the Premises.

SECTION 16. COST OF COLLECTION AND ATTORNEY'S FEES. In the event of legal proceedings between the parties, the prevailing party in such proceedings shall be entitled to have its costs and attorneys' fees, including costs and attorneys' fees for appellate proceedings, paid by the non-prevailing party.

SECTION 17. LIENS. Tenants agrees to keep the Premises free and clear of any lien or encumbrance of any kind whatsoever created by Tenant's acts or omissions and Tenant shall indemnify and defend, to the extent and limits permitted by law, Landlord against any claim or action brought to enforce any lien imposed on the Premises because of Tenant's negligent act or omission. Except as specifically provided otherwise herein, Tenant shall have 10 days after

receiving notice of any such lien or encumbrance to have such removed. If Tenant fails to have such removed within that time, Tenant shall be in default.

SECTION 18. WAIVER. No act of a party shall be deemed a waiver of any of the party's rights hereunder, unless such waiver is specifically made in writing. A party's forbearance to enforce any rights hereunder or to exercise any available remedy, or to insist upon strict compliance herewith, shall not be deemed a waiver or forfeiture of such rights, remedies, or strict compliance, nor shall such forbearance stop the party from exercising any available rights or remedies or from requiring strict compliance in the future. Landlord's acceptance of any late or inadequate performance including, but not limited to, late or insufficient payments of Rent, shall not constitute a waiver or forfeiture of Landlord's right to treat such performance as an event of default or to require timely and adequate performance in the future.

SECTION 19. NOTICES. All notices or other communication required or permitted to be given pursuant to this Agreement shall be in writing and shall be construed as properly given if mailed by registered or certified mail with return receipt requested. It is agreed that notice so mailed shall be reasonable and effective upon the expiration of three (3) business days after its deposit. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be the address as follows:

**Palm Coast Arts Foundation, Inc.
Attn: Sam Perkovich, President
P.O. Box 351766
Palm Coast, Florida 32135-1766**

**City of Palm Coast, Florida
Attn: Jim Landon, City Manager
160 Cypress Point Parkway
Suite B-106
Palm Coast, Florida 32164**

SECTION 20. CONSTRUCTION OF LEASE AGREEMENT. Whenever the context permits, or requires the use of the singular in this Agreement shall include the plural and

the plural shall include the singular. Any reference herein to one gender shall likewise apply to the other gender and to the neuter; and any reference herein to the neuter shall refer likewise to one or both genders. Any reference herein to a person shall include trusts, partnerships, corporations, and other entity, as appropriate.

SECTION 21. CAPTIONS. The captions to the provisions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement nor in any way effect the substance of this Agreement.

SECTION 22. APPLICABLE LAW/VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue shall be in the Seventh Judicial Circuit in and for Flagler County, Florida.

SECTION 23. SURVIVABILITY. The parties agree that all of Tenant's indemnities, representations and warranties made herein, shall, to the extent and limits permitted by law, survive the termination or expiration of this Agreement and that the termination or expiration hereof shall not release Tenant from any accrued, unfulfilled or unsatisfied liabilities or obligations.

SECTION 24. MERGER. No prior or present agreements or representations shall be finding upon the parties hereto unless incorporated in this Agreement. No modification or change in this Agreement shall be valid or binding upon the parties unless a writing is executed by the parties to be bound thereby.

SECTION 25. PARTIES BOUND. This Agreement shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns of the parties. In the event Landlord or any successor-owner of the Premises shall convey or otherwise dispose of the Premises, all liabilities and obligations of Landlord, or any successor-owner as Landlord,

to Tenant under this Agreement shall terminate upon such conveyance or disposal and the giving of written notice thereof to Tenant.

SECTION 26. SEVERABILITY. If any provision of this Agreement should be in conflict with any public policy, statute or rule of law, or is otherwise determined to be invalid or unenforceable, then such provision shall be deemed null and void to the extent of such conflict, but without invalidating the remaining provisions.

SECTION 27. ACCORD AND SATISFACTION. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earlier Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or Rent payment be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Agreement.

SECTION 28. TIME PERIODS. Time is of the essence in this Agreement. Any reference herein to time periods of less than six (6) days shall exclude Saturdays, Sundays, and legal holidays; and any time period provided for herein that ends on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next full business day.

SECTION 29. RECORDING. This Agreement shall be recorded in the Land Records of Flagler County, Florida.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals on the date stated.

Witnesses:

X Carol Monachese
Printed Name: CAROL MONACHESE

Judy Ingram
Printed Name: JUDY INGRAM

TENANT:

PALM COAST ARTS FOUNDATION, INC.

By: X Shirley (Jim) Perbouch
Title: President
Date: 12-6-12

LANDLORD:

CITY OF PALM COAST, FLORIDA

By: Jim Landon
Jim Landon, City Manager
Date: 12/7/12

ATTEST

Virginia Smith
Virginia Smith, CMC, CP, City Clerk/Paralegal

APPROVED AS TO FORM AND CONTENT:

William E. Reischmann, Jr.
William E. Reischmann, Jr., Esquire, City Attorney

Prepared by:
Catherine D. Reischmann, Esquire
Post Office Box 2873
Orlando, Florida 32802-2873

Inst No: 2014035916 11/25/2014 12:51 PM
BK:2036 PG:117 PAGES:16
RECORDED IN THE RECORDS OF
Gail Wadsworth Clerk of the Circuit Court & Comptroller
Flagler FL

RECEIVED
11/23/14

Return to:
Virginia Smith, CMC, CP
City of Palm Coast
160 Cypress Point Pkwy, Suite B-106
Palm Coast, Florida 32164

LEASE AGREEMENT

THIS LEASE AGREEMENT (Agreement) is entered into as of November 12, 2014 (Commencement Date), between the **PALM COAST ARTS FOUNDATION, INC.** (Tenant or PCAF), whose mailing address is P.O. Box 351766 Palm Coast, Florida 32135 and the **CITY OF PALM COAST, FLORIDA** (Landlord), whose mailing address is 106 Cypress Point Parkway, Suite B-106, Palm Coast, Florida 32164.

WITNESSETH:

SECTION 1. PREMISES. Subject to the terms hereof, and to zoning and restrictions of record, and in consideration of the mutual benefits and obligations set forth hereafter, Landlord leases to Tenant and Tenant leases from Landlord the Premises located in Flagler County, Florida, more particularly described as follows (the "Premises"):

Lots 19 and 20, of the subdivision plat of Town Center at Palm Coast Phase 2, according to the plat thereof, as recorded in Map Book 35, Pages 63 through 68, of the Public Records of Flagler County, Florida.

**Property Appraiser's Parcel ID #06-12-31-5825-00000-0190
Property Appraiser's Parcel ID #06-12-31-5825-00000-0200.**

SECTION 2. TERM. This Agreement shall be for a term of ten (10) years, commencing on the Commencement Date and expiring November 11, 2024; provided, however, that the parties may extend this Agreement for an additional ten (10) years under said terms, conditions, and provisions as may be mutually agreed by the parties in writing. Also, provided that this Agreement will terminate and a new lease will be negotiated upon Tenant's filing with

Landlord of an application for a building permit for an Events Center Building or Performing Arts Center on the Premises.

SECTION 3. RENT. Tenant shall pay to Landlord during the term of this Agreement an annual Rent in the amount of ONE DOLLAR (\$1.00) in advance, without demand, reduction or set-off (the "Rent"). Rent is due upon execution of this Agreement and annually thereafter.

SECTION 4. USE.

(a) Tenant shall use and occupy the Premises for cultural arts purposes and other community uses. The uses shall be depicted on Exhibit "A", PCAF Conceptual Plan. No other uses are allowed. Tenant must obtain all necessary government approvals for any uses. Tenant shall not use the Premises in a disreputable, ultra-hazardous or unlawful manner, or in any manner that would constitute a public or private nuisance. Tenant shall not perform any acts on the Premises that would generate noxious odors.

(b) Tenant will allow Landlord use of the Premises a minimum of four (4) times a year, up to three (3) days per event, assuming the Premises are available. Landlord will provide Tenant sixty (60) days' notice of a request for use of the Premises.

SECTION 5. HAZARDOUS SUBSTANCES. Tenant shall not use, store, generate, dispose of, release or otherwise handle or process any hazardous substance on or about the Premises. Should Tenant violate this provision, then Tenant shall indemnify, defend, and hold Landlord harmless from all claims, charges, penalties, fines, liabilities, costs (including clean-up costs), and all other obligations and expenses arising directly or indirectly from such violation.

SECTION 6. QUIET ENJOYMENT. Upon paying the Rent and performing all other covenants and obligations under this Agreement, Tenant shall hold the Premises free from disturbance.

SECTION 7. REDELIVERY. Tenant covenants that at the termination of this Agreement, whether by expiration, default or otherwise, Tenant shall promptly re-deliver the Premises to Landlord free from subtenancies and in the condition the Premises are presently in, reasonable use and wear excepted. Any personal property or trade fixtures remaining on the Premises three (3) days after termination shall be deemed abandoned by Tenant, and may be disposed of as Landlord deems fit at Tenant's expense. All personal property or fixtures located in the Premises on the Commencement Date shall be redelivered in good condition with the Premises.

SECTION 8. ACCEPTANCE OF PREMISES. Tenant acknowledges that Landlord has made no representation or warranty that the Premises are fit for Tenant's intended use. Tenant has inspected the Premises, and Tenant accepts the Premises "as is".

SECTION 9. INDEMNIFICATION/LIABILITY/LOSS. The Landlord is protected by sovereign immunity. The Tenant shall indemnify, defend and save the Landlord harmless, from and against all claims, demands, obligations, liabilities, penalties, fines, charges, costs and expenses, including, but not limited to, attorney's fees, costs and expenses for the defense thereof, arising from occurrences on or about the Premises and from the Tenant's negligent activities thereon. Should claim be brought against the Landlord or the Landlord be made a party to any action relating to the Premises, then the Tenant shall reimburse the Landlord for all attorney's fees, costs and expenses incurred by the Landlord in connection with the claim or action. The Tenant shall provide premises and property liability insurance acceptable to the Landlord and naming the Landlord as an additional insured (and provide proof thereof) with coverage limits in an amount of no less than \$1,000,000.00 combined single limit.

SECTION 10. NO ASSIGNMENT WITHOUT CONSENT. Tenant cannot assign this Agreement or any of Tenant's rights hereunder, nor sublet the Premises or any portion thereof.

SECTION 11. DEFAULT/TERMINATION.

(1) Landlord, at its option, may terminate this Agreement on three (3) days' notice to the Tenant: (a) if any Rent due hereunder is not paid when due; or (b) if the Premises are abandoned by Tenant or otherwise become and remain vacant or deserted for a period of ten (10) days or more; or (c) if the Premises are used for some purpose other than the use authorized herein; or (d) if Tenant shall have failed to cure a default in the performance of any other provision of this Agreement or any rule or regulation set forth herein within ten (10) days after written notice thereof to Tenant from Landlord, or if such default cannot be completely cured in such time, if Tenant shall not promptly proceed in good faith to cure such default within said ten (10) days, or shall not complete the curing of such default with due diligence; or (e) if Tenant does not timely provide Premises to Landlord as provided in Section 4(b); or In the event that Landlord elects to terminate this Agreement, then, upon the expiration of the aforesaid three (3) day notice period, Tenant shall remain liable for damages to the maximum extent provided herein or permitted by law.

(2) Landlord may terminate this Agreement without cause after one hundred eighty (180) days written notice to Tenant.

SECTION 12. UTILITIES.

Tenant shall be solely responsible for and shall promptly pay all charges for water, sewage, gas, electricity, trash removal or any other utility used or consumed in the Premises. If Landlord supplies any utility used or consumed in the Premises, Tenant agrees to purchase the

same from Landlord and to pay amounts due to Landlord. In no event shall Landlord be liable for an interruption or failure in the supply of any such utilities to the Premises. Tenant shall not install any equipment in or about the Premises which will exceed or overload the capacity of any utility facilities serving the Premises, without first obtaining the written consent of Landlord.

SECTION 13. SECTION OMITTED INTENTIONALLY.

SECTION 14. MECHANICS' LIENS.

This Agreement and State law strictly forbids the filing of any liens whatsoever by any contractor, subcontractor, materialmen, laborer or other person for any work performed by or at the request of Tenant in or about the Premises. Notice of such prohibition may be given to such persons in a memorandum of lease recorded in the public records of the county in which the Premises is located. The purpose of this Section is to expressly exculpate and insulate Landlord from any liability whatsoever for the cost of any such work performed by or at the request of Tenant. The interest of Landlord in the Premises shall not be subject to foreclosure with respect to any such liens. In addition, Tenant shall cause any lien filed against the Premises in violation of this Section 14 to be released and discharged within ten (10) days after Landlord's written demand therefore and Tenant shall indemnify and hold Landlord harmless from and against any such lien and any cost, damages, charges and expenses incurred in connection with any such lien, including, without limitation, attorney's fees.

Nothing contained in this Section 14, or the Agreement, shall authorize Tenant to do any act which may create or be the foundation for any lien, mortgage or other encumbrance upon the reservation or other estate of Landlord, or of any interest of Landlord in the Premises, or in the Property or improvements thereof; it being agreed that should Tenant cause any alterations, changes, additions, improvements or repairs to be made in the Premises, or cause materials to be

furnished or labor to be performed therein, neither Landlord nor the Premises shall, under any circumstances, be liable for the payment of any expenses incurred or for the value of any work done or material furnished to the Premises or any part thereof. Tenant shall, upon request of Landlord, deliver such documents as may be required by Landlord in order to effectuate the lien protection required by this Section; all such alterations, changes, additions, improvements and repairs and materials and labor shall be at Tenant's expense; and Tenant shall be solely and wholly responsible to contractors, laborers and materialmen furnishing labor and materials to the Premises, or any part thereof. Tenant shall inform every service or material provider of the foregoing provisions prior to contracting with any of them for goods or services.

SECTION 15. RESPONSIBILITIES OF TENANT.

Without limiting the generality of the obligations placed upon Tenant under Section 14, Tenant agrees to repair and maintain the Premises in good order and condition in compliance with City Code. Tenant shall, at its own cost and expense, perform all janitorial and cleaning services within the Premises in order to keep the same in a neat, clean and orderly condition.

If Tenant fails to undertake and at all times thereafter diligently pursue to completion the repair and maintenance of the Premises in compliance with City Code within fourteen (14) days after its receipt of written notice from Landlord that such repairs or maintenance are so required (except in the case of any such repairs or maintenance which constitute an emergency to the structural integrity or safety of the Premises, in which event no such notice shall be required), then Landlord may make such repairs and maintenance, without liability to Tenant for any loss or damage that may accrue to Tenant's property. Within ten (10) days after completion, and upon Landlord's presentation of a bill, Tenant shall pay Landlord's cost of making such repairs, plus twenty percent (20%) for overhead, as additional rent. In addition, said bill shall include

interest at the rate of ten percent (10%) on Landlord's repair costs, computed from the date of completion of such repairs by Landlord through the date of the full payment of such costs by Tenant.

If Landlord undertakes any maintenance or repair work in the course of which it shall be determined that such maintenance or repair work is made necessary by the negligence or willful act or omission of Tenant or any of its employees or agents, or that the maintenance or repair work is, under the terms of this Agreement, the responsibility of Tenant, then Tenant shall pay Landlord's cost therefore, plus overhead and interest as above provided in this Section 15.

SECTION 16. SURRENDER OF PREMISES.

Upon the termination of Tenant's rights of possession under this Agreement (whether as a result of the expiration of the Lease Term or any renewal or extension thereof or any sooner termination thereof in accordance with the terms of the Agreement), Tenant shall immediately surrender the Premises to Landlord in the same condition and state of repair as the Premises were in upon delivery of possession thereof to Tenant under this Agreement, reasonable wear and tear excepted. Tenant shall also thereupon surrender all keys for the Premises to Landlord. Tenant shall remove all its trade fixtures and any alterations, additions, decorations or improvements which Landlord requests to be removed before surrendering the Premises to Landlord as aforesaid and Tenant shall promptly repair any damage caused to the Premises thereby. Tenant's obligation to observe or perform this covenant shall survive the termination of this Agreement and Tenant's rights of possession hereunder. BY SIGNING THIS RENTAL AGREEMENT, THE TENANT AGREES THAT UPON SURRENDER OR ABANDONMENT, AS DEFINED BY CHAPTER 83, FLORIDA STATUTES, THE LANDLORD SHALL NOT BE LIABLE OR

RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE TENANT'S PERSONAL PROPERTY.

SECTION 17. INSURANCE AND INDEMNIFICATION.

Section 17.1 - Liability Insurance.

During the entire Lease Term and any extensions or renewals thereof, Tenant shall keep in full force and effect bodily injury, property damage and comprehensive public liability insurance with respect to the Premises for a coverage of not less than \$1,000,000.00 for the injury or death of any one person, \$1,000,000.00 for the injury or death of more than one person in any one accident, and \$1,000,000.00 for property damage, which insurance shall include without limitation Pollution Legal Liability coverage or similar coverage and shall cover defense costs for environmental contamination or Pollution. The policies shall name Landlord, any person, firms or corporations designated by Landlord, and Tenant as insureds and shall contain a clause that the insurer will not cancel or modify the insurance policies without first giving Landlord not less than ten (10) days' prior written notice thereof. A copy of the policies or certificates of such insurance shall be delivered to Landlord on or before the Commencement Date. All policies to be maintained under this Agreement shall be written on an insurance carrier with an A.M. Best rating of at least A-VII.

Section 17.2 - Indemnification of Landlord.

Tenant shall indemnify and save Landlord harmless from and against any and all claims, actions, damages, liability and expense incurred by or charged against Landlord in connection with loss of life, personal injury or damage to property arising directly or indirectly from or out of any occurrence at the Premises, the occupancy or use thereof by Tenant or any act or omission of Tenant, its agents, contractors, employees, servants, lessees, invitees or concessionaires on the

Premises. If Landlord is made a party to any litigation commenced by or against Tenant or otherwise relating to the Premises, then Tenant shall hold Landlord harmless from and against and shall pay all costs, expenses and reasonable attorney's fees incurred or paid by Landlord in connection with such litigation. Notwithstanding anything to the contrary as may be contained hereinabove, Tenant shall indemnify and hold Landlord harmless from all suits, actions, damages, liability, expenses, and associated fees and costs, attorneys' and otherwise, as a result of Tenant's use of the Premises and any damages or destruction to person(s) or property, loss of life, loss of income, or other such occurrence from any cause whatsoever insofar as such damage or destruction to person(s) or property, loss of life, loss of income or other such occurrence shall not be as a result of any act or acts of Landlord, its affiliates, associates, employees, contractors, agents or invitees regardless of whether such act or acts as contemplated herein shall have been occasioned by commission or omission.

Section 17.3 - Waiver of Subrogation.

Landlord and Tenant each hereby waive their right to receive damages against each other for any reason whatsoever to the extent the damaged party recovers from its insurance carrier, unless said waiver invalidates any such insurance policy. Any insurance policy procured by either Tenant or Landlord hereunder which does not name the other as an insured shall, if obtainable (regardless of cost), contain an express waiver of any right of subrogation by the insurance company against the Landlord or Tenant, as the case may be. All insurance policies obtained by Tenant hereunder shall contain an endorsement that Landlord, although named as an insured, shall nevertheless be entitled to recover damages caused by the negligence or willful acts of Tenant.

Section 17.4 - Requirement to Cure.

Tenant shall not allow any insurance required to be maintained by it under this Agreement to lapse or be terminated for any reason whatsoever. In the event Landlord receives notice from an insurance carrier (i) that any policy has not been renewed, or (ii) that any premium has not been paid, or (iii) that any coverage is going to be modified or eliminated, or (iv) that any insurance required to be maintained by Tenant under this Agreement is going to be altered in any manner which could have a negative impact on the protection provided to Landlord, such notice shall constitute a material default under this Agreement. Tenant immediately shall cure such default. If Tenant does not cure such default within ten (10) days, Tenant shall cease all operations on the Premises. Landlord shall have the right to enforce the provisions of this Section by any means available to it under this Agreement, at law or in equity, including without limitation injunction or acceleration of all sums due hereunder.

SECTION 18. RIGHT OF ENTRY.

Landlord or its representatives shall have the right to enter the Premises (with notice to Tenant unless an emergency occurs than no notice is necessary) during all reasonable hours of any day during the Lease Term to: (a) ascertain if the Premises are in proper repair and condition; and (b) make repairs, additions or alterations thereto or to the property or the building property in which the same are contained, without the same constituting an eviction of Tenant in whole or part or entitling the Tenant to any abatement of rent or other charges payable by it hereunder while such repairs, additions or alterations are being made.

SECTION 19. TENANT'S PROPERTY.

Section 19.1 - Taxes on Premises, Leasehold or Personalty.

Tenant shall be responsible for and shall pay when due all municipal, county or state taxes assessed during the Lease Term or any extension or renewal thereof against the Premises,

any leasehold interest or personal property of any kind, owned by or placed in, upon or about the Premises by the Tenant. In addition, if the taxing authorities include in any taxes or assessments levied or assessed against the Premises, the value of any improvements made by Tenant, or if such taxing authorities include machinery, equipment, fixtures, inventory or other personal property or assets of Tenant in such taxes or assessments, then Tenant shall also pay 100% of the taxes and assessments allocable to such items.

Section 19.2 - Loss and Damage.

Landlord shall not be responsible for any damage to property of Tenant or of others located in or about the Premises, nor for the loss of or damage to any property of Tenant or of others by theft or misappropriation or otherwise. Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or leaks from any part of the Premises or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatever nature. Landlord shall not be liable for any such damage caused by other tenants or persons in the Premises, occupants of adjacent property, or the public, or damages caused by operations in construction of any private, public or otherwise for any latent defect in the Premises, except that if Tenant shall give notice to Landlord within a period of one (1) year from the date Tenant takes possession of the Premises of the existence of any such latent defect, then, provided such defect shall not have resulted from any act, omission, alteration or improvement made by Tenant, Landlord shall repair such defect. Landlord shall not be liable and shall be kept harmless from any and all claims arising directly or indirectly out of damage to any and all property of Tenant kept or stored in or about the Premises, including subrogation claims by Tenant's insurance carriers.

SECTION 20. LIABILITY OF LANDLORD.

Notwithstanding anything to the contrary contained in this Agreement or at law or in equity, Tenant hereby expressly acknowledges and agrees that there shall at no time be or be construed as being any personal liability by or on the part of Landlord under or in respect of this Agreement or in any way related to the Premises. Tenant further acknowledges and agrees that Tenant is accepting this Agreement and the estate created hereby upon and subject to the understanding that it shall not enforce or seek to enforce any claim or judgment or any other matter, for money or otherwise, personally or directly against Landlord. Tenant shall look solely to the Landlord's interest in the Premises for the satisfaction of any and all claims, remedies or judgments in favor of Tenant requiring the payment of money by Landlord, and no other judicial process for the satisfaction of Tenant's claims hereunder. The exculpation of personal liability as herein set forth was a material inducement for Landlord entering into this Agreement and shall be absolute, unconditional and without exception of any kind whatsoever.

SECTION 21. DESTRUCTION OF PREMISES. In the event that the Premises or a portion thereof is destroyed or damaged by fire or other casualty, then Landlord may or may not elect to repair or rebuild the Premises or to terminate this Agreement. If Landlord elects to terminate this Agreement, Tenant shall promptly surrender possession of the Premises to Landlord and neither Landlord nor Tenant shall have any remaining obligations hereunder, except any obligations owed by Tenant that accrued before the casualty, which obligations Tenant shall forthwith settle. Landlord shall not be liable for any damages, inconvenience, or annoyance to Tenant resulting from any damage to the Premises or from the repair or replacement thereof, and shall not be liable for any delay in restoring the Premises unless arising from the Landlord's negligent or wrongful action. If Tenant's negligence or the negligence of

Tenant's agents, employees or invitees results in damage or destruction to the Premises, then notwithstanding any other provision of this Agreement, Tenant shall be obligated to pay the cost or repair, replacement or restoration that exceeds any available insurance proceeds therefore, and Rent shall not abate during the period of repair or restoration.

SECTION 22. ALTERATIONS. Tenant shall not make any alterations to the real property on the Premises without first obtaining the written consent of Landlord. Any alterations so approved by Landlord shall (a) be made in a good and workmanlike manner; (b) be paid for in full by Tenant; (c) be made with materials of comparable or better quality than are already in place; and (d) not weaken the Premises or cause a reduction in fair market value of the Premises. Tenant may make alterations to the interior of any structures on the Premises without Landlord's consent.

SECTION 23. COST OF COLLECTION AND ATTORNEY'S FEES. In the event of legal proceedings between the parties, the prevailing party in such proceedings shall be entitled to have its costs and attorneys' fees, including costs and attorneys' fees for appellate proceedings, paid by the non-prevailing party.

SECTION 24. WAIVER. No act of a party shall be deemed a waiver of any of the party's rights hereunder, unless such waiver is specifically made in writing. A party's forbearance to enforce any rights hereunder or to exercise any available remedy, or to insist upon strict compliance herewith, shall not be deemed a waiver or forfeiture of such rights, remedies, or strict compliance, nor shall such forbearance stop the party from exercising any available rights or remedies or from requiring strict compliance in the future. Landlord's acceptance of any late or inadequate performance including, but not limited to, late or insufficient payments of Rent,

shall not constitute a waiver or forfeiture of Landlord's right to treat such performance as an event of default or to require timely and adequate performance in the future.

SECTION 25. NOTICES. All notices or other communication required or permitted to be given pursuant to this Agreement shall be in writing and shall be construed as properly given if mailed by registered or certified mail with return receipt requested. It is agreed that notice so mailed shall be reasonable and effective upon the expiration of three (3) business days after its deposit. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be the address as follows:

**Palm Coast Arts Foundation, Inc.
Attn: Sam Perkovich, President
P.O. Box 351766
Palm Coast, Florida 32135-1766**

**City of Palm Coast, Florida
Attn: Jim Landon, City Manager
160 Cypress Point Parkway
Suite B-106
Palm Coast, Florida 32164**

SECTION 26. CONSTRUCTION OF LEASE AGREEMENT. Whenever the context permits, or requires the use of the singular in this Agreement shall include the plural and the plural shall include the singular. Any reference herein to one gender shall likewise apply to the other gender and to the neuter; and any reference herein to the neuter shall refer likewise to one or both genders. Any reference herein to a person shall include trusts, partnerships, corporations, and other entity, as appropriate.

SECTION 27. CAPTIONS. The captions to the provisions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement nor in any way effect the substance of this Agreement.

SECTION 28. APPLICABLE LAW/VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue shall be in the Seventh Judicial Circuit in and for Flagler County, Florida.

SECTION 29. SURVIVABILITY. The parties agree that all of Tenant's indemnities, representations and warranties made herein, shall, to the extent and limits permitted by law, survive the termination or expiration of this Agreement and that the termination or expiration hereof shall not release Tenant from any accrued, unfulfilled or unsatisfied liabilities or obligations.

SECTION 30. MERGER. No prior or present agreements or representations shall be binding upon the parties hereto unless incorporated in this Agreement. No modification or change in this Agreement shall be valid or binding upon the parties unless a writing is executed by the parties to be bound thereby. This replaces the previous Lease dated December 7, 2012, between the parties.

SECTION 31. PARTIES BOUND. This Agreement shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns of the parties. In the event Landlord or any successor-owner of the Premises shall convey or otherwise dispose of the Premises, all liabilities and obligations of Landlord, or any successor-owner as Landlord, to Tenant under this Agreement shall terminate upon such conveyance or disposal and the giving of written notice thereof to Tenant.

SECTION 32. SEVERABILITY. If any provision of this Agreement should be in conflict with any public policy, statute or rule of law, or is otherwise determined to be invalid or unenforceable, then such provision shall be deemed null and void to the extent of such conflict, but without invalidating the remaining provisions.

SECTION 33. ACCORD AND SATISFACTION. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earlier Rent, nor shall any endorsement or statement on any check or any letter

accompanying any check or Rent payment be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Agreement.

SECTION 34. TIME PERIODS. Time is of the essence in this Agreement. Any reference herein to time periods of less than six (6) days shall exclude Saturdays, Sundays, and legal holidays; and any time period provided for herein that ends on a Saturday, Sunday or legal holiday shall extent to 5:00 p.m. of the next full business day.

SECTION 35. RECORDING. This Agreement shall be recorded in the Land Records of Flagler County, Florida.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals on the date stated.

Witnesses:

x *Krist Matthews*
Printed Name: Kristin Matthews
x *Cayde Couch*
Printed Name: Angel A Couch

TENANT:

PALM COAST ARTS FOUNDATION, INC.

By: x *Shulyn A Berkovich*
Title: resident
Date: 10-30-14

LANDLORD:

CITY OF PALM COAST, FLORIDA

By: *Jim Landon*
Jim Landon, City Manager
Date: 11/12/14

ATTEST:

Virginia A. Smith
Virginia A. Smith, City Clerk/Paralegal

APPROVED AS TO FORM AND CONTENT:

William E. Reischmann, Jr.
William E. Reischmann, Jr., Esquire, City Attorney

Prepared by and return to:
City Clerk
City of Palm Coast
160 Cypress Point Parkway, Ste. B-106
Palm Coast, FL 32164

Inst No: 2015026728 9/1/2015 2:41 PM
BK:2083 PG:1169 PAGES:5
RECORDED IN THE RECORDS OF
Gail Wadsworth, Clerk of the Circuit Court & Comptroller
Flagler FL

SECOND AMENDMENT TO
LEASE AGREEMENT WITH
THE PALM COAST ARTS FOUNDATION

THIS SECOND AMENDMENT is made and entered into, on this 20th day of August, 2015, and is to that certain Lease Agreement made and entered into on the 12th day of November 2014, between the City of Palm Coast, a Florida municipal corporation whose address is 160 Cypress Point Parkway, Ste. B106, Palm Coast, Florida 32164, (hereinafter referred to as the "City"), and the Palm Coast Arts Foundation, Inc., whose address is: P.O. Box 351766, Palm Coast, Florida 32135, (hereinafter referred to as "Tenant" or PCAF").

WITNESSETH:

WHEREAS, the City currently has a Lease Agreement to lease City-owned property as described in Exhibit "A" attached hereto (the "Premises"), to Palm Coast Arts Foundation, Inc., dated November 12, 2014, for the ultimate construction of the Performing Arts Center, recorded in O.R. Book 2036, Page 117, of the Public Records of Flagler County, Florida, (the "Lease Agreement"); and

WHEREAS, the Palm Coast Arts Foundation has received a grant to construct outdoor event space and a temporary headquarters/fundraising center on the Premises; and

WHEREAS, the Palm Coast Arts Foundation requires an extension/amendment to the Lease Agreement to meet requirements for further State grant funding; and

WHEREAS, the City of Palm Coast desires to amend the Lease Agreement with the Palm Coast Arts Foundation.

NOW, THEREFORE, in consideration of the mutual understandings and agreements contained herein, the parties agree to amend the agreement as follows:

SECTION 1. AMENDMENT. Section 2, Term of Agreement, of the Lease Agreement is amended as follows:

SECTION 2. TERM. This Agreement shall be for a term of twenty (20) years, commencing on the Commencement Date and expiring November 11, 2034; provided, however, that the parties may extend this Agreement for an additional ten (10) years under said terms, conditions, and provisions as may be mutually agreed by the parties in writing. Also, provided that this Agreement will terminate and a new lease will be negotiated upon Tenant's filing with Landlord of an application for a building permit for an Events Center Building or Performing Arts Center on the Premises.

SECTION 2. Except as herein modified, all terms and conditions of the Lease Agreement shall remain in full force and effect.

SECTION 3. RECORDING OF LEASE. Upon execution of this Second Amendment, said document will be recorded by the City Clerk of the City of Palm Coast with the Land Records of Flagler County, Florida.

IN WITNESS WHEREOF, the parties hereto have executed this instrument for the purpose herein expressed.

[signatures to follow]

WITNESS/ATTEST

PALM COAST ARTS FOUNDATION, INC.

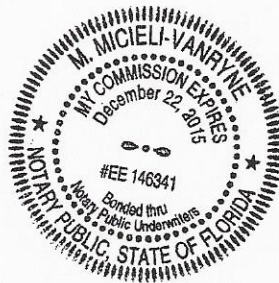
BY: Nancy M Crouch BY: Shirlyn A Perkovich
Print Name: NANCY CROUCH Shirlyn A. Perkovich, President

BY: JC Dated: 8-20-2015

Print name: Kelli Cerankowski

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 20 day of August 2015, 2015 by Shirlyn A. Perkovich, President of PALM COAST ARTS FOUNDATION, INC., a Florida corporation, on behalf of the company, who is personally known to me or has produced _____ as identification.



[Signature]
Notary Public

Name of Notary, Typed, Printed or Stamped

My Commission No: _____

Witness:

CITY OF PALM COAST

BY:

Diane Lando

Jim Landon

Print Name:

Diane Lando

Jim Landon, City Manager

BY:

Barbara Redline

Dated:

8/17/15

Print Name:

BARBARA REDLINE

ATTEST:

Virginia A. Smith

Virginia A. Smith, City Clerk

Approved as to Form and Legality

William E. Reischmann, Jr.

William E. Reischmann, Jr., Esq.

8/17/15 PCMD

MEP 8/5/15 Finance Director

G:\Docs\Cities\Palm Coast\Agreements\Arts Foundation Lease\PCAF Lease Amendment 7-23-15.d & c

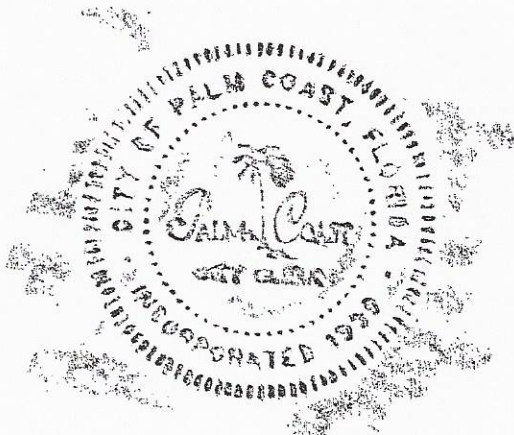


EXHIBIT "A"
[PREMISES]

Lots 19 and 20, of the subdivision plat of TOWN CENTER AT PALM COAST, PHASE 2, according to the plat thereof, as recorded in Map Book 35, Pages 63 through 68, of the Public Records of Flagler County, Florida.

Property Appraiser's Parcel ID #06-12-31-5825-00000-0190

Property Appraiser's Parcel ID #06-12-31-5825-00000-0200

Prepared by and return to:
City Clerk
City of Palm Coast
160 Lake Avenue
Palm Coast, FL 32164

Inst No: 2016017727 6/8/2016 12:36 PM
BK:2134 PG:417 PAGES:8
RECORDED IN THE RECORDS OF
Gail Wadsworth Clerk of the Circuit Court & Comptroller
Flagler FL

**THIRD AMENDMENT TO
LEASE AGREEMENT WITH
THE PALM COAST ARTS FOUNDATION**

THIS THIRD AMENDMENT is made and entered into on this 26 day of May, 2016, and is to that certain Lease Agreement made and entered into on the 12th day of November 2014, between the **CITY OF PALM COAST**, a Florida municipal corporation whose address is 160 Lake Avenue, Palm Coast, Florida 32164, (hereinafter referred to as the "Landlord"), and the **PALM COAST ARTS FOUNDATION, INC.**, whose address is P.O. Box 351766, Palm Coast, Florida 32135, (hereinafter referred to as "Tenant" or PCAF").

WITNESSETH:

WHEREAS, the Landlord and Tenant currently have entered into a Lease Agreement to lease City-owned property as described in Exhibit "A" attached hereto (the "Premises"), dated November 12, 2014, for the ultimate construction of the Performing Arts Center, recorded in O.R. Book 2036, Page 117, as amended by Second Amendment recorded on September 1, 2015, in O.R. Book 2083, Page 1169, all of the Public Records of Flagler County, Florida, (the "Lease Agreement"); and

WHEREAS, the parties have agreed to amend the Lease Agreement due to the Landlord's intention to construct new restrooms on the Premises, and the parties wish to

outline their responsibilities and the terms for the construction and to outline the removal of temporary structures owned by the Tenant.

NOW, THEREFORE, in consideration of the mutual understandings and agreements contained herein, the parties agree to amend the agreement as follows:

SECTION 1. A new section 36 entitled "Construction of Restrooms" is hereby added as follows:

SECTION 36. CONSTRUCTION OF RESTROOMS.

- (1) Landlord will agree to improve the Premises at Landlord's expense by constructing new restrooms as shown on the diagram attached hereto as Exhibit "B".
- (2) Tenant will be responsible for all maintenance, repair and replacement as needed of the restrooms, throughout the term of the Lease Agreement.
- (3) Tenant will indemnify the Landlord pursuant to section 17.2 of the Lease Agreement in the event of claims arising out of a breach of the Tenant's duties to properly maintain the restrooms.
- (4) The construction of the restrooms by the Landlord does not affect the rent in any way.
- (5) All improvements which are part of Landlord's work shown in Exhibit "B" shall, during and after expiration of the Term or sooner termination of this Lease Agreement, be owned by Landlord. Tenant acknowledges that the Landlord funded the construction of the restrooms and that the restrooms shall not be subject to any claim of Tenant or its

lenders, creditors, or any other claims. Tenant will not allow any liens to be placed on the restroom improvements or on the Premises.

(6) The Landlord has the right to require the Tenant to open the restrooms to the general public after 5 days advance notice to the Tenant. When the restrooms are made available to the general public, the Landlord will maintain and insure the restrooms during that time only. The Tenant will remain responsible for the Premises, including the restrooms, at all other times.

SECTION 2. A new section 37 entitled "Temporary Structures" is hereby added as follows:

SECTION 37. TEMPORARY STRUCTURES.

The Tenant has erected a temporary structure on the Premises. All temporary structures erected by Tenant must be removed from the Premises no later than five (5) years from the date of this Amendment. If Tenant does not remove any temporary structures within five (5) years from the date of this Amendment, the temporary structures and all contents will become the Landlord's property to remove or demolish, in Landlord's sole discretion.

SECTION 3. A new section 38 entitled "Phase 1 Surplus Fill Material" is hereby added as follows:

SECTION 38. PHASE I SURPLUS FILL MATERIAL.

As part the Tenant's first phase of construction, the Tenant was provided and has stockpiled surplus fill material to be used in the next phase of construction. The Tenant shall apply for and obtain the necessary permits and/or approvals to use

the stockpiled surplus fill material in the next phase of construction by July 1, 2016. If the Tenant has not obtained the necessary permits and/or approvals by July 1, 2016, or as an alternative, removed the stockpiled surplus fill material, the Tenant will be in default of the Lease Agreement.

SECTION 4. Except as modified by this Amendment, the terms and conditions of the Lease Agreement are ratified and confirmed by the parties. In the event of a conflict between the terms of this Amendment and the terms of the Lease Agreement, the terms of this Amendment shall govern. All defined terms used in this Amendment shall have the meaning assigned to them in the Lease Agreement, unless otherwise expressly stated herein.

SECTION 5. RECORDING OF LEASE. Upon execution of this Third Amendment, said document will be recorded by the City Clerk of the City of Palm Coast with the Land Records of Flagler County, Florida.

IN WITNESS WHEREOF, the parties hereto have executed this instrument for the purpose herein expressed.

WITNESS/ATTEST

PALM COAST ARTS FOUNDATION, INC.

BY: 

Print Name: Margaret Sheehan-Jones

BY: 

Shirlyn A. Perkovich, President

BY: 

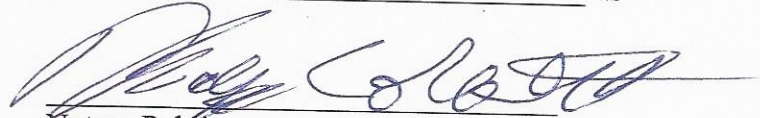
Nancy Crouch

Dated: 5-23-2016

Print name: NANCY CROUCH

STATE OF FLORIDA
COUNTY OF FLAGLER

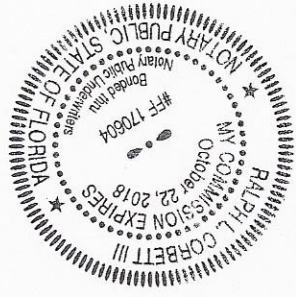
The foregoing instrument was acknowledged before me this 23 day of May 2016, 2016 by Shirlyn A. Perkovich, President of PALM COAST ARTS FOUNDATION, INC., a Florida corporation, on behalf of the company, who is personally known to me or has produced _____ as identification.



Notary Public

Name of Notary, Typed, Printed or Stamped

My Commission No: _____



Witness:

CITY OF PALM COAST

BY: [Signature]
Print Name: Michael Jannotti

[Signature]
Jim Landon, City Manager

BY: [Signature]
Print Name: BEAU FALSONG

Dated: 5/26/16

ATTEST:

[Signature]
Virginia A. Smith, City Clerk

Approved as to Form and Legality

[Signature]

William E. Reischmann, Jr., Esq.

[Signature] 5/20/16 PCMD
[Signature] 5/27/16 Finance Director



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EXHIBIT "A"
[PREMISES]

Lots 19 and 20, of the subdivision plat of TOWN CENTER AT PALM COAST, PHASE 2, according to the plat thereof, as recorded in Map Book 35, Pages 63 through 68, of the Public Records of Flagler County, Florida.

Property Appraiser's Parcel ID #06-12-31-5825-00000-0190

Property Appraiser's Parcel ID #06-12-31-5825-00000-0200

EXHIBIT B

LM COAST ARTS FOUNDATION
CULTURAL ARTS CENTER
Phase One - The Pavilion Stage



Optional 2nd
restroom building if
2 structures are
chosen to meet
requirements.

Proposed Restroom
Building

Andrew S. Dance + Associates, LLC

13 Eganville Lane, Palm Coast, FL 32164
386-827-5600 / andy@andredance.com
www.andredance.com

SCALE: 1" = 30'



NORTH