

**LEASE AGREEMENT  
BETWEEN THE CITY OF SANTA FE AND  
THE CENTER FOR CONTEMPORARY ARTS OF SANTA FE, INC.**

This LEASE AGREEMENT (Lease Agreement) is made and entered into this 20<sup>TH</sup> day of JUNE, 2018 by and between the CITY OF SANTA FE, a municipal corporation (City or Lessor) and THE CENTER FOR CONTEMPORARY ARTS OF SANTA FE, INC., a New Mexico nonprofit corporation (Lessee), collectively the "Parties".

**WHEREAS**, the City intends to make a determination that The Center for Contemporary Arts of Santa Fe, Inc., as intended Lessee, qualifies under the procurement code as the sole source for providing Services through programs and activities upon the Premises, as described in Section 4.A of this Lease Agreement.

**WITNESSETH:**

In consideration of the Lessee's promises herein, Lessor hereby gives Lessee a Lease Agreement, revocable and terminable as hereinafter provided, to enter on, make use of, and develop the real property of Lessor as follows:

**1. PREMISES**

Lessor allows Lessee to use, occupy, and improve, subject to the terms and conditions of this Lease Agreement, that certain portion of the existing city-owned building known as "The Screen" movie theater located at 1600 St. Michael's Drive, Building 16 on the former campus of the Santa Fe University of Art & Design in the City of Santa Fe consisting of approximately 3,895 square feet (the Premises), as more fully described and shown on Exhibit A attached hereto and incorporated herein. Lessee accepts the Premises in its present state and agrees that it is in good condition, without any representation or warranty by Lessor as to the condition of the Premises or as to the use which may be made thereof. Lessee's use of the Premises includes the non-exclusive use of the men's and women's restrooms in Corridor B as shown on Exhibit A.

**2. EFFECTIVE DATE**

This Lease Agreement shall become effective July 1, 2018 (the Effective Date).

**3. LEASE TERM**

The term of this Lease Agreement shall commence at 12:00 a.m. on the Effective Date. The term of this Lease Agreement shall consist of an "Initial Term" of one (1) year with one (1) "Optional Additional Term" of one (1) year. The Initial Term and any Optional Additional Term are hereinafter referred to collectively as the "Term".

Lessee's exercise of any Optional Additional Term is contingent upon compliance with this Lease Agreement and with proper written notice by Lessee to Lessor at least ninety (90) days prior to the expiration of the Initial Term and shall be at Lessor's sole discretion. In the event Lessee remains in possession of the Premises after the expiration of the Term of this Lease Agreement, such possession may, at the sole option of Lessor, be continued as a month-to-month tenancy. During any such month-to-month tenancy, the Rent due shall be prorated and payable on a monthly basis, and the terms and conditions of the Lease Agreement shall be otherwise applicable.

**4. USE OF PREMISES**

A. Provision of Specific Services. Lessee shall use and develop the Premises, and/or

cause the Premises to be used and developed, solely for the specific purpose of providing services to the residents of the City and County of Santa Fe in the form of free or low-cost, film-related educational and entertainment services including but not limited to screenings, lectures, and presentations for schools, community groups, and the general public, and community events in partnership of the City of Santa Fe; and conducting activities directly related to these services (the Services).

Lessee agrees to actively use and develop the Premises, and/or cause the Premises to be actively used and developed, to deliver the above Services. The Services provided by Lessee may be modified from time to time by written agreement of the Parties to account for changes in community needs, changes in Lessee's and/or Lessee's Sublessee's capacities to provide new or different services, or other similar changes attributable to the passage of time.

B. Development of the Premises. Lessee may, with the prior written consent of Lessor and at no cost to Lessor, develop the Premises as it deems necessary in furtherance of the intended use of the Premises as provided in Section 4.A above. For the purposes of this Lease Agreement, development shall be defined as improvements or alterations to the existing Premises, but shall not include the construction of new buildings, structures or site improvements, or alterations to the exterior of building.

C. Ownership of Improvements. Lessee shall own any improvements that the Lessee places, or causes to be placed, on the Premises during the Term of this Lease Agreement, unless the Parties agree otherwise in writing. Upon termination of this Lease Agreement, title to any and all such improvements shall pass to Lessor.

D. Trade Fixtures. All trade fixtures installed by Lessee after the Effective Date of this Lease Agreement shall remain the property of Lessee, who may remove the same upon termination of this Lease Agreement, provided that removal shall be done in such a manner as not to injure or damage the Premises.

In the event that Lessee fails to remove the trade fixtures, Lessor may require Lessee to remove the same. In the event that Lessee fails to remove said trade fixtures after receipt of notice from Lessor, Lessor may remove and dispose of the same as it sees fit and Lessee agrees to sell, assign, transfer and set over to Lessor all of Lessee's right, title and interest in and to said trade fixtures and any personal property not removed by Lessee. Lessee further agrees that should Lessor remove said trade fixtures pursuant to this paragraph, that Lessee shall pay Lessor upon demand the cost of such removal, plus the cost of transportation and disposal thereof.

E. Repairs and Maintenance. Lessee shall not cause or permit any waste, damage or injury to the Premises or to any improvements made to the Premises. Lessee shall, at its sole expense, keep and maintain the Premises in good and clean condition at all times and shall be responsible for the costs of any and all required repairs and replacements that arise during the Term of this Lease Agreement. Lessee's responsibilities under this Section 4.E shall include without limitation any and all required repairs to and maintenance of the men's and women's restrooms in Corridor B as shown on Exhibit A.

For the purposes of this Section 4.E, Lessee's responsibilities for repairs and maintenance of the Premises shall not include major capital improvements such as repairs and replacements to major building systems such as roof membrane systems, heating/ventilation/air-conditioning systems, electrical and plumbing systems, roof and wall structural systems.

In the event Lessee fails to maintain the Premises at a standard acceptable to the Lessor as determined in Lessor's sole discretion, Lessor may terminate this Lease Agreement, in

accordance with Section 13 herein.

F. Compliance with Laws. Use of the Premises shall at all times be in compliance with the City of Santa Fe Municipal Code and other applicable local, state and federal regulations including but not limited to compliance with the City of Santa Fe Integrated Pest Management Policy (§10-7 SFCC 1987) (the Pest Management Policy).

## **5. SUBLEASE**

In furtherance of Lessee's use and development of the Premises pursuant to Section 4 of this Lease Agreement, with the prior written consent of the Lessor, Lessee may sublease portions of the Premises to other not-for-profit organizations, community groups, or governmental entities (each hereinafter a Sublessee) that provide Services. Lessee shall be the "Sublessor" to any Sublessee(s) of the Premises. Lessee shall include a provision in all subleases that the subtenant shall attorn to Lessor as landlord upon termination or expiration of this Lease Agreement. Lessee shall provide copies of all Sublease agreements to Lessor upon request.

## **6. RENT**

Rent shall be paid as follows:

A. Rent during Initial Term. During the Term of and in consideration of this Lease Agreement and the demise of the Premises by Lessor to Lessee, Lessee hereby agrees and covenants with Lessor to pay for said Premises the annual fair market rent (the Rent) as established by a real estate appraisal prepared by an MAI-certified appraiser licensed by the State of New Mexico (the 2018 Appraisal). Lessor shall obtain the 2018 Appraisal and notify Lessee of the Rent established thereby within sixty (60) days after the Effective Date of this Lease Agreement.

The Parties agree that Lessee may use and occupy the Premises beginning on the Effective Date provided that at the time Rent is established by the 2018 Appraisal, the Rent will be applied retroactively to the Effective Date.

Upon notification of the Rent by Lessor, Lessee may terminate this Lease Agreement in accordance with Section 13.B.ii herein. In such event, the Parties agree to negotiate in good faith to establish the amount of Rent due for the period that Lessee occupied the Premises prior to termination.

B. Rent during any Optional Additional Term(s). The Rent for any Optional Additional Term(s) of this Lease Agreement shall be determined by increasing the previous year's Rent by an amount calculated by multiplying the previous year's Rent by two and one-half percent (2.5%).

C. Provision of Services to Offset Monetary Rent. During the Term of and in consideration of this Lease Agreement, Lessee may offset the monetary Rent due by providing to the residents of the City and County of Santa Fe the Services described in Section 4 of this Lease Agreement. In addition, Lessee shall permit any approved Sublessee(s) to provide such Services in lieu of or in addition to monetary Rent and to the extent that it does so, Lessee may apply the value of such Services to the Rent due by Lessee hereunder. The monetary value of the Services provided by Lessee during any lease year shall meet or exceed the Rent due for that lease year.

D. Quarterly Service Value Statements. At the end of each quarter of each lease year Lessee shall prepare a statement (Quarterly Service Value Statement) itemizing each type and corresponding monetary value of Services delivered during the immediately prior quarter of the

lease year and the amount of Services that it proposes to credit toward Rent due.

E. Exclusions. Lessee shall exclude from the value of any Services that it proposes to credit toward Rent the amount of any governmental subsidy and other payment for Services received by Lessee for providing such Services and the amount paid by Service recipients to receive the Services.

F. Third-Party Auditor Statement. Beginning on August 1, 2019 and on August 1<sup>st</sup> of each subsequent lease year during the Term of this Lease Agreement, Lessee shall submit to Lessor a written statement from an independent third-party auditor (Third-Party Auditor Statement) that the provision of Services for the entirety of the prior lease year has met the requirements of this Section 6. The Third-Party Auditor Statement shall be accompanied by the Quarterly Service Value Statements for the entirety of the prior lease year. Lessor may adopt a required form for the Third-Party Auditor Statement or the Quarterly Service Value Statements and such adopted form may be modified from time to time by the Lessor.

G. Review by Lessor. Lessor shall evaluate Lessee's Third-Party Auditor Statement and Quarterly Service Value Statements for each lease year and provide a written acceptance or rejection to Lessee. Lessee may request that Lessor review the methodology that Lessee intends to use to prepare any Quarterly Service Value Statement prior to its submission to Lessor. Lessor may, in its sole discretion, request any such additional information and documentation as it deems necessary to evaluate the Third-Party Auditor Statement or any Quarterly Service Value Statement, and may request to review any Quarterly Service Value Statement prepared during the course of the lease year. Lessee's failure to provide such requested information within forty-five (45) days of Lessor's request is cause for Lessor's termination of this Lease Agreement. Lessor's determination regarding the monetary value of Services shall be final and binding and not subject to challenge by Lessee in any forum.

Notwithstanding anything in this Section 6 to the contrary, Lessor's failure provide written acceptance or rejection of the Third-Party Auditor Statement and accompanying Quarterly Service Value Statements or to request additional information and documentation from Lessee within forty-five (45) days of Lessor's receipt of any Third-Party Auditor Statement shall be deemed to be acceptance of such Third-Party Auditor Statement by Lessor.

H. Rent Shortfalls. Should the monetary value of the Services in any year not equal or exceed the Rent due in that year (a Rent Shortfall), then Lessee shall pay to Lessor the amount of the Rent Shortfall in monetary Rent. Notwithstanding anything to the contrary in the foregoing sentence, Lessor may, in its sole discretion, agree to allow Lessee to provide within a reasonable amount of time additional Services to offset any Rent Shortfall, and in such event the Parties agree to negotiate in good faith to determine the nature, extent, and schedule for provision of such additional Services.

I. No Compensation by Lessor. In no event shall Lessor be required at any time, including at the end of the Lease Term, to compensate Lessee in any way for any excess Services. In the event of the termination of this Lease Agreement prior to the end of the Term, for any cause, Lessee shall forfeit any excess Services not applied to Rent.

## **7. UTILITIES & SERVICES**

Beginning on the Effective Date and until the termination of this Lease Agreement, the responsibility and costs for providing utilities and services to the Premises shall be the responsibility of the Parties as specified below:

A. Responsibility of Lessor. All natural gas, electricity, domestic water, and sanitary sewer service shall be provided to the Premises by Lessor.

B. Responsibility of Lessee. All telephone, cable or satellite television, wired or wireless internet, security alarm services, solid waste collection services, and cleaning services shall be performed or coordinated and paid for by Lessee. In addition to the cleaning of the Premises, Lessee's cleaning responsibilities shall include without limitation the cleaning and stocking of the men's and women's restrooms in Corridor B as shown on Exhibit A. Any utilities or services not specified herein shall be the responsibility of the Lessee.

## **8. TAXES**

Lessee shall pay all taxes levied and assessed, if any, upon any personal property, buildings, fixtures and improvements belonging to Lessee and located upon the demised premises, and all leasehold and possessory interest taxes levied or assessed by any proper taxing authority.

## **9. ASSIGNMENT OR TRANSFER**

Lessee shall not assign or otherwise transfer this Lease Agreement, without the prior written consent of the Lessor. Any such actions taken by Lessee shall result in the immediate termination of this Lease Agreement.

## **10. INSURANCE**

Lessee shall at all times maintain and provide adequate insurance coverage which includes, without limitation, each of the following:

A. Casualty Insurance. Lessee shall carry and maintain in full force and effect during the term of this Lease Agreement casualty insurance ("extended coverage" and "additional extended coverage") as may be available for all improvements to the Premises in an amount sufficient to restore and replace existing structures and improvements if lost or damaged by any form of casualty. Lessee shall cause the City of Santa Fe to be named as an additional insured on such policy of insurance.

B. Liability Insurance. Lessee shall carry and maintain in full force and effect during the term of this Lease Agreement, public liability insurance covering bodily injury and property damage, in a form and with an insurance company acceptable to Lessor, with limits of coverage not less than as stated in the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property, against all claims and lawsuits arising from Lessee's use of the Premises. Lessee shall cause the City of Santa Fe to be named as an additional insured on such policy of insurance.

C. Workman's Compensation Insurance. Lessee shall carry and maintain in full force and effect during the Term of this Lease Agreement, workers' compensation insurance at statutory limits for its employees working at the Premises. Lessee shall cause the City of Santa Fe to be named as an additional insured on such policy of insurance.

D. Certificates of Insurance. Within ten (10) days of the Effective Date of this Lease Agreement, and thereafter at any time during the Term of this Lease Agreement that Lessor requests, Lessee shall provide Lessor with certificates of insurance for each policy evidencing that the coverage required hereunder is current. Such policy shall provide that the coverage evidenced thereby shall not be terminated or modified for any reason without thirty (30) days prior written notice to the Lessor. A certificate or policy which states that failure to give such

notice imposes no obligation on the part of the insurer shall be unacceptable to Lessor, and Lessee shall be responsible for removing such language from such certificate or policy.

E. Sublease Agreements. Lessee shall cause any and all Sublease agreements, or other agreements related to use, occupation, or development of the Premises, that Lessee enters into to contain language that requires the City of Santa Fe to be named as an additional insured on such policies of insurance as provided in this Section 10.

## **11. INDEMNIFICATION**

Lessee shall indemnify, hold harmless and defend Lessor, its agents, officers, and employees against all losses, damages, claims or judgments, including payment of all attorney's fees and costs, on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Lessee's use of the Premises hereunder, including use of the Premises by Lessee's employees, agents, representatives, Sublessees, tenants, contractors, agents, guests, invitees or permitted assigns. Lessee shall cause any and all agreements that Lessee enters into with any of the above parties to contain language indemnifying the Lessor as provided in this Section.

## **12. EASEMENTS**

Lessor reserves the exclusive right to grant access, utility or other easements on or through the Premises. Lessor shall notify Lessee in writing prior to Lessor's grant of any easement through the Premises.

## **13. TERMINATION**

### **A. Termination by Lessor.**

i. Lessor may terminate this Lease Agreement with written notice to Lessor at least ninety (90) days prior to the termination date; or

ii. Lessor may terminate this Lease Agreement upon Lessee's failure to comply with any provisions contained herein. Prior to termination, Lessor shall hand deliver or mail notice to Lessee via certified or registered mail specifying:

(a) the breach;

(b) the action required to cure the breach;

(c) a date, not less than fifteen (15) days from the date the notice is hand delivered or mailed to Lessee, by which such breach must be cured; and

(d) that failure to cure such breach on or before the date specified in the notice will result in termination of the Lease Agreement.

### **B. Termination by Lessee.**

i. Lessee may terminate this Lease Agreement with written notice to Lessor at least sixty (60) days prior to the termination date; or

ii. Lessee may terminate this Lease Agreement with written notice to Lessor within thirty (30) days after notification by Lessor of the amount of the Rent established pursuant to Section 6.A of this Lease Agreement.

## **14. NOTICE**

Any required notice will be deemed delivered, given and received (i) when personally hand delivered, or (ii) five days after the same are deposited in the United States mail, postage

prepaid, registered, addressed to the applicable Party at the address indicated below for such Party, or at such other address as may be designated by either Party in a written notice to the other Party:

To Lessor:

City Manager  
City of Santa Fe  
P. O. Box 909  
Santa Fe, NM 87504

To Lessee:

Stuart Ashman, Executive Director  
The Center for Contemporary Arts in Santa Fe, Inc.  
1050 Old Pecos Trail  
Santa Fe, NM 87505

**15. NO WAIVER**

No waiver of a breach of any of the provisions contained in this Lease Agreement shall be construed to be a waiver of any succeeding breach of the same or any other provisions.

**16. SEVERABILITY**

In the event that one or more of the provisions contained in this Lease Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

**17. ENTIRE AGREEMENT**

The foregoing constitutes the entire Lease Agreement between the Parties, represents their entire understanding, and defines all of their respective rights, title and interests as well as all of their duties, responsibilities and obligations. Any and all prior agreements and understandings between the Parties related to the Premises, if any, are merged herein. This Lease Agreement shall not be modified or amended except by a written document signed by the Parties hereto.

**18. BINDING EFFECT**

This Lease Agreement shall be binding upon and insure to the benefit of the Parties hereto and their respective successors and permitted assigns.

**19. LITIGATION EXPENSE**

In the event of litigation between the Parties, each Party shall be responsible for its own litigation expenses.

In the event of litigation between Lessee and its Sublessees in which Lessor is named, Lessee shall pay any necessary costs, including reasonable attorney's fees, expenses and other costs of collection or otherwise, which Lessor shall incur in enforcing this Lease Agreement or in recovering any and all damages caused to the Premises by Lessee, or Lessee's Sublessees, contractors, agents, employees or permitted assigns.

**20. APPLICABLE LAW; VENUE**

In any action, suit or legal dispute arising from this Lease Agreement, Lessee agrees that the laws of the State of New Mexico shall govern. The Parties agree that any action or suit arising from this Lease Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

**21. HEADINGS**

The section headings contained in this Lease Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Lease Agreement.

**22. AMENDMENT**

This Lease Agreement shall not be altered, changed or modified except by an amendment in writing executed by the Parties hereto.

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[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]



9

## LEASE PREMISES

