

LEASE

This Lease is made and executed on _____, 20__, by and between the **CITY OF AVON PARK**, a Florida Municipal Corporation organized and existing under the laws of the State of Florida, having its principal office at 110 East Main Street, Avon Park, FL 33825, herein referred to here "City" and the **HEARTLAND CULTURAL ALLIANCE, INC.** a non-profit corporation, organized and existing under the laws of the State of Florida, having its principal office at 9205 Bridle Path, Sebring, FL 33875, herein referred to as "HCA."

1. DEMISE; DESCRIPTION OF PREMISES

City leases to HCA and HCA hires from City, for the purpose of use as an art museum containing the art of Peter Powell Roberts, a cultural center for exhibiting local and regional art and related cultural events. The Premises generally known as the Second Floor of the Avon Park Community Center located at 310 W. Main St., Avon Park 33825, along with the structures and appurtenances AS-IS and WHERE-IS (hereinafter "Premises"). City makes no representation or warranty whatsoever as to the condition of the Premises. As used in this Lease, the term "Premises" refers to the real property described above and to any improvements to that second floor of the Avon Park Community Center from time to time during the term of this Lease.

2. TERM

The term of this Lease shall be for a term of three (3) years, commencing on November 1, 2014, and terminating on November 2, 2017.

3. RENT

The total rent for the full Lease term shall be thirty and 00/100 dollars (\$30.00), payable as \$10.00 per year for each year, which HCA shall pay to City annually, but may pay for the full term in a lump sum.

4. MANAGEMENT, USES, AND USES PROHIBITED

(a) **Use of Premises Limited.** HCA leases the Premises for the purpose of operating and maintaining an art museum, art gallery and cultural center. For the full term of this lease and any subsequent periods, if extended, HCA shall make the Art Museum open to the general public during reasonable hours and not less than three (3) days per week, and at reasonable rates, charges and terms. HCA may occasionally rent out to the general public for special events and private usage. In the event that HCA ceases using the Premises for the purposes stated herein; or, if HCA loses its status as 501(c)(3) entity under the Internal Revenue Code this Lease may be terminated by the City in its sole discretion.

(b) **Rules for Use of Premises.** Exhibit “B” contains all the rules agreed upon by the parties at the signing of this Lease.

5. UNLAWFUL ACTS, WASTE AND NUISANCE PROHIBITED

During the term of this Lease, HCA shall comply with all applicable laws affecting the leased Premises including City ordinances and resolutions. HCA shall not commit or suffer to be committed any waste on the leased Premises, or any nuisance.

6. ABANDONMENT OF PREMISES

HCA shall not vacate or abandon the Premises nor cease using the Premises as an Art Museum at any time during the term of this Lease. If HCA abandons, vacates, or surrenders the leased Premises, this Lease shall be terminated by the City. Personal property in the space will be returned to HCA and HCA shall be provided five (5) days to retrieve the property at HCA’s sole expense.

7. CITY'S RIGHT OF ENTRY

HCA shall permit City and the agents and employees of City to enter the leased Premises at any reasonable times. In no event shall the City enter the Premises without either an HCA representative or a police officer accompanying the inspector.

8. ENCUMBRANCE OF HCA'S LEASEHOLD INTEREST

HCA may not encumber by mortgage, lien, deed of trust, or other instrument, the Premises or HCA’s leasehold interest and estate in the leased Premises.

9. ENVIRONMENTAL CONCERNS

HCA shall in a timely manner, comply with all applicable Environmental Laws applicable to HCA’s use of the Premises.

City is unaware of any unlawful discharges or contamination in violation of Environmental Laws onto the Premises, and HCA has made diligent research and inquiry as to the present condition of the Premises, and accepts the Premises and all structures for all purposes AS-IS WHERE-IS.

10. SUBLETTING AND ASSIGNMENT

Subletting of the Premises or assignment of this Lease by HCA is prohibited. Only the renting of space for temporary special events shall be allowed, as further discussed in this Lease.

11. NOTICES

All notices, demands, or other writings in this Lease shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, postage prepaid return receipt requested or by delivery to a nationally recognized overnight courier service, and addressed to that party at the address stated above, unless notified of a different address in writing.

12. TAXES AND GOVERNMENT CHARGES

HCA acknowledges that, City is a governmental entity with authority to tax its citizens, and HCA shall be obligated to pay any property tax bills as rendered through Highlands County directly to Highlands County if HCA is lawfully required to pay such taxes under Florida law. Furthermore, HCA agrees to pay all other lawful taxes, levies or charges lawfully imposed by any state or local governments to the extent applicable to the Premises and/or improvements thereto.

13. IMPROVEMENTS BY HCA; CONTRIBUTIONS BY CITY

(a) **Improvements.** HCA shall provide improvements to the existing Premises necessary for the proposed Use (hereinafter "Improvements"). HCA shall, at its own expense, prepare drawings and specifications necessary for such Improvements, including a comprehensive estimate of the total costs of such work, and shall submit same to the City for approval. HCA shall contract for the work at its own expense. HCA shall obtain at least two (2) competitive bids from licensed and insured contractors for any work.

(b) **City Cash Contributions.** The City has agreed to contribute \$35,000.00 in cash to HCA for Improvements to the Premises ("City Contribution"). In order to maintain the legal compliance of such contributions and ensure that the money is spent in the manner intended by the City, the City shall pay for the Improvements based on cash draws as follows:

(1) HCA shall include in each contract for the Improvements, a requirement that requests for payment shall be submitted to City for approval, and that no liens may be filed against the Building or any property of the City.

(2) HCA and a City designee shall then Inspect the work to confirm that the amount of the payment is in proportion to the amount of work provided by the contractor.

(3) HCA shall submit draw requests to the City on an a monthly basis for work completed and inspected by HCA.

(4) The City reserves the right to reject further payments based on a draw exceeding the amount of work completed, poor quality of work, or in the event that total costs of Improvements will exceed the City Contribution, and HCA does not have adequate funds to

complete the Improvements.

(5) If approved, the City shall send out such payment in not more than twenty (20) days.

(6) Any and all contractors and engineers shall provide an affidavit of no liens ensuring under oath that all material men, subcontractors and employees have been paid prior to the last draw.

(7) Any City Contribution funds remaining after the completion of the Improvements shall be retained by the City.

Such City Contribution shall be used only for construction of Improvements to the Premises, and shall not be used for office equipment, office supplies, or any other ephemeral expenditures.

14. MAINTENANCE, REPAIRS AND DESTRUCTION OF PREMISES AND IMPROVEMENTS

(a) **Maintenance of Premises and improvements.** HCA shall, at its own cost, and without any expense to City, keep and maintain the Premises in good, sanitary, and neat order, condition and repair, HCA shall also comply with and abide by all federal, state, county, municipal, and other governmental statutes, ordinances, laws, and regulations affecting the Premises. The City shall furnish a passenger elevator. The elevator maintenance, certifications, licenses and repairs shall be contracted for and paid by the City. The City shall pay for all maintenance and other costs associated with the air conditioning units. The City shall pay for other repairs to the physical building including the roof, walls and entry doors.

15. UTILITIES

Water, wastewater and electric shall be paid by the City. All other utilities including without limitation, telephone service and internet service, shall be paid for by HCA.

16. LIENS

(a) **HCA's duty to keep Premises free of liens.** HCA shall keep Premises and improvements free and clear of any and all mechanics', materialmen's, and other liens for or arising out of or in connection with work provide by HCA. HCA shall at all times promptly and fully pay and discharge any and all claims on which any lien may or could be based, and shall indemnify City and all of the Premises and all buildings and improvements on the Premises against all liens and claims of liens and suits or other proceedings pertaining to those liens.

(b) **Contesting liens.** If HCA desires to legally contest any lien rather than paying it outright, it

shall notify City of its intention to do so. In such a case, and provided that HCA shall, on demand, protect City by a good and sufficient surety bond against any lien and cost, liability, or damage arising out of such contest, HCA shall not be in default under this Lease but shall satisfy and discharge the lien to the extent held valid. HCA shall protect and indemnify City against all loss, expense, and damage resulting from the contest of a lien including reasonable attorney's fees and costs at all tribunal levels.

17. INDEMNIFICATION OF CITY

Indemnity. HCA shall defend, indemnify and hold harmless the City of Avon Park and all of the City of Avon Park's officers, agents, and employees from and against all claims, liability, loss and expense, including reasonable costs, collection expenses, attorneys' fees, and court costs, through appeals, which may arise because of the negligence of HCA, its officers, agents or employees in performance or non-performance of its obligations under the Agreement, or otherwise arising through HCA's use of the Premises. HCA recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to the City of Avon Park when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by the City of Avon Park in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida, and other good and valuable consideration, the receipt and sufficiency of which HCA hereby acknowledges. This clause shall survive the termination of this Lease as to any events occurring during HCA's tenancy of the Premises. Compliance with any insurance requirements required elsewhere within this Agreement shall not relieve HCA of its liability and obligation to defend, hold harmless and indemnify the City of Avon Park as set forth in this article of the Agreement.

Nothing herein shall be construed to extend the City of Avon Park's liability beyond that provided in section 768.28, Florida Statutes.

18. ATTORNEYS' FEES; VENUE; JURY TRIALS

(a) If any action at law or in equity shall be brought under this Lease, or for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the leased Premises, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs reasonable attorneys' fees, including paralegal costs, appeals and bankruptcy proceedings, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered.

(b) To the extent that a waiver of jury trial is permitted by law, the parties waive trial by jury in any action or proceeding brought in connection with this lease or the Premises.

19. SIDEWALK SPACE AND SIGNAGE

The City does not lease to HCA any space under, in, or on any street or sidewalk adjacent to the leased Premises. HCA may erect a monument sign at the front of the building with approval by the City. HCA may install identifying/directional signage at the entrance to the building, at the elevator, and other signage as required for public safety and convenience with approval by the City.

20. REDELIVERY OF PREMISES; REMEDIES CUMULATIVE; DISPOSITION OF IMPROVEMENTS ON TERMINATION OF LEASE

HCA shall pay the rent in the manner provided in this Lease. In the event of the non-performance by HCA of any of the covenants which HCA has undertaken, this Lease may be terminated as provided in this Lease. All remedies conferred on City shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law.

On termination of this Lease for any cause or no cause, the City shall become the owner of any fixtures paid for by the City Contribution and improvements on the Premises.

21. PUBLIC RECORDS

The terms of HCA's use of the Premises provides substantially favorable treatment for HCA as HCA is performing a service that is beneficial to the City, County, and public in general, and these services are traditionally governmental in nature. Based on that premise, it is possible that HCA could be determined by a court of law to be "acting on behalf of the City" to bring it under the ambit of the Florida Public Records Act, Chapter 119 F.S. Therefore, pursuant to section 119.0701 F.S., HCA agrees to the following public records requirements:

- (a) HCA shall keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the services hereunder. All records, books, and accounts related to the performance of this agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes, and especially s. 119.0701 FS, and such "public records" shall be kept by HCA in compliance thereof.
- (b) At no additional cost to the City, HCA shall provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119. F.S., or as otherwise provided by law.
- (c) HCA shall ensure that public records that are exempt or confidential as well as exempt from public records, the public records are not disclosed except as authorized by law.

(d) HCA shall meet all requirements for retaining public records and shall transfer, at no cost to the City, all public records in possession of the HCA upon termination of the Lease and destroy any duplicate public records that are exempt and confidential. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

22. INSURANCE

(a) **Insurance coverage of Premises.** The City provides casualty and liability insurance for the Avon Park Community Center building, however, HCA shall, at HCA's sole expense, keep all contents and improvements that are now or in the future a part of the Premises, insured against loss or damage by fire and the extended coverage hazards for the full replacement value of the improvements, with loss payable to City with the insurance proceeds for the City Contribution being solely the compensation to the City.

(b) **Personal injury liability insurance.** HCA shall, at its sole cost and expense, procure and maintain throughout the term of this Lease, Comprehensive General Liability and Worker's Compensation insurance, including Employer Liability insurance, with minimum policy limits of \$1,000,000 Combined Single Limits, and \$2,000,000 for injury to or death of any number of persons in one occurrence, or to the extent and in such amounts as required and authorized by Florida law, and will provide endorsed certificates of insurance generated and executed by a licensed insurance broker, brokerage or similar licensed insurance professional evidencing such coverage, and naming the City of Avon Park as a named, additional insured, as well as furnishing the City of Avon Park with a copy, or copies, of said insurance policies. Certificates of insurance and copies of these insurance policies must be received by the City within 10 days of signing the lease.

(c) **City's right to pay premiums on behalf of HCA.** All of the policies of insurance referred to in this section shall be written in a form satisfactory to the City and by insurance companies satisfactory to City, but not less than AM Best "A", with City being included as an additional named insured, and with the insurer waiving any subrogation rights against City. HCA shall pay all of the premiums and deliver the policies, or certificates of the policies, to the City within thirty (30) days of commencement of this Lease. In the event of HCA's failure either to acquire the insurance in the names called for or to pay the premiums or to deliver the policies, or certificates of the policies to the City, the City shall be entitled, but shall have no obligation, to acquire the insurance and pay the premiums which shall be repayable to City within thirty (30) days of written demand upon HCA. Failure to repay the premiums shall be cause for the City to terminate this Lease. Each insurer mentioned in this section shall agree, by endorsement on the

policy or policies issued by it, or by an independent instrument furnished to City, that it will give to City at least thirty (30) days' written notice before the policy or policies in question shall be altered or cancelled. City agrees that it will not unreasonably withhold its approval as to the form or to the insurance companies selected by HCA.

(f) **Blanket insurance policies.** Notwithstanding anything to the contrary contained in this section, HCA's obligations to carry the insurance provided for in this Lease may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by HCA; provided however, the coverage afforded City will not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Lease by reason of the use of a blanket policy of insurance, and provided further that the requirements of Subsection (e) of this section are otherwise satisfied.

23. PERMITS

Permits for food, alcohol, occupancy, inspections, or permissions as may be required by local, state, or national governments shall be furnished by HCA at HCA's expense.

24. NOTICE OF DEFAULT

Except as otherwise provided herein, HCA shall not be deemed to be in default under this Lease unless, if such default is curable, the City first gives to HCA thirty (30) days' written notice of the default, and HCA fails to cure the default within a 90-day period or, if the default is of such a nature that it cannot be cured within 90 days, HCA fails to commence to cure the default within such period of 90 days or fails to proceed to the curing of the default with due diligence.

25. DEFAULT

Breach of any provision in this Lease shall be deemed a default. In addition, HCA shall be deemed in default of this Lease if it ever files a claim of bankruptcy of any kind, ceases to be a 501(c)3 organization, ceases to actively provide the Art Museum as described herein, or is otherwise determined to be insolvent in the reasonable opinion of the City's certified public accountant. In the event of any breach of this Lease by HCA, the City, in addition to the other rights or remedies the City may have, shall have the immediate right of re-entry and may remove all persons and property from the Premises. Any property may be removed and stored in a public warehouse or elsewhere at the sole cost of, and for the account of, HCA. City may at any time after that elect to terminate this Lease for any previous breach. Should City at any time terminate this Lease for any breach, in addition to any other remedy it may have, City may recover from HCA all damages incurred by reason of the breach, including the cost of recovering the Premises, and including the worth at the time of the termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the

stated term over the then reasonable rental value of the Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from HCA to City.

26. EFFECT OF EMINENT DOMAIN

(a) **Effect of condemnation.** In the event all or a portion of the leased Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the conclusion of the taking, and HCA shall then be released from any liability accruing under this Lease after that date.

(c) **Condemnation award.** In the event of the termination of this Lease by reason of the total or partial taking of the Premises by eminent domain, then in any condemnation proceedings, City and HCA shall be free to make claim against the condemning or taking authority for the amount of any damage done to them, respectively, as a result of the taking.

27. INTERRUPTION OF SERVICES OR USE

Interruption or curtailment of any utility or other service maintained in the building, if caused by strikes, mechanical difficulties, or any causes beyond the City's reasonable control whether similar or dissimilar to those enumerated, shall not entitle HCA to any claim against the City. If the premises are rendered untenable in whole or in part, for a period of ten (10) business days, by the making of repairs, replacements, or additions, other than those made with HCA's consent or caused by misuse or neglect by HCA or HCA's agents, servants, visitors, or licensees, there shall be a proportionate abatement of rent during the period of untenability.

28. WAIVER

The waiver by City of or the failure of City to take action with respect to any breach of any term, covenant, or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach, or of any other term, covenant, or condition contained in the Lease.

29. SECTION CAPTIONS

The captions appearing under the section number designations of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

30. DOCUMENT IS THE RESULT OF MUTUAL DRAFTSMANSHIP

The terms and conditions in this Lease are the product of mutual draftsmanship by both parties, and any ambiguities in this Lease or any documentation prepared pursuant to it shall not be construed against any of the parties because of authorship. The parties acknowledge that all the

terms of this Lease were negotiated at arms' length, and that each party, being represented by counsel or capable of being so represented, is acting to protect its, his, her, or their own interest.

31. RECORDATION

This Lease may not be recorded without the City's prior written consent, but HCA agrees, upon request of the City, to execute a memorandum hereof for recording purposes.

32. RADON GAS

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.

33. COUNTERPARTS AND FACSIMILE (FAX) DOCUMENTS

This Lease may be signed in counterparts, and each counterpart bearing an original signature shall be considered one document with all others bearing original signature. Also, facsimile transmission of any signed original document and re-transmission of any signed facsimile transmission shall be the same as delivery of an original.

HCA

Witnesses:

HEARTLAND CULTURAL ALLIANCE, INC

Printed name: _____

By: _____
Fred Leavitt, President

Printed name: _____

CITY

Attested by: _____
Maria Sutherland, City Clerk

CITY OF AVON PARK, FLORIDA

By: _____
Sharon Schuler, Mayor

APPROVED AS TO FORM AND CONTENT

Gerald T. Buhr, City Attorney

EXHIBIT A
ALLOCATIONS OF COMMON UTILITIES AND SERVICES

1. Electric - Shall be provided at no cost to HCA by the City. The City may install separate electric meters for the Premises at the City's sole discretion and expense. HCA agrees to conserve this utility and to use this service in a reasonable manner.
2. Water - Shall be provided at no cost to HCA by the City. HCA agrees to conserve this utility and to use this service in a reasonable manner.
3. Sewer - Shall be provided at no cost to HCA by the City. HCA agrees to conserve this utility and to use this service in a reasonable manner.
4. Garbage - Shall be provided at no cost to HCA by the City, consistent with services already provided for the Premises. HCA agrees to conserve this utility and to use this service in a reasonable manner. Additional garbage services if required by HCA shall be provided by HCA at HCA's sole expense. All garbage is to be placed in receptacles.
5. Telephone , fax, WIFI, internet and related services shall be provided by HCA at HCA's sole expense.
6. Mowing and common area landscaping shall be provided by the City at the City's sole discretion and expense.
7. Repaving and maintenance of park lot shall be provided by the City at the City's sole discretion and expense.
8. Window washing shall be provided by the City at the City's sole discretion and expense.
9. Painting of exterior shall be provided by the City at the City's sole discretion and expense.

EXHIBIT B
RULES FOR USE OF PREMISES

1. HCA shall not suffer or permit the obstruction of any common areas, including driveways, walkways, and stairways.
2. City reserves the right to refuse access to any persons City in good faith judges to be a threat to the safety, reputation, or property of the Avon Park Community Center and its occupants.
3. HCA shall not make or permit any noise or odors that annoy or interfere with other HCA's or persons having business within the Avon Park Community Center.
4. HCA shall not make, suffer or permit litter except in appropriate receptacles for that purpose.
5. HCA shall not alter any lock or install new or additional locks or bolts without the express written permission of the City.
6. HCA shall be responsible for the inappropriate use of any toilet rooms, plumbing or other utilities on the Premises, No foreign substances of any kind are to be inserted in any toilet rooms, plumbing or other utilities.
7. HCA shall not deface the walls, partitions or other surfaces of the premises or Avon Park Community Center.
8. HCA shall not suffer or permit anything in or around the premises or building that causes excessive vibration or floor loading in any part of the Avon Park Community Center.
9. Furniture, significant freight, and equipment shall be moved into or out of the building only with the City's knowledge and consent, and subject to reasonable limitations, techniques, and timing that may be designated by City. HCA shall be responsible for any damage to the Avon Park Community Center arising from any such activity.
10. HCA shall not employ any service or contractor for services or work to be performed in the building, except as approved by City.
11. HCA shall provide all barriers and signage necessary, in the sole opinion of the City, to ensure that customers and other users of the Premises do not use Avon Park Community Center entrances other than the elevator and when necessary to due to first floor events, the fire stairs.
12. No window coverings, shades, or awnings shall be installed or used by HCA without express, written permission and approval by the City based on the City's code, and the City's desired building motif and character.

13. No HCA, employee, or invitee shall go on the roof of the building.
14. HCA shall not suffer or permit smoking or carrying of lighted cigars or cigarettes in areas reasonably designated by City or by other applicable governmental agencies as nonsmoking areas.
15. HCA shall not use any method of heating or air conditioning other than as provided by City. HCA shall conserve energy as reasonable and prudent under the circumstances.
16. HCA shall not install, maintain, or operate any vending machines.
17. Although the Premises has a kitchen for low volume use by HCA employees, the Premises shall not be used for lodging or manufacturing, or cooking. HCA is responsible for acquiring and paying for any required government permits and approvals for providing food or alcohol at HCA events, or hiring at its sole expense any licensed vender to provide this service.
18. HCA shall comply with all safety, fire protection, and evacuation regulations established by City or any applicable governmental agency.
19. City reserves the right to waive any one of these rules or regulations, and any such waiver shall not constitute a waiver of any other rule or regulation or any subsequent application of that rule or regulation to the HCA.
20. HCA assumes all risks from theft or vandalism and agrees to keep its Premises locked as may be required.
21. City reserves the right to make other reasonable rules and regulations that City may from time to time deem necessary for the appropriate operation and safety of the Avon Park Community Center and its occupants. HCA agrees to abide by these and any other reasonable rules and regulations that City designates