

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

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

**THIS THIRD AMENDMENT** is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2016, and is to that certain Lease Agreement made and entered into on the 12<sup>th</sup> 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 by December 31, 2022, 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: \_\_\_\_\_

BY: \_\_\_\_\_  
Sherlyn A. Perkovich, President

BY: \_\_\_\_\_

Dated: \_\_\_\_\_

Print name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016 by Sherlyn 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: \_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Jim Landon, City Manager

BY: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Dated: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Virginia A. Smith, City Clerk

Approved as to Form and Legality

\_\_\_\_\_  
William E. Reischmann, Jr., Esq.

\_\_\_\_\_/\_\_\_\_/\_\_\_\_ PCMD  
\_\_\_\_\_/\_\_\_\_/\_\_\_\_ Finance Director

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"  
[DIAGRAM OF NEW RESTROOMS TO BE CONSTRUCTED]