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**FIRST AMENDMENT TO RENTAL AGREEMENT FOR COMMERCIAL
PROPERTIES
LEASE NO. 123292-001**

THIS FIRST AMENDMENT TO RENTAL AGREEMENT FOR COMMERCIAL PROPERTIES ("First Amendment") is entered into as of December 1, 2011, between the City of Phoenix, a municipal corporation as successor in interest to the Arizona Department of Transportation, ("Lessor") and Arizona Humanities Council, Inc., a non-profit corporation ("Lessee").

RECITALS

WHEREAS, City's predecessor-in-interest and Lessee entered into that certain Rental Agreement for Commercial Properties effective December 1, 2011 between the Arizona Department of Transportation as Lessor and the Arizona Humanities Council as Lessee ("Lease") for the property located at 1218 North Central Avenue, Phoenix AZ 85004 ("Premises") including the historic house located thereon ("House"); and,

WHEREAS, The Lessor and Lessee entered into that certain Assignment and Novation agreement ("Assignment") under which the City of Phoenix assumed the obligations of the Lessor under the Lease and certain amendments to the Lease were made; and,

WHEREAS, Lessor and Lessee desire to amend the Lease and Assignment as hereinafter provided.

AGREEMENTS

NOW, THEREFORE, Lessor and Lessee mutually agree to amend the Lease as follows:

1. Defined Terms. All capitalized terms have the same meaning as defined in the Lease, unless otherwise defined in this First Amendment. Lease, Assignment and this First Amendment are collectively "Amended Lease."
2. Rehabilitation of the House. The Parties agree that the City will rehabilitate the House on the following conditions:
 - a. On or before December 31, 2011, Lessor will commence performance of those work items delineated as the City's responsibility on the Interior and Exterior Work Frequency Table attached hereto as Exhibit A ("Rehabilitation").
 - b. Lessor will provide Lessee with a construction schedule for the Rehabilitation as soon as Lessor receives the final schedule.

- c. Lessee will need to vacate the House during the Rehabilitation. Lessor will work to minimize disruption to Lessee's tenancy during the Rehabilitation and use its best efforts to limit the period during which Lessee must vacate the House to less than four weeks.
 - d. Lessee will be relieved of its pro-rata share of the utility and other bills during the period it is not occupying the House through an appropriate accounting with Lessor.
3. Use and Occupancy. Notwithstanding any provision in the Lease or the Assignment to the contrary, the Parties agree to use and occupy the Premises as follows:
- a. Lessee will occupy the second floor of the House, containing approximately 2505 gross square feet, except for the space identified as office 202 and its closet, which will be used as office space by Lessor.
 - b. Lessee is granted the exclusive use of the space on the first floor currently used as office space by Lessor and the butler's pantry as office space immediately upon receipt of the certificate of occupancy for the Rehabilitation.
 - c. Lessee is granted the non-exclusive use of approximately 125 square feet of space in the basement, identified as room 001, for storage. Lessee may not store boxes on the floor and may not place storage in the attic.
 - d. Lessor will use room 002 in the basement for storage and Lessee must provide access to Lessor's storage area.
 - e. Lessee will make the House available to the HPO (defined below) for four (4) public tours or open houses annually upon reasonable notice to Lessee.
 - f. Lessee may use the House for fund-raising activities and may serve alcohol if permitted by law.
4. Term of the Agreement. Notwithstanding any provision in the Lease or the Assignment to the contrary, the Parties agree as follows:
- a. The term of the Amended Lease shall commence on December 1, 2011 ("Amendment Date") and terminate on November 30, 2018.

- b. Lessee will have the option to renew the Amended Lease for two additional five-year periods provided it gives Lessor six (6) months written notice prior to the expiration of the Amended Lease term.
- c. The Amended Lease may be cancelled by either party with not less than 365 days' prior written notice. Due to the initial expenses that Lessee will incur on the Premises, neither party may give such notice for at least two (2) years after the Amendment Date.

5. Use of Public Spaces. Notwithstanding any provision in the Lease or the Assignment to the contrary, the Parties agree that the following uses of the public spaces in the House ("Public Spaces") are permitted and required:

- a. The City of Phoenix Historic Preservation Office ("HPO") will have unlimited day-use, upon reasonable notice to Lessee.
- b. Lessee will make weekday use reasonably available to outside humanities, education and neighborhood groups on a space-available basis with one week's notice.
- c. Lessee or contractor of Lessee will staff a minimum of 24 evening events annually and may arrange for staffing additional events at Lessee's discretion. The following apply to these staffed, evening events:
 - 1. Events must end by 9:00 p.m.
 - 2. Lessee must receive thirty (30) days' prior written notice of events.
 - 3. Lessee has no formal duties during events.
 - 4. Except as set forth in Section 5(d) below, events shall be subject to such rental fees and cleaning deposits as may be reasonably adopted by Lessee.
- d. Lessor, HPO and Phoenix Sister Cities may use the Public Spaces any evening if not otherwise booked for a use permitted by this Section 5 free of charge if the event is staffed by Lessor and Lessor is responsible for ensuring the House is properly cleaned and locked.
- e. Lessor departments and City Council may have unlimited use between the hours of 8:30 a.m. and 5:00 p.m., Monday – Friday, subject to seven (7) days' prior written notice to and scheduling by Lessee. Lessor will be responsible for rearranging tables and chairs and returning the furniture to the configuration existing prior to Lessor's use.

6. Event Terms and Calendar. The Parties agree that the following terms will apply to events in the House:
 - a. Within sixty (60) days after execution of this Amendment, Lessee will develop event agreements for users and establish reasonable rental fees and cleaning deposits.
 - b. A cleaning deposit may be charged for day-use of facility by outside humanities, education and neighborhood groups and such use is subject to reasonable rules Lessee may adopt.
 - c. Event terms and rules for day-use are subject to approval by the HPO, which approval will not be unreasonably withheld.
 - d. Lessee will post event terms and calendar of events on its website within thirty (30) days following completion of Rehabilitation.
 - e. Lessor will provide a link on its website to the Lessee website for information regarding use of the House.
7. Furnishings and Art Work. Within six (6) months after the Amendment Date, Lessee must obtain and install high-quality, reasonably-priced, period-appropriate furnishings in the Public Spaces in coordination with the HPO. In no event will Lessee be required to spend more than \$15,000 for the acquisition of the furnishings, although this amount will be reduced if Lessee is able to obtain donated furnishings. Upon installation, the furnishings will become the property of the Lessor. The deadline for installation of the furnishings may be extended by HPO if Lessee satisfactorily demonstrates that it is using its best efforts to meet the deadline. If the Lessor supplies art work for installation in the Public Spaces, Lessee will follow City guidelines for security of City-supplied art work.
8. Maintenance and Repair of the Premises. Notwithstanding any provision in the Lease or the Assignment to the contrary, the Parties agree that the following provisions apply to maintenance and repair of the Premises and the House:
 - a. Lessor's obligations include repair, replacement and maintenance of capital improvements including the foundation, structural elements, roof, exterior walls and exterior windows, and any replacement of the heating, ventilation, and air conditioning systems due to normal wear and tear and not due to the failure of Lessee to properly maintain the heating, ventilation, and air conditioning systems as required by this Lease. At Lessee's expense, Lessee will perform all routine, non-capitalized maintenance and repairs necessary to maintain the improvements in a condition comparable to the condition of the

improvements as of the date of completion of the City's rehabilitation project, subject to reasonable wear and tear, and Lessee shall repair, both interior or exterior, including glass, sidewalks, curbs, parking lots, parking spaces, doors, window glass (except exterior window frames/sashes), screens, awnings, locks, keys, security system, weather stripping and thresholds as well as all interior walls, floors, ceilings and floor coverings, subject to the standards of this Section 8(a). Lessee's responsibility also includes landscaping; irrigation; the servicing, repair and maintenance of equipment and fixtures at the Premises, including the heating, ventilation, and air conditioning systems and changing filters for such systems. The routine repair and maintenance required by Lessee herein specifically includes the items delineated in Exhibit A during those years listed on Exhibit A. Lessee will also repair and be responsible for the damage caused by stoppage, breakage, leakage, overflow, discharge or freezing of plumbing pipes, soil lines or fixtures. In no event will Lessee be responsible for the cost of maintenance or repair in excess of \$3,000.00 annually ("Annual Cap"). Costs for routine landscaping, janitorial services, utilities, second floor upgrades, and any alarm upgrades will not be included in the calculation of the Annual Cap. Notwithstanding the foregoing provisions of this Section 8(b), Lessee shall have no obligation to pay for expenses that must be depreciated under generally accepted accounting principles unless otherwise provided in this amendment, and Lessee shall have no obligation to pay for expenses necessary to replace property or repair damages caused as a result of theft as long as Lessee followed proper security measures and theft cannot be reasonably attributed to Lessee's negligence. Lessor will undertake any reasonable and necessary repairs in excess of the Annual Cap.

- b. If any part of the improvements is damaged by Lessee, or Lessee's employees, agents, or invitees other than invitees of the City of Phoenix ("Lessee Damage"), Lessee will provide Lessor with immediate written notification of all damage to the Premises. After notification and approval by Lessor, repairs will be made promptly at Lessee's expense so as to restore said improvement to its previous condition. If Lessee refuses or neglects to commence the necessary repairs within thirty (30) days after the written demand by Lessor (other than in the case of emergency), Lessor may (but is not required to) make such repairs without liability to Lessee for any loss or damage that may accrue to Lessee's stock, business, equipment, or fixtures by reason thereof, and if Lessor makes such repairs, Lessee will pay to Lessor, on demand, the cost thereof. Lessee's failure to pay will constitute a default under this Amended Lease. Lessee's failure to give, or unreasonable delay in giving, notice of needed repairs or defects will make Lessee liable for any loss or damage

resulting from delay or needed repairs. Any costs incurred by Lessee to repair Lessee Damage will not be included in calculation of the Annual Cap.

- c. Lessee will keep the Premises, except for the four attic anterooms, broom clean, sanitary and in compliance with all health and safety laws, ordinances and requirements applicable to Lessee by any legally constituted public authority. Cleaning includes removal of any trash or refuse deposited on the Premises by Lessee, Lessee's customers or anyone else (except Lessor or its agents, employees or contractors). Lessee will employ, if Lessor reasonably determines it is necessary, a reputable pest extermination company at regular intervals.
9. Upgrades and Improvements by Lessee. Lessee agrees to upgrade all flooring on the second floor of the House including the flooring in the area to be used as office space by Lessor. The upgrades must be either refinished wood floors or installed carpeting, subject to HPO's approval which will not be unreasonably withheld. Any other upgrades, including any upgrade to the House's security alarm system, or any improvement to the House or the Premises by Lessee will be made at Lessee's expense and only with HPO approval.
10. Utilities and Services. Notwithstanding any provision in the Lease or the Assignment to the contrary, Lessee is responsible for the payment of 50% of the water and sewer charges to the Premises and 50% of the electricity costs. Lessee will pay 100% of the cost of telephone communication upgrades, costs of the security system and janitorial expenses. Each party will be responsible for its own telephone and internet expenses and will provide its own telephone/internet lines in a safe and attractive manner.
11. Insurance. The Parties agree as follows:
- a. The insurance that Lessee is required to carry pursuant to the terms of the Assignment covers Lessee's personal property and liability insurance for Lessee's use of the Premises for Lessee events and for claims against the City arising out of Lessee's negligence or willful conduct.
 - b. Section C of Exhibit B to the Assignment is hereby deleted in its entirety and the following language is substituted therefor:
 - C. **NOTICE OF CANCELLATION:** For each insurance policy required by the insurance provisions of the Lease, the Lessee must provide to the Lessor, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice shall be mailed, e-mailed, hand-delivered or sent by

facsimile transmission to: City of Phoenix, Real Estate/Finance,
Property Management, 251 West Washington Street, 8th Floor,
Phoenix AZ 85003, fax (602) 261-8919.

- c. Lessor will provide insurance for the structural elements of the House and for City-owned property in the House and liability insurance for non-Lessee events.
12. Communication and Dispute Resolution. The Parties agree to establish a method for prompt communication to resolve issues regarding conditions and maintenance of the House and to participate in reasonable dispute resolution. If a dispute cannot be resolved by the Executive Director of the Arizona Humanities Council and the Historic Preservation Officer of the City of Phoenix, within fifteen (15) days thereafter, the President of the Board of the Arizona Humanities Council and the Director of the City of Phoenix Planning and Development Department shall meet for the purpose of engaging in a good faith resolution of the dispute. If the dispute cannot be resolved through this meeting, the parties agree to submit the dispute to arbitration under the Commercial Arbitration Rules of the American Arbitration Association, such arbitration to occur in Phoenix, Arizona. Each party shall pay one-half of the fees and expenses associated with the arbitration although the arbitrator shall be authorized to assess fees and expenses against the unsuccessful party.
13. Legal Worker Provisions. The City is prohibited by A.R.S. § 41-4401 from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Lessee warrants that it and its subcontractors are in compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A. Lessee agrees that a breach of this warranty will be deemed a material breach of the Amended Lease that is subject to penalties up to and including termination of the Amended Lease. City retains the legal right to inspect the papers of any contractor or subcontractor employee who works on the Amended Lease to ensure that the contractor or subcontractor is complying with the warranty contained herein.
14. Background Screening Requirements. Lessee agrees that all workers (collectively "Contract Worker(s)") that Lessee furnishes to the City pursuant to this Lease will be subject to background and security checks and screening (collectively "Background Screening") at Lessee's sole cost and expense as set forth in this Section. The Background Screening provided by Lessee must comply with all applicable laws, rules and regulations. Lessee further agrees that the Background Screening required in this Section is necessary to preserve and protect public health, safety and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Lessee from any liabilities that

may arise out of Lessee's services under this Lease or Lessee's failure to comply with this Section. Therefore, in addition to the specific measures set forth below, Lessee and its Contract Workers will take such other reasonable, prudent and necessary measures to further preserve and protect public health, safety and welfare when providing services under this Lease.

- a. Because of the varied types of services performed, the City has established three levels of risk and associated Background Screening. The risk level and Background Screening required for this Lease is a standard risk Background Screening because the Contract Worker's work assignment will: (i) require a badge or key for access to City facilities; or (ii) allow any access to sensitive, confidential records, personal identifying information or restricted City information; or (iii) allow unescorted access to City facilities during normal and non-business hours. The Background Screening for this standard risk level must include a background check for real identity/legal name and felony and misdemeanor records from any county in the United States, the state of Arizona, plus any other jurisdiction where the Contract Worker has lived at any time in the preceding seven (7) years from the Contract Worker's proposed date of hire.
- b. By executing this First Amendment, Lessee certifies and warrants that Lessee has read the Background Screening requirements and criteria in this Section, understands them, and that all Background Screening information furnished to the City is accurate and current. Also, by executing this First Amendment, Lessee further certifies and warrants that Lessee has satisfied all such Background Screening requirements for the Standard Risk Background Screenings.
- c. Lessee must include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for services furnished under the Amended Lease including, but not limited to, supervision and oversight services.
- d. The Background Screening requirements of this Section are material to City's entry into this First Amendment and any breach of this Section by Lessee shall be deemed a material breach of the Amended Lease. In addition, Lessee shall defend, indemnify and hold harmless the City for any and all claims arising out of Lessee's failure to satisfy this Section.
- e. Lessee's obligations and requirements that Contract Workers satisfy this Background Screening Section shall continue throughout the entire term of the Amended Lease. Lessee will maintain all records and documents related to all Background Screenings and the City reserves the right to audit Lessee's compliance with this Section.

15. Iran and Sudan. Pursuant to A.R.S. §§35-391.06 and 35-393.06, Lessee certifies that it does not have a scrutinized business operation, as defined in A.R.S. §§35-391 and 35-393, in either Iran or Sudan.
16. Signage. Lessee at its own expense will provide signage that designates the House as the home of the Arizona Humanities Council.
17. Leases Terms. Although this is an amendment to the Lease, the parties agree that many of the rights and obligations of the parties as described in the Lease are significantly altered by this amendment. The parties further agree that, to the extent the terms of the Lease conflict with the terms or intent of this amendment, this amendment controls.

[Signature page to follow]

Lessor and Lessee have executed this Amendment as of the first date written above.

Lessor:
City of Phoenix, a Municipal corporation
David Cavazos, City Manager

BY: [Signature]
Mary Vivion-Withrow
Deputy Finance Director *for AG*

Approved as to form:

[Signature]
Acting City Attorney

Attest:

[Signature]
City Clerk



[Signature]
CITY CLERK DEPT.
MAY 11 2006

Lessee:

Arizona Humanities Council, Inc.
A non-profit corporation

BY: [Signature]

Name: BRENDA THOMSON

Title: EXECUTIVE DIRECTOR

PJB:908723v2

EXHIBIT A
Interior and Exterior Work Frequency Table

WORK ITEM	2011	2012	2013	2014	2015	2016	2017	2018
Annual operation and maintenance of irrigation system per landscape architect requirements	X	X	X	X	X	X	X	X
Monthly maintenance of landscaping (per landscape architect requirements once rehabilitation project is completed)	X	X	X	X	X	X	X	X
Replace/upgrade irrigation and landscape system	X	X						X
Seal coat existing asphalt paving and line stripe every three years or less frequently if city concurs	X**	X**						
Paint exterior wood work as needed; bi-annual inspection and touchups typically needed at least once every 5 years	X***	X***	X				X	
Paint interiors. Bi-annual inspection & touchups for main/second floor as needed	X	X						
Replace or repair roof	X	X						
Repair/repaint gutters and downspouts as needed per HP Office inspection	X	X						
Fire Suppression upgrades	X	X						
Alarm System upgrade by AHC (2010) and annual maintenance	X	X						
Upgrade plumbing systems in house	X	X						
Add ADA accessible bathroom on first floor and ADA access into house	X	X						
Structural upgrades to meet building code	X	X						
Installation of new mechanical equipment	X	X						
Annual professional inspections of mechanical equipment per system requirements	X	X						
Replacement of second floor carpets and/or restoration of wood floors	X****	X****						
Installation of upgraded electrical system								
Bi-annual professional maintenance of electrical system (sections and panel boards) per electrician recommendations								
Maintain all exterior and interior lighting, and repair as needed	X	X	X	X	X	X	X	X

NOTE: For all items delineated as the responsibility of the Arizona Humanities Council (AHC), the AHC shall coordinate with the Historic Preservation Office (HPO) to obtain advance approval of this work. Some maintenance and inspection items specified to be completed in 2012 by AHC may not be required if the City sponsored rehabilitation project is underway and this work cannot be completed as a result of the ongoing project. The City rehabilitation project will occur in both 2011 and 2012; for items completed in 2012, the AHC scheduled completion may be adjusted accordingly per work item description in exhibit.

- * This is an add-on item in City rehabilitation project. If this work cannot be done as part of city project, AHC is responsible for making repairs by 2013.
- ** HPO will inspect exterior paint bi-annually to determine if any touch-up painting is needed more frequently than every five year.
- *** HPO to paint first floor interiors only in 2011 or 2012, except for touchup painting on second floor due to rehabilitation project. If City does not complete rehabilitation project in 2011, the AHC requirements for this item would also shift accordingly.
- **** AHC is required to complete this item in 2012, within 15 days of completion of city rehabilitation project to ensure house is adequately protected for security purposes.
- ***** City electrical upgrades will be replacing existing system, but will not be supplying additional outlets to AHC offices. If AHC requires additional outlets, AHC will need to complete this work at its own cost.

SHADING KEY: Arizona Humanities Council City of Phoenix

EXHIBIT "B"
INSURANCE REQUIREMENTS

POLICE shall procure and maintain for the duration of the Agreement, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Agreement.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect POLICE from liabilities that might arise out of this Agreement. POLICE is free to purchase such additional insurance as POLICE determines necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** POLICE shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate
\$2,000,000
- Products – Completed Operations Aggregate
\$1,000,000
- Personal and Advertising Injury
\$1,000,000
- Each Occurrence
\$1,000,000
- Fire Damage (Damage to Rented Premises) *
\$100,000

a. The policy shall be endorsed to include the following additional insured language: "The City of Phoenix shall be named as an additional insured with respect to liability arising out of the use and/or occupancy of the property subject to this Agreement."

2. Property Insurance

Coverage for Lessee's tenant improvements Replacement Value

Coverage on building (required if POLICE is sole occupant) Replacement Value

- a. Property insurance shall be written on an all risk, replacement cost coverage, including coverage for flood and earth movement.
- b. The City of Phoenix shall be named as a loss payee on property coverage for tenant improvements.
- c. If property coverage on the building is required, "the City of Phoenix shall be named as a loss payee".
- d. Policy shall contain a waiver of subrogation against the City of Phoenix.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix shall be an additional insured to the full limits of liability purchased by POLICE even if those limits of liability are in excess of those required by this Agreement.
2. The POLICE's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then two (2) days prior notice may be given. Such notice shall be sent directly to **City of Phoenix, Public Works Department, 200 W. Washington, 7th Floor, Phoenix, AZ 85003.**

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the POLICE from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** POLICE shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before the Agreement commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of this Agreement and remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

All certificates required by this Lease shall be sent directly to **City Public Works Department, 200 W. Washington, 7th Floor, Phoenix, AZ 85003.** The City Department, agreement number and location description are to be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

F. **APPROVAL:** Any modification or variation from the insurance requirements in this Agreement must have prior approval from the City of Phoenix Law Department, whose decision shall be final. Such action will not require a formal amendment, but may be made by administrative action.

