



Legislation Text

File #: 2015-0211, Version: 1

AMEND §178.03 (E) AND (F)

AN ORDINANCE AMENDING §178.03(E) AND (F) OF THE UNIFIED DEVELOPMENT CODE TO REMOVE PRE-APPROVED SIDEWALK VENDOR LOCATIONS IN FRONT OF THE WALTON ARTS CENTER AS AGREED UPON IN RESOLUTION 118-04, AND TO STREAMLINE THE APPROVAL PROCESS FOR ALTERNATIVE LOCATIONS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby repeals §178.03 (E) and (F) of the Unified Development Code and replaces it with the language attached in Exhibit "A".

City of Fayetteville Staff Review Form

2015-0211

Legistar File ID

5/5/2015

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Jeremy Pate

4/17/2015

Development Services /
Development Services Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

An ordinance amending §178.03(E) of the Unified Development Code to prohibit sidewalk vendors in front of the Walton Arts Center, pursuant to the lease agreement approved by Resolution 118-14, and to ease restrictions on the process by which other sidewalk vendor locations can be approved.

Budget Impact:

| | |
|--|---|
| Account Number | Fund |
| Project Number | Project Title |
| Budgeted Item? <u>NA</u> | Current Budget \$ - |
| | Funds Obligated \$ - |
| | Current Balance \$ - |
| Does item have a cost? <u>No</u> | Item Cost |
| Budget Adjustment Attached? <u>NA</u> | Budget Adjustment |
| | Remaining Budget \$ - |

V20140710

Previous Ordinance or Resolution # _____

Original Contract Number: _____


Approval Date: _____

Comments:



CITY COUNCIL AGENDA MEMO

MEETING OF MAY 05, 2015

TO: Mayor Jordan, Fayetteville City Council
THRU: Don Marr, Chief of Staff
FROM: Jeremy Pate, Development Services Director 
DATE: April 17, 2015
SUBJECT: Sidewalk Vendors in front of Walton Arts Center

RECOMMENDATION:

Staff recommends approval of an ordinance amending §178.03 (E) of Unified Development Code to remove permission for annual sidewalk vendors to locate on the north (Dickson) and west (West) sidewalks in front of the Walton Arts Center, pursuant to the amended lease agreement approved by the University of Arkansas, Walton Arts Center and City of Fayetteville (Res. 118-14) in 2014; and to modify the process by which sidewalk vendor locations can be approved.

BACKGROUND:

The City permits sidewalk vendors in multiple locations throughout the downtown area; some are predetermined and pre-approved locations, such as the wider sidewalks in front of the Walton Arts Center on Dickson/West and the sidewalks on the inside of the downtown Square. Other locations are reviewed on a case by case basis through a Conditional Use Permit. In the most recent lease agreement between the City, University and Walton Arts Center, a provision was added that prohibits sidewalk vendors from locating along their boundary. Specifically, in section 12 (page 7), the language states:

“Lessor shall not permit street vendors to occupy the sidewalks immediately adjacent to the Premises or to operate thereon to the extent Lessor owns and/or possesses the right to control any such sidewalks.”

Presumably this due to the redesign of the primary entry to the Walton Arts center from Dickson and West, which incorporates a wider stair entry, new planters, and more interaction with the public realm. Sidewalk vendors are not permitted in locations where they would interfere with stair entries or other locations that are normally reserved for entering a building. The first ordinance amendment is to remove 178.03(E)(1) as permitted sidewalk vendor areas to comply with the lease language.

The second ordinance amendment request is to change the process by which sidewalk vendors can request an alternative location than those preapproved by the City Council. The ordinance currently requires any location that is not preapproved to be considered through a Conditional Use Permit process. In order to streamline this review process, staff proposes to

remove the conditional use permit process and instead allow this review at a staff level, much as we do already with vendors on private property. Any variances from cart size or operating area would still have to go to the Planning Commission.

DISCUSSION:

The proposal to remove the currently preapproved sidewalk vending locations on Dickson and West has been discussed with the Walton Arts Center and the City Attorney's office, who both concur that an ordinance amendment is needed to comply with the lease agreement approved by the City Council. Staff has proposed the additional amendment in hopes that the reduction of preapproved spaces, and indeed the most popular sidewalk vending locations that we have, will be offset to a degree by streamlining our review process for alternative locations in our downtown.

BUDGET/STAFF IMPACT:

N/A

178.03 Sidewalk Vendors

- (A) *Purpose.* Public rights-of-way are designed for free and unobstructed travel. However, the City of Fayetteville recognizes that certain development patterns with wide sidewalks are unique and that certain public amenities are not inconsistent with the underlying dedication for the public right-of-way, as long as they do not impede travel or interfere with the public safety. This ordinance is designed to regulate open air vending of goods on public rights-of-way.
- (B) *Sidewalk Vendor Authorization.* The Zoning and Development Administrator may issue a permit for a sidewalk vendor to use a specific sidewalk or plaza location for specified hours to sell specified goods for up to a one year period. In addition to the general use requirements, the Zoning and Development Administrator shall ensure that no permit is granted unless:
- (1) The applicant has obtained all necessary permits from State or County authorities, including any Transient Merchant permit requirements.
 - (2) The applicant has submitted a sales and use tax number, sales tax remittance forms and an affidavit that the applicant has fully paid all sales and use taxes during the previous twelve months, if applicable.
 - (3) The applicant has filed a HMR tax remittance form with the City of Fayetteville, when applicable.
 - (4) The applicant has notified all adjacent property owners, by certified mail, of the application.
- (C) *Permit Application.* Each application for a permit to conduct business on a sidewalk shall be accompanied by a \$100 application and permit fee. Permits issued after July 1st shall be accompanied by a \$50 application and permit fee. Each permit will expire at 3 a.m. on January 1st following the year issued. The permit fee shall be collected prior to issuance of the permit
- (1) Application for a sidewalk vendor permit shall include the following items in a format acceptable to the Zoning and Development Administrator:
 - (a) Name, address and contact information.
 - (b) Type of items sold or services rendered.
 - (c) A valid copy of all necessary permits required by State and County health authorities.
 - (d) Proof of application for remittance of HMR tax to the City of Fayetteville.
 - (e) Means to be used in conducting business, including but not limited to, a description of any mobile container or device to be used for transport or to display approved items or services.
 - (f) A site plan indicating the location and dimensions of the proposed use and device or pushcart.
 - (g) A detailed scale drawing, picture or diagram and material specifications of the device or pushcart to be used.
 - (2) The permit issued shall not be transferable in any manner.
 - (3) The permit is valid for one sidewalk vending location only.
- (D) *Permitted Vending Products and Goods.*
- (1) The City of Fayetteville permits the following types of goods for street vending in approved locations:
 - (a) Cut Flowers
 - (b) Food and Beverage
 - (c) Arts and Crafts: Only objects of art or craft produced and sold by a local artist or craft person may be sold by street vendors.
 - (2) All goods being sold from sidewalk vendors shall:
 - (a) Be located within the permitted area and be attended at all times. Sidewalk vendors shall not conduct transactions with vehicular traffic located in the right-of-way.
 - (b) Not lead to or cause congestion or blocking of pedestrian traffic on the sidewalk.
 - (c) Involve a short transaction period to complete the sale or render the service.
 - (d) Not cause undue noise or offensive odors.
 - (e) Be easily carried by pedestrians.
- (E) *Pre-Approved Locations Requirements.* Sidewalk vendors are permitted in specific locations in Fayetteville as a use by right. These locations

have been determined by the City Council to have adequate sidewalk width, pedestrian traffic flow, and they minimize potential conflicts with existing businesses. Sidewalk vendors are not permitted to operate on days / times associated with special events, unless they have been approved and granted a Special Events Permit from the organization coordinating the special event. Maps of approved locations are available in the Planning Division. The locations where street vending is allowed as a permitted use are:

~~(1) North and West sidewalks in front of the Walton Arts Center. Sidewalk vendors may locate along West Avenue and Dickson St. in front of the Walton Arts Center.~~

(2) Inside of the Fayetteville Square. Sidewalk vendors may locate along sidewalks on all sides of the interior of the downtown Fayetteville Square. On days / times that the Farmers' Market or other special events operate, sidewalk vendors shall only be permitted if approved through the Farmers' Market or Special Event Permit process.

(F) **Alternative Locations. Conditional Use Permit.** If an applicant wishes to operate as a sidewalk vendor in a location other than those specifically approved by the City Council, a conditional use permit must be obtained. Upon receipt of a conditional use permit application, the Planning Division Commission shall review the proposed permit operating area to determine if the said area is suitable for street vending in accordance with this chapter. In making this determination, the Planning Division Commission shall consider the following criteria:

(1) The application meets all other criteria established herein for a sidewalk vendor, with the exception that the applicant may request that the cart, and/or operating area, may be larger than the dimension required in this chapter. An increase in cart size or operating area may be considered by the Planning Commission as a variance and does not require conditional use permit review. The determination of a larger cart size and/or operation area shall be subject to the variance criteria in Chapter 156.03(C).

(2) The number of permits issued for the street vending location shall not exceed the capacity of the area in terms of maintaining the use of the sidewalk as a public right-of-way, with a minimum 48" pedestrian access route that is free and clear of obstructions. The Planning Division Commission shall consider the width of sidewalk, the proximity and location of existing street furniture, including, but not limited to: signposts, lamp posts, parking

meters, bus shelters, benches, phone booths, street trees and newsstands, as well as the presence of bus stops, truck loading zones, other sidewalk vendors or taxi stands to determine whether the proposed use would result in pedestrian or street congestion.

(G) **Requirements.** Sidewalk vendors conducting business on the sidewalks of the City of Fayetteville with a valid permit issued under this Chapter may transport and/or display approved goods upon the approved mobile device or pushcart, under or subject to the following conditions:

(1) The operating area shall not exceed 40 square feet of sidewalk, which shall include the area of the mobile device, operator and trash receptacle. The Planning Division will provide a map of approved vendor locations.

(2) The length of the mobile device or cart shall not exceed 7 feet, including the cart's trailer tongue or hitch that is not removed or collapsible, and any propane tanks or other attachments to the mobile device. The width shall not exceed 4 feet, including the carts wheel wells or tires, and any accessory components of the cart such as retractable or collapsible sinks or shelves.

(3) The height of the mobile device or pushcart, excluding canopies, umbrellas, or transparent enclosures, shall not exceed 5 feet.

(4) No permanent hardware shall be affixed to the sidewalk or adjacent buildings.

(5) Mobile generators are prohibited.

(6) No sidewalk vendor may conduct business on a sidewalk in any of the following places:

(a) Within 10 feet of the intersection of the sidewalk with any other sidewalk. Sidewalk intersections shall be kept clear for pedestrian safety.

(b) Within 10 feet of any handicapped parking space, or access ramp.

(c) Within 15 feet of a fire hydrant.

(d) Within 15 ft. of an entrance to a building.

(7) Street vending facilities shall be removed from the public right-of-way when not in use. Sidewalk vendors are only allowed to operate between the hours of 5 a.m. and 3 a.m. All carts shall be removed from the public right-of-way during non-operational hours.

- (8) Prior to final approval, Planning Staff shall inspect the sidewalk vendor set up in the proposed location. The applicant shall make an appointment between the hours of 8 a.m. to 5 p.m. in which Planning Staff will inspect the cart and all proposed accessories such as coolers, trash receptacle, chairs, etc. that the applicant is proposing for the site. Upon approval, sidewalk vendors shall display in a prominent and visible manner the permit issued by the Planning Division.
- (9) The Fire Marshal shall inspect and approve any food and beverage pushcart to assure the conformance of all cooking or heating apparatus with the provisions of the City Fire Code.
- (10) Sidewalk vendors who sell food and beverage are required to be permitted, and receive approval, through the Arkansas Department of Health and Human Services for food related establishments. A copy of the permit issued by the State, and inspected and approved by the Washington County Health Department, shall be supplied to the Planning Division prior to Planning Division approval.
- (11) Sidewalk vendors are required to provide a trash receptacle for public use located within their permitted operating space. All sidewalk vendors must pick up and properly dispose of all paper, cardboard, metal, plastic or other litter in any form (including cigarette butts) within the sidewalk area assigned to the vendor within thirty minutes of the end of daily operations. Failure to completely remove all such litter from the authorized sidewalk location shall constitute a violation of the permit approval.
- (12) No sidewalk vendor shall solicit, berate or make any noise of any kind by vocalization or otherwise, for the purpose of advertising or attracting attention to his wares. No audible amplified music shall be permitted.
- (H) *Signage.* Sidewalk vendors shall obtain a sign permit from the Planning Division prior to the issuance of a permit to operate. Sidewalk vendors are permitted a total of one (1) A-frame sandwich/menu board subject to Ch. 174 Signs regulating these types of signs. The menu board shall list the products and prices for the items being vended. Only products or services available at the vending location shall be displayed.
- (I) *Revocation of the Sidewalk Vendor Permit.* The Zoning and Development Administrator is authorized to revoke a sidewalk vendor's permit if it is determined that a violation of the requirements of the Unified Development Code has occurred.

(Ord. 5185, 10-7-08; Ord. 5321, 5-18-10; Ord. 5459, 11-15-11)

RESOLUTION NO. 118-14

A RESOLUTION TO APPROVE AN AMENDED AND RESTATED LEASE AGREEMENT AMONG THE UNIVERSITY OF ARKANSAS AND CITY OF FAYETTEVILLE AS LANDLORDS AND THE WALTON ARTS CENTER COUNCIL, INC. AS TENANT

WHEREAS, the University, City of Fayetteville and Walton Arts Center Council, Inc. agreed to a 25 year lease to be effective on April 1, 1992 for the Walton Arts Center; and

WHEREAS, in 2001 the Walton Arts Center Council, Inc. deeded the parcel for the Nadine Baum building to the City of Fayetteville and University of Arkansas; and

WHEREAS, it is in the best interests of the Citizens, Businesses and City of Fayetteville to amend and restate the Original Lease Agreement to ensure that the Walton Arts Center on Dickson Street will continue to be operated, managed and maintained "in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013;" and

WHEREAS, the Amended and Restated Lease Agreement together with proper amendments to the Articles of Incorporation of Walton Arts Center Council, Inc. and Walton Arts Center Foundation, Inc. should assist in the campaign to ensure completion of the Walton Arts Center enlargement and enhancement project; and

WHEREAS, the University of Arkansas Board of Trustees, the Walton Arts Center Council, Inc. Board of Trustees and the Walton Arts Center Foundation, Inc. Board of Trustees have approved this Amended and Restated Lease Agreement for the Walton Arts Center.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the Amended and Restated Lease Agreement attached as Exhibit 1 and authorizes Mayor Jordan to sign this Lease.

PASSED and APPROVED this 1st day of July 2014.

APPROVED:

By: 

LIONELL JORDAN, Mayor

ATTEST:

By: 

SONDRA E. SMITH, City Clerk/Treasurer





AMENDED AND RESTATED LEASE AGREEMENT

BETWEEN

**BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS FOR THE
UNIVERSITY OF ARKANSAS, FAYETTEVILLE, AND THE CITY OF
FAYETTEVILLE, ARKANSAS**

“Lessor”

and

WALTON ARTS CENTER COUNCIL, INC.

“Lessee”

Table of Contents

Page

| | |
|---|----|
| 1. <u>Premises and Improvements Leased</u> | 2 |
| 2. <u>Term</u> | 2 |
| 3. <u>Rental</u> | 3 |
| 4. <u>Taxes</u> | 3 |
| 5. <u>Insurance</u> | 4 |
| 6. <u>Waiver of Subrogation Rights</u> | 5 |
| 7. <u>Maintenance by Lessee</u> | 5 |
| 8. <u>Utilities</u> | 5 |
| 9. <u>Lessee's Improvements and Modifications</u> | 6 |
| 10. <u>Surrender of Premises</u> | 6 |
| 11. <u>No Offsets</u> | 6 |
| 12. <u>Lessee's Use</u> | 6 |
| 13. <u>Abatement of Lessee's Obligations</u> | 7 |
| 14. <u>Restoration of Improvements</u> | 7 |
| 15. <u>Waste - Liens</u> | 8 |
| 16. <u>Indemnification</u> | 8 |
| 17. <u>Assignment and Subletting</u> | 9 |
| 18. <u>Total Condemnation of the Premises</u> | 9 |
| 19. <u>Partial Condemnation of the Premises</u> | 10 |
| 20. <u>Determining Fair Market Value</u> | 11 |
| 21. <u>Holding Over</u> | 11 |
| 22. <u>Inspection</u> | 12 |
| 23. <u>Default</u> | 12 |
| 24. <u>Remedies</u> | 13 |
| 25. <u>No Waiver</u> | 14 |
| 26. <u>Quiet Enjoyment</u> | 14 |
| 27. <u>Further Assurances</u> | 15 |
| 28. <u>Entire Agreement</u> | 15 |
| 29. <u>Severability</u> | 15 |
| 30. <u>Applicable Law</u> | 15 |
| 31. <u>Venue</u> | 15 |
| 32. <u>Amendment</u> | 15 |
| 33. <u>Headings</u> | 16 |
| 34. <u>Recorded Memorandum</u> | 16 |
| 35. <u>Binding Effect</u> | 16 |
| 36. <u>Notices</u> | 16 |
| 37. <u>Representations and Warranties of Lessee</u> | 17 |
| 38. <u>Execution</u> | 18 |
| 39. <u>Counterparts</u> | 18 |

Table of Contents
(continued)

Page

| | |
|-----------|------------------------------|
| Exhibit A | Description of Real Property |
| Exhibit B | Plan of Improvement |
| Exhibit C | Memorandum of Lease |

AMENDED AND RESTATED LEASE AGREEMENT

This Amended and Restated Lease Agreement is made and entered into this ____ day of _____, 2014, by and among Board of Trustees of the University of Arkansas for the University of Arkansas, Fayetteville (“**University of Arkansas**”), the City of Fayetteville, Arkansas (the “**City**”), and Walton Arts Center Council, Inc., an Arkansas not-for profit corporation (the “**Walton Arts Center**”). The University of Arkansas and the City are collectively referred to in the singular tense from time to time as “**Lessor**”, and the Walton Arts Center is referred to as “**Lessee**”.

RECITALS:

- A. The twenty five (25) year Original Lease Agreement from the City of Fayetteville and the University of Arkansas as the Lessor was effective on April 1, 1992, and leased to Lessee Walton Arts Center lands which included all of Block Six (6) of the Original Plat of the Town of Fayetteville, Arkansas, as per plat on file in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas. The Original Lease Agreement was signed by the University of Arkansas on November 24, 1993, the Mayor of the City of Fayetteville after the Fayetteville City Council approval on January 18, 1994, and by Lessee on January 4, 1994. The parcel containing the Nadine Baum building was deeded to the City and the University in 2001 by the Walton Arts Center Council, Inc. Capitalized terms not otherwise defined in this Lease Agreement (as defined below) shall have the meanings given them in the Original Lease Agreement.
- B. The Original Lease Agreement expires on March 30, 2017, subject to certain renewal options granted to Lessee.
- C. The parties desire to amend and restate the Original Lease Agreement in its entirety so as to, among other things, extend the primary term of the Original Lease Agreement and permit Lessee to begin a fund raising campaign with the intention of renovating, refurbishing, and enlarging, and operating the Premises if successful, to remove from the leased premises that portion of Block Six upon which the City of Fayetteville is to

construct a parking deck using citizen approved bond revenues and to add the Nadine Baum building and parcel. The area to be retained by the City includes the entire parking deck site from the west side of the parking deck east to School Avenue and from the north side of the parking deck south to Spring Street except for the north liner building which replaces the Walton Arts Center Administrative Headquarters building.

- D. The Original Lease Agreement is hereby amended and restated in its entirety by this Amended and Restated Lease Agreement (“**Lease Agreement**”) and shall be effective as of the latest date set forth on the signature page.
- E. Within a reasonable period of time from the date Lessor executes this Lease Agreement, Lessee shall begin a capital fund raising campaign to cultivate, develop and solicit donors and the general public for funds to renovate, refurbish, enlarge, and operate the Premises in accordance with the renderings, documents, and drawings attached as Exhibit "B" to this Lease Agreement (the “**Lessee Improvement Work**”). While Lessee will use its best efforts with regard to the capital campaign to pay for the Lessee Improvement Work, Lessee offers no assurances that the campaign will be successful or a timeline for completion of the Lessee Improvement Work. Lessor acknowledges that Lessee may be required to complete the Lessee Improvement Work in phases or stages over several years.

In consideration of the terms and conditions contained herein, the sufficiency of which is acknowledged by Lessor and Lessee, the parties agree as follows:

1. Premises and Improvements Leased. Subject to the terms and conditions set forth in this Lease Agreement, Lessor leases and lets the Premises as referred to in C. and as more particularly described in Exhibit “A” unto Lessee who hereby accepts the Premises.

2. Term. Unless sooner terminated as set forth below, the term of this Lease Agreement (“**Term**”) shall be twenty-five (25) years, commencing as of the date Lessor and Lessee execute this Lease Agreement (the “**Lease Commencement Date**”) and shall continue through the

last day of the month at 5:00 PM CST in which the twenty-fifth (25th) anniversary of the Lease Commencement Date occurs. At the end of the original Term and subject to Lessor's right to terminate this Lease Agreement, Lessee shall have the option to extend the Term of this Lease Agreement for a period of twenty-five (25) years subject to the terms and conditions herein set forth, provided Lessee is not otherwise in default. Lessor shall have the right to terminate this Lease Agreement by providing written notice of termination to Lessee at least ninety (90) days prior to of the expiration of the original Term. If Lessor does not exercise its right terminate this Lease Agreement by providing written notice to Lessee at least 90 days prior to the expiration of the original Term, then Lessee shall have the right to extend the Term by providing written notice to the Lessor at any time prior to the expiration of the original Term.

3. Rental. As rental for the Premises, within ten (10) business days of the Lease Commencement Date, Lessee shall pay to Lessor in advance the sum of ONE DOLLAR (\$1.00) for rental of the Premises for the entire Term. As additional rental, Lessee shall pay in full on a timely basis all costs, expenses, fees, and assessments owed in connection with any Lessee Improvement Work that Lessee may commence. As further consideration for the rental for the Premises, the Walton Arts Center agrees to faithfully perform all of its Representations and Warranties of Lessee contained in Paragraph 37 of this Lease Agreement.

4. Taxes. As additional rental, Lessee shall pay, before they become delinquent, all ad valorem taxes, if any, and special or general assessments, if any, lawfully levied or assessed against the Premises, or which may become a lien against the Premises, or which become due and payable during the term hereof. Upon giving notice to Lessor, Lessee may, in good faith and in the manner provided by law, contest any such tax or assessment against the Premises; provided, all costs and expenses incident to contesting such taxes or assessments shall be paid by Lessee, and Lessee shall:

(i) if necessary to prevent any sale of the Premises or any loss or damage to Lessor, pay such tax or assessment under protest; (ii) in the event of an adjudication adverse to Lessee, promptly pay such tax or assessment; (iii) indemnify and hold Lessor harmless against any losses or damages arising from such contest; (iv) take all such other actions as may be reasonably necessary to prevent any such sale or loss; and (v) before such taxes or assessments become delinquent, deliver to Lessor proof of Lessee's timely and full payment of all such taxes and assessments. The duty of indemnification shall survive the expiration or termination of this Agreement. Additionally, nothing contained in this provision shall be a waiver of Lessor's right, at Lessor's cost, to challenge the imposition of any type or kind of taxes on the Premises.

5. Insurance. Nothing contained herein shall obligate or otherwise require Lessor to procure or maintain any insurance pertaining to the Premises. Lessee will, at its sole cost and expense, at all times, keep the Premises insured under special form policies of fire and extended coverage for its full insurable value, with vandalism, sprinkler leakage, and malicious mischief insurance, and such other additional coverages as may from time to time be designated by Lessor, including, without limitation, all-risk coverage, boiler and machinery insurance, flood insurance, earthquake, and war damage insurance added as endorsements to said insurance policy. This insurance must be maintained with a reliable insurance company or companies licensed to do business in the state of Arkansas. These policies shall also include a replacement cost coverage endorsement and must meet all coinsurance requirements of the insurer, in an amount affording coverage of not less than eighty percent (80%) of the full insurable value of the Premises. Such policy or policies shall provide that coverage is noncancelable without thirty (30) days prior written notice to Lessor.

Lessee further agrees to carry and maintain commercial general liability insurance written

as primary coverage with a reliable insurance company licensed to do business in the state of Arkansas, and acceptable to Lessor, covering occurrences that may arise on the Premises as a result of the operations thereon, in amounts not less than \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage and \$3,000,000 per occurrence of combined bodily injury and property damage. All policies required by this provision shall be jointly payable to the University of Arkansas and the City.

6. Waiver of Subrogation Rights. Lessor and Lessee each hereby waive their respective rights of subrogation against the other for any and all claims and causes of action whatsoever arising out of any injury upon, or loss or damage to, the Premises, or any part thereof, resulting from any risk or peril insured against by any of the insurance policies herein required or purchased by the Lessee. Lessor and Lessee shall each promptly notify their respective insurers of such waiver of subrogation rights.

7. Maintenance by Lessee. Lessee shall, at its sole cost, risk and expense: (i) maintain the Premises in good condition and repair, excepting therefrom only normal, reasonable wear and use; (ii) keep the Premises in a clean, safe and sanitary condition; (iii) make, or cause to be made, all necessary repairs, whether interior, exterior or structural, on the Premises; and (iv) provide for the reasonable care, landscaping and cleaning of the Premises.

8. Utilities. Lessee shall, at its sole cost and expense, provide utilities for the Premises, including without limitation all initial installation or connection fees or charges, and all monthly fees, service charges or late charges for electricity, television, cable, telephones, water, gas, sewer and garbage service, or any other expenses arising out of, or incident to Lessee's occupancy of the Premises; provided, however, Lessor shall, to the best of its ability, continue to furnish on an on-going basis those services to the Premises that it currently provides.

9. Lessee's Improvements and Modifications. Subject to the terms and conditions contained herein, Lessee shall have the right, at its sole cost, expense, and risk: (i) to modify the Premises existing on the Lease Commencement Date hereof in accordance with the Lessee Improvement Work as outlined in Exhibit B attached; and (ii) construct or install on the Premises such other structures, improvements, or fixtures as Lessee may desire in order to continue to satisfy audience and artist demands and so as to remain competitive as an arts center.

10. Surrender of Premises. At the termination under this Lease Agreement or the expiration of the Term: (i) Lessee shall surrender and deliver up to Lessor the Premises in good repair and condition, excepting therefrom only damage by fire, tornado or other casualty and normal, reasonable wear and use; and (ii) all improvements and fixtures, whether existing on the Lease Commencement Date hereof or subsequently constructed on, or affixed to, the Premises, shall be and remain the sole property of Lessor without any payment whatsoever by Lessor to Lessee or any offset in favor of Lessee against Lessor.

11. No Offsets. In the event Lessee shall have any claim whatsoever against Lessor, such claim may not be offset against the rental payments or any other sum payable to Lessor pursuant hereto.

12. Lessee's Use. Lessee shall use and occupy the Premises as an arts center for the residents of Northwest Arkansas and related ancillary support services and educational activities throughout the State of Arkansas; provided, however, certain portions of the Premises may continue to be utilized for general commercial purposes in accordance with applicable laws. At all times Lessee shall conduct its business and control its agents, employees, invitees, licensees, and all other persons entering upon the Premises, or any part thereof, under the authority or by permission of Lessee, in such a manner as is lawful and reputable. Lessee shall not permit, allow or otherwise

suffer any operations to be conducted on the Premises that would cause the suspension or cancellation of the fire and extended coverage insurance policies required under Paragraph 5. Lessee, in the use and occupancy of the Premises, and in the conduct of its business thereon, shall at all times comply with all applicable plat or zoning restrictions, deed restrictions, and all other laws, statutes, ordinances, or regulations applicable to the Premises, and Lessee shall, at its sole cost and expense, secure and maintain all necessary licenses and permits required for the conduct of its business upon the Premises. Lessor shall not permit street vendors to occupy the sidewalks immediately adjacent to the Premises or to operate thereon to the extent Lessor owns and/or possesses the right to control any such sidewalks.

13. Abatement of Lessee's Obligations. Lessee's obligations and duties pursuant to this Lease Agreement, including without limitation its obligations under this Lease Agreement, shall not be abated, terminated or diminished during any period that the Premises, or any part thereof, are untenable, except as provided in Paragraphs 14, 18 or 19; provided, however, that Lessee shall remain responsible to pay all amounts required to be paid under this Lease Agreement and that became due and owing prior to the events identified in Paragraphs 14, 18 or 19.

14. Restoration of Improvements. In the event any or all improvements to the Premises are either partially or entirely destroyed or damaged by any cause whatsoever, Lessee shall notify Lessor of such loss or damage. Thereafter, Lessee shall, at its sole cost, risk and expense, promptly commence and diligently complete, or cause to be promptly commenced and diligently completed: (i) the removal of any debris on the Premises, salvaging to the extent economically feasible any salvageable or reusable materials remaining thereon, and Lessee shall promptly alleviate any dangerous conditions existing on the Premises as a result of such damage or destruction; and (ii) the repair and restoration of the Premises, so that upon the completion of such repairs and restoration,

the Premises will (a) be suitable for Lessee's use, (b) have a commercial value at least as great as that before such loss or destruction, and (c) retain, to the extent practicable, the same appearance and character. If such loss, damage or destruction results from a casualty covered by one or more policies of casualty insurance, the proceeds of such policies shall, to the extent necessary, be paid to Lessee as reimbursement for its reasonable expenses incurred in the repair and restoration of the Premises; provided, however, prior to the payment to Lessee of the proceeds of such insurance policies, Lessee shall deliver to Lessor satisfactory evidence of the completion of such repairs and restoration, and the cost thereof, and the reasonableness of all such costs. If the proceeds from such insurance policies are insufficient to reimburse Lessee for its expenditures relating to the repair and restoration of the Premises, Lessee alone shall bear all costs of such repairs and restoration which are in excess of the proceeds of such insurance policies. In the event the proceeds of such insurance policies are greater than the sums required to repair and restore the Premises, all such remaining sums shall be the sole property of Lessee.

15. Waste - Liens. Lessee shall not allow or suffer: (i) any waste of the Premises; or (ii) permit, by reason of any act of Lessee or failure by Lessee to perform any act required herein, any liens or other encumbrances to attach to, or to exist against, the Premises.

16. Indemnification. Lessee shall indemnify, defend, save and hold harmless from and against all liabilities, claims, losses, damages, fines or causes of action (including without limitation all costs of court, investigation, or attorney's fees incurred in connection with such causes of action or claims and any appellate litigation) due to any death or personal injury to any person whomsoever or any property damage whatsoever arising out of, from, or pertaining to:

- A. Lessee's operations or the conduct of its business upon the Premises, including without limitation any condition pertaining to the Premises attributable thereto;

and

- B. Any breach violation, or nonperformance of any term, covenant, or provision under this Lease Agreement by Lessee, its employees, invitees, licensees and agents.

If Lessor is made a party to any suit or legal action for damages arising from the negligence or other actions of Lessee, its employees, invitees, licensees, or agents (including any of the causes enumerated above), Lessor shall give notice to Lessee of such suit or legal action and Lessee shall thereupon assume all burden, cost and expense incident to the defense, investigation, and settlement of such cause of action or claim, including all costs of court, investigation and attorney's fees in connection therewith, and Lessee shall promptly pay any judgment which may be obtained in such suit or legal action against the Lessor.

17. Assignment and Subletting. Except as to the premises located at 220 North West Avenue, Fayetteville, AR 72702, which currently are sublet for the operation of a "Grubb's" restaurant and as set forth in the next sentence, Lessee may not assign, sublet, mortgage or otherwise encumber its interest or estate in the Premises, or any part thereof, or its rights pursuant to this Lease Agreement, without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessee may, without Lessor's consent, assign or sublet all or part of its rights and interests under this Lease Agreement to a wholly-owned subsidiary or any affiliated entity; provided, however, any such assignment or subletting by Lessee, with or without the prior written consent of Lessor, shall not act or release Lessee from its obligations pursuant to this Lease Agreement, including, without limitation, its obligation to pay the rental. Notwithstanding the foregoing, Lessee shall be permitted to allow use of the Premises by art-related entities and resident companies.

18. Total Condemnation of the Premises. If, during the term under this Lease

Agreement, all or a substantial part of the Premises are condemned by an entity having the power of eminent domain, and if such condemnation will materially interfere with Lessee's use of the Premises so that the Premises cannot be made suitable for occupation by reasonable repairs or restoration, or if the Premises are sold to such condemning authority or entity under the threat of condemnation, then Lessee may terminate this Lease Agreement by giving notice thereof to Lessor; thereafter, any award of damages in connection with such condemnation proceedings, or the proceeds of any such sale made to such condemning authority, shall be and remain the sole property of Lessor as to value of any improvements and as to the Lessor with regard to the value of land or real property taken.

19. Partial Condemnation of the Premises. In the event less than a substantial portion of the Premises is taken or condemned by an entity having the power of eminent domain, or sold to such entity under the threat of condemnation, so that such condemnation or sale will not materially interfere with Lessee's use of the Premises, this Lease Agreement shall not terminate, and Lessee shall, at its sole expense, cost and risk, promptly commence and diligently complete, or cause to be promptly commenced and diligently completed, the repair and restoration of the Premises, so that upon the completion of such repairs and restoration the Premises will, to the extent practicable, be suitable for use by Lessee and retain the same appearance, character and commercial value as immediately preceding such condemnation or sale. If the estimated cost of such restoration or repairs equals or exceeds twenty per cent (20%) of the then fair market value (as defined in paragraph 20 below) of the Premises, then prior to the commencement of restoration of repairs, Lessee shall submit for Lessor's approval all drawings and specifications pertaining to repairs or restorations, and Lessee shall not commence any repairs or restorations until Lessor has approved all such drawings and specifications, contracts, contractors, performance and payment bonds (and

the respective sureties thereon) pertaining to such repairs or restoration. An award of damages in connection with such condemnation proceedings, or the proceeds of any such sale made to such condemning entity, shall be applied to reimburse Lessee for its expenses relating to the restoration and repair of the Premises; provided, Lessee alone shall bear all costs of such restoration or repairs in excess of such award pursuant to such condemnation proceedings or the proceeds of any such sale. In the event the award pursuant to such condemnation proceedings or the proceeds of such sale are in excess of the amount necessary to repair and restore the Premises, then all such awards or proceeds shall be and remain the sole property of Lessee. Such partial condemnation of the Premises shall not release Lessee from its obligation to pay any rental then owed.

20. Determining Fair Market Value. If Lessor and Lessee are unable to agree on a fair market value of the Premises, for the purpose of Paragraph 19 above, then Lessor and Lessee shall, within thirty (30) days, each appoint a qualified person to act as an appraiser, and the decision by such appraisers as to the fair market value of the Premises, shall be binding upon Lessor and Lessee (the “**Fair Market Value**”). In the event such appraisers are unable to agree upon a fair market value for purpose of Paragraph 19, then the appraisers designated by Lessor and Lessee shall choose a third duly qualified person, acceptable to both Lessor and Lessee, and the decision of the third appraiser as to the fair market value of the Premises, shall be binding upon both Lessor and Lessee. In the event the fair market value as determined by such appraisers differs from the rental during the month in which the casualty or loss occurred, then upon the determination of a fair market value for the Premises, Lessor and Lessee shall respectively make such reimbursements or payments of excess or insufficient rental as may be appropriate to the extent legally permitted for Lessor.

21. Holding Over. In the event Lessee shall hold over on the Premises, or any part

thereof, after the termination under this Lease Agreement or the expiration of the Term or any extension, unless otherwise agreed in writing such holding over shall constitute and be construed as a tenancy from month to month only; provided, the rental payments during such period of holding over shall be a sum equal to the Fair Market Value of the rental during the month immediately preceding the termination under this Lease Agreement or the expiration of the Term hereof.

22. Inspection. Lessor, acting through its authorized agents and representatives, shall have the right to enter upon the Premises at any and all reasonable times for the purpose of inspecting the general state of repair and condition of the Premises, or for any other reasonable purpose whatsoever, including, but not limited to, emergencies.

23. Default. Any or all of the following shall constitute an event of default ("Event of Default") pursuant to the terms under this Lease Agreement:

- A. Lessee's failure for any reason whatsoever to comply with the terms, covenants, conditions and agreements contained herein or to promptly discharge any and all of its obligations and duties pursuant hereto, including without limitation Lessee's failure to pay any sum herein required or failure to provide proof of payment of same;
- B. The filing of a petition in bankruptcy by or against Lessee pursuant to any section or chapter of the Bankruptcy Code, as amended, or any other similar law or statute of the United States of America or any state thereof, or entering into any agreement, plan of reorganization or composition with creditors, or any committee thereof;
- C. Lessee's becoming insolvent or making a transfer or assignment for the benefit of

creditors;

- D. The appointment of a receiver or trustee for all, or a substantial part, of Lessee's assets; or
- E. The issuance of process for execution upon or the attachment of Lessee's property upon, or interest in, the Premises.

24. Remedies. Upon the occurrence of any Event of Default, Lessee waives all statutory rights of ejectment, and Lessor shall have the option of pursuing any one or more of the following remedies without any notice or demand whatsoever:

- A. Terminate this Lease Agreement, in which event Lessee shall promptly surrender the Premises to Lessor, and, if Lessee fails to do so, Lessor may, without prejudice to any other remedy which it may have for possession of the Premises or the collection of any arrearages in rental payments, enter upon, and take possession of, the Premises and expel or remove any agent, representative or employee of Lessee or any other person who may be occupying the Premises, or any part thereof, under the authority of Lessee, without being liable for prosecution of any claim for damages therefore; Lessee agrees to pay to Lessor on demand the amount of all losses and damages which Lessor may suffer by reason of such termination, whether through an inability to relet the Premises on satisfactory terms or otherwise;
- B. Enter upon or take possession of the Premises and expel or remove any agent, representative or employee of Lessee, or any other person occupying the Premises, or any part thereof, under the authority of Lessee, without being liable for prosecution or any claim for damages therefore, and thereafter Lessor shall

make a diligent and reasonable effort to relet the Premises on commercially reasonable terms, and Lessee shall pay to Lessor, on demand, any deficiency that may arise by reason of Lessor's inability to relet the Premises for a rental equal to that provided herein, regardless of the reason for such failure; Lessor's good faith determination as to what constitutes commercially reasonable terms for reletting the Premises shall be conclusive for purposes of this paragraph; or

- C. Enter upon the Premises without being liable for prosecution or any claims for damages therefore, and do and perform whatever acts Lessee is obligated to do pursuant to the terms under this Lease Agreement. Lessee shall reimburse Lessor on demand for any expenses which Lessor may incur in thus affecting compliance with Lessee's obligations pursuant hereto, including, without limitation, all court costs and attorney's fees.

25. No Waiver. The waiver by any party hereto of any breach or violation of any provision under this Lease Agreement shall not act or be construed as a waiver of any prior or subsequent breach hereof, nor shall the pursuit of any of the foregoing remedies (as set forth in Paragraph 24) preclude the pursuit of any other remedies provided herein or applicable law, nor shall the pursuit of any remedy provided herein or by applicable law constitute a forfeiture or waiver of any payments or other sums payable to Lessor pursuant hereto, or of any damages accruing to Lessor by reason of Lessee's violation of any of the terms, conditions, and covenants contained herein.

26. Quiet Enjoyment. Lessor warrants and represents to Lessee that it has fully right and power to execute and perform this Lease Agreement and that Lessee, upon the payment of rental and the performance of the other covenants and terms contained herein, shall peaceably

and quietly have, hold, and enjoy the Premises during the full term under this Lease Agreement.

27. Further Assurances. From time to time, and at all times, Lessor and Lessee shall do all such further acts as may be reasonably required to fully perform and carry out the terms and intent under this Lease Agreement.

28. Entire Agreement. This Lease Agreement constitutes the sole and only agreement between Lessor and Lessee concerning the subject matter hereof and supersedes all prior agreements, arrangements or understandings, if any, whether written or oral, relating to the subject matter hereof.

29. Severability. In case any one or more of the provisions contained in this agreement shall for any reason whatsoever be held invalid, illegal or otherwise unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Lease Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained as a part hereof.

30. Applicable Law. This Lease Agreement shall be interpreted and construed, and the respective rights of Lessor and Lessee governed, according to the laws of the State of Arkansas. Nothing contained in this Lease Agreement shall be deemed, construed or operate as a waiver of any immunities to suit available to the University of Arkansas, the City or their respective trustees, officials, or employees.

31. Venue. Unless otherwise finally determined by court of competent jurisdiction, the venue of any suit, cause of action or other legal proceeding pertaining to this Lease Agreement shall be in Washington County, Arkansas, subject to the non-waiver of immunities provision set forth in Paragraph 31.

32. Amendment. This Lease Agreement may only be amended by a writing executed

by both Lessor and Lessee, and thereafter duly delivered by each respectively to the other and incorporated by reference as a part hereof.

33. Headings. The headings of the respective articles or paragraphs under this Lease Agreement are for the purpose and convenience of reference only, and are not intended to be a part of, or to affect the meaning and interpretation of, this Lease Agreement. The Recitals as the beginning of the Lease Agreement are and shall be construed in harmony with all other substantive provisions of this Lease Agreement.

34. Recorded Memorandum. Concurrently with the execution and delivery under this Lease Agreement, Lessor and Lessee shall execute, deliver and promptly file for record in the deed records of Washington County, Arkansas, a memorandum evidencing this Lease Agreement in substantially the same form as the attached Exhibit "C", to which reference is made for all purposes.

35. Binding Effect. This Lease Agreement is binding upon and shall inure to the benefit of the Lessor and Lessee and their respective successors in title and permitted assigns.

36. Notices. All notices, information, offers, payments of rental, or other communications herein required or permitted, shall be in writing and shall be properly given, made or sent when delivered personally to the below identified representative of such party addressed in such writing, or when mailed by prepaid certified or registered mail, return receipt requested, or by overnight delivery service, to such party at its respective address as follows:

If to Lessor:

The City of Fayetteville, Arkansas
_____, Arkansas

Office of the Chancellor

425 Administration Building
University of Arkansas
Fayetteville, Arkansas 72701

With a copy to:

Office of the General Counsel
421 Administration Building
University of Arkansas
Fayetteville, Arkansas 72701

If to Lessee:

Walton Arts Center Council, Inc.
P. O. Box 3547
Fayetteville, Arkansas 72702
Attention: President and CEO

With a copy to:

Attention: John Alan Lewis
Mitchell, Williams, Selig, Gates & Woodyard, PLLC
5414 Pinnacle Point Drive, Suite 500
Rogers, Arkansas 72758
(479) 464-5656

or to such other respective addresses either Lessor or Lessee may hereafter designate and give notice thereof to the other.

37. Representations and Warranties of Lessee. Lessee hereby covenants and warrants to Lessor that:

- A. Lessee is a not-for-profit corporation incorporated pursuant to the laws of the State of Arkansas, has duly paid all applicable franchise taxes and charter fees, and is duly authorized to do business in the State of Arkansas;
- B. The undersigned individual, acting as the duly authorized agent of Lessee, has full power and authority to execute this Lease Agreement as the act and deed of Lessee; provided, however, Lessee's taking possession of the Premises, or any part thereof, shall be conclusively deemed as Lessee's ratification under this Lease

Agreement; and Lessee has fully and completely inspected the Premises, and as of the effective date hereof the Premises are adequate and sufficient for the purposes for which they are herein leased. At all times during the Term, shall operate, manage and maintain the Walton Arts Center on Dickson Street in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013. In determining whether this standard is met, the City of Fayetteville and the University of Arkansas may take into account the quality, type and number of performances and activities occurring at the Dickson Street facility, including the quality, type and number of: (i) Broadway Musicals and performances; (ii) other theatrical, dance and musical performances; (iii) concert performances and (iii) educational programs.

- C. Notwithstanding the foregoing, nothing in this Lease Agreement shall prevent Lessee from providing administrative or support services at the Premises for the benefit of other arts and entertainment venues in and around Northwest Arkansas which are owned, leased, operated or managed by Lessee.

38. Execution. This Lease Agreement was executed by Lessor and Lessee on the dates shown respectively on the acknowledgments of each, but is effective for all purposes on the effective date as set forth above.

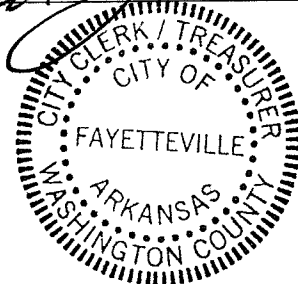
39. Counterparts. This Lease Agreement may be executed in multiple counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument. Signatures transmitted electronically via PDF copy or via facsimile shall be binding and make this Lease Agreement effective.

[SIGNATURE PAGE(S) FOLLOW]

“LESSOR”

CITY OF FAYETTEVILLE

By: [Signature]
Mayor



ATTEST:

[Signature: Sandra E. Smith]
City Clerk

Date: 07/07, 2014

BOARD OF TRUSTEES OF THE UNIVERSITY
OF ARKANSAS, ACTING FOR THE
UNIVERSITY OF ARKANSAS,
FAYETTEVILLE

By: [Signature]

G. David Gearhart
Chancellor

ATTEST:

[Signature: Marcia Overby]

Marcia Overby
Notary Public

8/11/14

8/11/14

“LESSEE”

WALTON ARTS CENTER COUNCIL, INC.

By: [Signature: Greg N. Lee]
Title: Chairman of the Walton
Art Center Council

ATTEST:

[Signature]
Secretary

Date: 8/19, 2014

EXHIBIT "A"

DESCRIPTION OF PREMISES

Tract A:

All of Block Six (6), of Original Town of Fayetteville, as per Plat of Record in the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas; LESS AND EXCEPT the southeast corner of said block more particularly described as follows: BEGINNING at the Southeast (SE) corner of said Block; thence along the East line of said Block N02°40'06"E a distance of 289.09 feet; thence leaving said East line N87°19'54"W a distance of 105.17 feet; thence S47°59'48"W a distance of 30.24 feet; thence S03°05'54"W a distance of 56.54 feet; thence N87°06'23"W a distance of 14.83 feet; thence S02°37'21"W a distance of 211.63 feet to the South line of said Block; thence along said South line S87°26'40"E a distance of 141.77 feet to the POINT OF BEGINNING.

In addition to the above described parcel, once the parking deck and its north liner building have been completed, the premises leased by the City of Fayetteville and the University of Arkansas to the Walton Arts Center Council, Inc. shall include the north liner building of the parking deck for use of the Walton Arts Center as its Administrative Headquarters, and the lower level as the expanded backstage area for the Walton Arts Center. Upon completion of the parking deck the City agrees to provide twenty-eight (28) parking spaces within the deck for the Walton Arts Center staff's use and another seven (7) parking spaces in the Spring Street parking lot.

Tract B:

A part of Block 8 of the original town (now City) of Fayetteville, Arkansas, being more particularly described as follows: Beginning at the Northeast corner of Block 8, thence North 87 degrees 50 minutes West 90.82 feet to the East railroad right of way, thence South 29 degrees 34 minutes West 215.87 feet, thence South 27 degrees 34 minutes West 43.4 feet, thence South 22 degrees 28 minutes West 62.9 feet, thence South 18 degrees 24 minutes West 42.4 feet along the East right of way, thence South 88 degrees 57 minutes East 254.70 feet, thence North 325.82 feet to the point of beginning, containing 1.34 acres, more or less.

Exhibit B



The Walton Arts Center Fayetteville Expansion and Renovation will allow the facility to meet growing demand for arts and special events and will improve the patron experience when they visit the theater. The project focuses on the expansion and renovation of the main lobby, Starr Theater, backstage support spaces, and technical upgrades.

1. The Main Lobby will be expanded and reconfigured, and a new plaza will create synergy with Dickson Street. The lobby will have more room for concessions, coat check, etc. and will serve as a great special event space. New multi-purpose rooms and support spaces (such as catering space, storage and concession areas) will be added.
2. Starr Theater will be upgraded and will have a dedicated lobby and entry. Additional backstage support spaces will be built to accommodate additional performance activities and events.
3. Backstage areas will be expanded to accommodate simultaneous performances in Baum Walker Hall and in Starr Theater and for growing touring production needs.
4. Theatrical lighting systems and audio systems will be upgraded to meet modern production needs. Accessible seating in Baum Walker Hall (main floor and balcony) will be added and upgraded to meet ADA standards.

EXHIBIT "C"

MEMORANDUM EVIDENCING AN AMENDED AND RESTATED LEASE AGREEMENT

STATE OF ARKANSAS)
)ss
COUNTY OF WASHINGTON)

THIS MEMORANDUM is executed to evidence the terms contained in a written instrument executed August 19, 2014, and effective as provided therein, styled "Amended and Restated Lease Agreement", by which the Board of Trustees of the University of Arkansas, acting for the University of Arkansas, Fayetteville and the City of Fayetteville, Arkansas (collectively, "Lessor") has leased the herein described real property to Walton Arts Center Council, Inc. ("Lessee"), a non-profit corporation, with its principal place of business in Fayetteville, Arkansas. Such Amended and Restated Lease Agreement pertains to the following described tract of real property, to wit:

Tract A:

All of Block Six (6), of Original Town of Fayetteville, as per Plat of Record in the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas; LESS AND EXCEPT the southeast corner of said block more particularly described as follows: BEGINNING at the Southeast (SE) corner of said Block; thence along the East line of said Block N02°40'06"E a distance of 289.09 feet; thence leaving said East line N87°19'54"W a distance of 105.17 feet; thence S47°59'48"W a distance of 30.24 feet; thence S03°05'54"W a distance of 56.54 feet; thence N87°06'23"W a distance of 14.83 feet; thence S02°37'21"W a distance of 211.63 feet to the South line of said Block; thence along said South line S87°26'40"E a distance of 141.77 feet to the POINT OF BEGINNING.

Tract B:

A part of Block 8 of the original town (now City) of Fayetteville, Arkansas, being more particularly described as follows: Beginning at the Northeast corner of Block 8, thence North 87 degrees 50 minutes West 90.82 feet to the East railroad right of way, thence South 29 degrees 34 minutes West 215.87 feet, thence South 27 degrees 34 minutes West 43.4 feet, thence South 22 degrees 28 minutes West 62.9 feet, thence South 18 degrees 24 minutes West 42.4 feet along the East right of way, thence South 88 degrees 57 minutes East 254.70 feet, thence North 325.82 feet to the point of beginning, containing 1.34 acres, more or less.

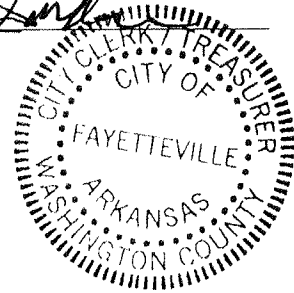
This memorandum evidencing the Amended and Restated Lease Agreement shall be filed for record in the deed records of Washington County, Arkansas.

EXECUTED AND EFFECTIVE this 07 day of 07, 2014.

“LESSOR”

CITY OF FAYETTEVILLE

By: [Signature]
Mayor



ATTEST:

[Signature]
City Clerk

Date: 07/07, 2014

BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS, ACTING FOR THE UNIVERSITY OF ARKANSAS, FAYETTEVILLE

By: [Signature]

G. David Gearhart
Chancellor

ATTEST:

[Signature]

Marcia Overby
Notary Public

8/11/14

8/11/14

“LESSEE”

WALTON ARTS CENTER COUNCIL, INC.

By: [Signature]

Title: Chairman of the Board

ATTEST:

[Signature]
Secretary Notary Public

Date: 8/13/14, 2014

ACKNOWLEDGMENT

STATE OF ARKASNAS)
)ss:
COUNTY OF WASHINGTON)

On this 11th day of August, 2014, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting within and for said County and State, appeared in person the within-named G. David Gearhart to me personally well known, who stated he is the Chancellor of the University of Arkansas, Fayetteville, and is duly authorized in that capacity to execute the foregoing instrument for and in the name and behalf of said entity, and further stated and acknowledged that he had so signed, executed, and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal on this 11th day of August, 2014.

Marcia Overby

Notary Public

My Commission Expires:
15 May 2024



ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss:
COUNTY OF WASHINGTON)

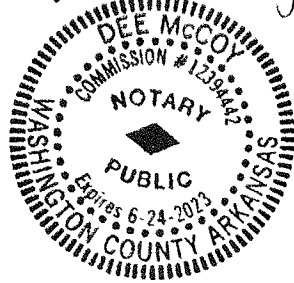
On this the 7 day of July, 2014, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting within and for said County and State, appeared in person the within-named Waneid Jordan and Sandra Smith to me personally well known, who stated they were the Mayor and City Clerk of the City of Fayetteville, Arkansas, a municipality, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said municipality, and further stated and acknowledged that they had so signed, executed, and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal on this 7 day of July, 2014.

Dee McCoy
Notary Public

My Commission Expires:

10-24-2023



ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss:
COUNTY OF WASHINGTON)

On this the 19th day of August, 2014, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting within and for said County and State, appeared in person the within-named Grog Lee and _____ to me personally well known, who stated they were the Chairman and Secretary of the Walton Arts Center Council, Inc., a non-profit corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said non-profit corporation, and further stated and acknowledged that they had so signed, executed, and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal on this 19th day of August, 2014.

Karen Percival
Notary Public

My Commission Expires:

9/6/21

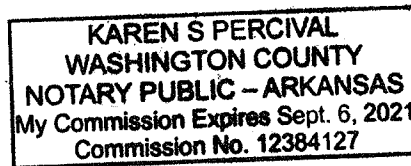


Exhibit "A"
178.03

(E) *Pre-Approved Locations.* Sidewalk vendors are permitted in specific locations in Fayetteville as a use by right. These locations have been determined by the City Council to have adequate sidewalk width, pedestrian traffic flow, and they minimize potential conflicts with existing businesses. Sidewalk vendors are not permitted to operate on days / times associated with special events, unless they have been approved and granted a Special Events Permit from the organization coordinating the special event. Maps of approved locations are available in the Planning Division. The locations where street vending is allowed as a permitted use are:

Inside of the Fayetteville Square. Sidewalk vendors may locate along sidewalks on all sides of the interior of the downtown Fayetteville Square. On days / times that the Farmers' Market or other special events operate, sidewalk vendors shall only be permitted if approved through the Farmers' Market or Special Event Permit process.

(F) *Alternative Locations.* If an applicant wishes to operate as a sidewalk vendor in a location other than those specifically approved by the City Council, a permit must be obtained. Upon receipt of a permit application, the Planning Division shall review the proposed permit operating area to determine if the said area is suitable for street vending in accordance with this chapter. In making

this determination, the Planning Division shall consider the following criteria:

- (1) The application meets all other criteria established herein for a sidewalk vendor, with the exception that the applicant may request that the cart, and/or operating area, may be larger than the dimension required in this chapter. An increase in cart size or operating area may be considered by the Planning Commission as a variance. The determination of a larger cart size and/or operation area shall be subject to the variance criteria in Chapter 156.03(C).
- (2) The number of permits issued for the street vending location shall not exceed the capacity of the area in terms of maintaining the use of the sidewalk as a public right-of-way, with a minimum 48" pedestrian access route that is free and clear of obstructions. The Planning Division shall consider the width of sidewalk, the proximity and location of existing street furniture, including, but not limited to: signposts, lamp posts, parking meters, bus shelters, benches, phone booths, street trees and newsstands, as well as the presence of bus stops, truck loading zones, other sidewalk vendors or taxi stands to determine whether the proposed use would result in pedestrian or street congestion.