

29-R-14

A RESOLUTION

Authorizing the City Manager to Enter into Renewal Lease Agreements with Resident Artists for Studio Spaces at the Noyes Cultural Arts Center

WHEREAS, the City of Evanston owns certain real property, including the property commonly known as the Noyes Cultural Arts Center at 927 Noyes Street, Evanston, Illinois; and

WHEREAS, the City currently leases and seeks to renew lease agreements for studio spaces in the Noyes Cultural Arts Center to resident artists; and

WHEREAS, the City Council has determined that it is in the best interests of the City of Evanston to continue to lease the aforementioned studio spaces, and to execute renewal lease agreements with resident artists.

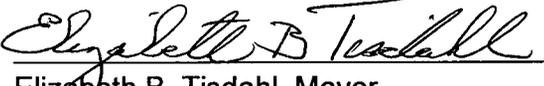
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: The City Manager is hereby authorized and directed to sign, and the City Clerk is hereby authorized and directed to attest on behalf of the City of Evanston, all renewal lease agreements for studio spaces by and between the City and various resident artists of the Noyes Cultural Arts Center for the period of May 1, 2014 through December 31, 2014. The studio space lease agreements shall be in substantial conformity with the lease attached as Exhibit "A" ("Master Studio Lease") and incorporated herein by reference.

SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional terms and conditions for the lease agreements for the

aforesaid studios as may be determined to be in the best interests of the City and approved as to form by the Corporation Counsel.

SECTION 3: Resolution 29-R-14 shall be in full force and effect from and after its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: April 28, 2014

**EXHIBIT A
MASTER STUDIO LEASE**

This Master Studio Lease Agreement (the "Lease") is executed on the _____ day of _____, 2014, by and between The City of Evanston, an Illinois municipal corporation and a home rule unit of the State of Illinois ("Lessor"), and _____ ("Lessee"), an _____. The Lessor and the Lessee shall be collectively referred to as the "Parties".

1. RENTAL RATE

- A. Lessee will pay Lessor the rental rate set forth on Page 1 of this Lease, per month and due on or before the 1st day of each month for the term of the Lease, as defined in Paragraph 2 (the "Rent").
- B. LATE CHARGES. Late fees will be assessed for rent due and owing to Lessor and all other invoiced charges in the amount of 10% of the invoice or \$50.00, whichever is greater. Late fees only apply if the administrative office of the Noyes Cultural Arts Center ("NCAC") or the Department of Parks, Recreation and Community Services receives payment AFTER 5:00 p.m. on the fifth day of each month for rent and/or if payment is received after 5:00 p.m. on the due date as specified on the invoice for all other charges. Invoiced charges may also be placed in the rent drop box slot located on the bottom portion of the door of the NCAC administrative office (room 100) by 5:00 p.m. on the due date specified on the invoice. See Appendix D. Assessed late fees not paid by the due date specified on the invoice will be billed double the amount on the next billing cycle.
- C. The Lessee is liable for all lease fees, including any late fees or fees for additional services, and for any damage, upkeep or losses to the NCAC building furniture or equipment caused or attributable to Lessee, Lessee's invitees, Lessee's agents or employees, during the Lease Term. Additional fees include but are not limited to: parking fees, custodial overtime, utility fees, and other accrued charges. The Lessor may bill other charges separately. See Appendix D.
- D. All payments shall be paid to:
Noyes Cultural Arts Center
927 Noyes Street
Evanston, IL 60201

Or

City of Evanston Parks, Recreation and
Community Services Department
Lorraine H. Morton Civic Center
2100 Ridge Avenue, First Floor
Evanston, IL 60201

2. TERM OF LEASE

- A. Initial Term: The initial term of this Lease will be for 8 months and will commence on May 1, 2014 and terminate on December 31, 2014.
- B. Second-Year Term: The Lessee has the option to renew the lease for a one year term beyond the Initial Term, January 1, 2015 to December 31, 2015.
- C. Third-Year Term: The Lessee has the option to renew the lease for a one year term beyond the Initial and Second Term, January 1, 2016 to December 31, 2016.

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D. Terms of Exercising the Option to Renew: The rent for each term is set forth above. All lease provisions shall remain the same, except that 1) all applicable new legislation shall be herein incorporated into the terms of the Lease by reference as though specifically stated; 2) Community Service requirements between Lessee and the Lessor shall be renegotiated; 3) the Rent shall increase by an amount to be determined solely by the Lessor, but not to exceed ten percent (10%) of the previous year's monthly Rent, and 4) the Lessor reserves the right to revise the Lessee's insurance requirements as to type(s) of coverage and policy amounts. The Parties acknowledge and agree that the leased spaces at the NCAC are leased below market rental rates for comparable spaces. Prior to execution of this Lease, and within 10 days of the first month of any beginning term of this Lease, all Lessees must provide the Lessor with a copy of their Annual Charitable Organization Report Form AG900-IL filed with Illinois Attorney General (if not-for-profit) or Federal Income Tax Return 1040 Schedule C, 1120-S or 1065 (if for-profit). Lessor reserves the right to not renew the Lease Agreement, see Paragraph 12.

3. LEASED PREMISES.

Lessor leases to Lessee the workspace (the "Leased Premises"), situated at 927 Noyes, Suite _____, Evanston, Illinois 60201. The Leased Premises are part of a cultural arts center containing other leased spaces, a parking area and common facilities. The commercial center is known as the Noyes Cultural Arts Center. The term "Common Facilities" as used in this Lease will include those facilities within the Noyes Cultural Arts Center for the nonexclusive use of Lessee in common with other authorized users, and includes, but is not limited to, sidewalks, planted areas, open means of ingress and egress, and the parking area.

4. MOVING

If the Lessor requires vacation of the Leased Premises and/or relocation within the NCAC, excluding an emergency, the Lessor will give Lessee at least sixty (60) days written notice. The Lessor will arrange for, and bear the cost of, moving Lessee's equipment, personal property, and other items (excluding computers, wiring, and telephones) into a comparable space with comparable amenities within the NCAC. If a comparable space is not available or if Lessee/Sub-lessee does not accept the space offered by the Lessor, Lessee/Sub-lessee will vacate the Leased Premises by the end of the 60-day notice period. If Lessee fails to vacate by the date determined in writing from the Lessor, Lessee will be charged a \$25.00 per day storage fee or a daily storage fee based on the per diem cost of the leased space whichever is greater.

5. CONDITION AND UPKEEP OF LEASED PREMISES

Lessee represents that it has examined the Premises, and has received the Premises in good order and repair, and acknowledges that no representations to the condition or repair thereof have been made by the Lessor or its agent prior to or at the execution of this Lease that are not herein expressed or endorsed hereon. The Lessee's taking possession shall be conclusive as evidence against the Lessee that the Leased

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Premises were in good order and satisfactory condition when the Lessee took possession except for a list of items to be completed or repaired, signed by the Lessor and Lessee prior to Lessee's occupancy. No promise by the Lessor or the NCAC staff to alter, remodel, decorate, clean or improve the Leased Premises or the NCAC and no representation has been made by Lessor or the NCAC staff to Lessee respecting the condition of the Leased Premises unless the same is expressly contained herein.

6. CARE, MAINTENANCE AND CUSTODIAL SERVICES

A. The Lessee shall, at the Lessee's own expense, keep the Leased Premises in good condition and shall pay for the repair of any damages caused by the Lessee, its agents, employees or invitees. The Lessee shall keep the Leased Premises in clean condition and presentable to the public. The Lessee shall pay the Lessor for overtime wages for staff and for any other related expenses incurred in the event that repairs, alterations, decorating or other work in the Leased Premises are not made during ordinary business hours at the Lessee's request.

B. Lessee will keep the Leased Premises, including all walls, surfaces and appurtenances, in good repair. At no time shall Lessee move, remove, handle, injure or disturb any property not theirs on or in the Leased Premises. Lessee shall be responsible for repairs, damages and losses for damages sustained outside the Leased Premises attributable to Lessee's activities or invitees. All damage must be reported in writing to the Director of Parks, Recreation and Community Services, or his or her designee, by the next City of Evanston business day. Repairs by Lessee must have prior written approval by the Director of Parks, Recreation and Community Services, or his or her designee, and must occur within thirty (30) days of such approval unless the Director of Parks, Recreation and Community Services, or his or her designee, gives a prior written request or grants approval for an extension beyond the thirty (30) days. If Lessee fails to make the necessary repairs by the date determined by the Lessor, the Lessor has the option to make the necessary repairs and Lessee agrees to promptly pay for those repairs upon presentation of an invoice by the Lessor to the Lessee. The Lessor may terminate this Lease for Lessee's failure to make the necessary repairs by the due date. Lessees are required upon lease termination to leave space in the same or better condition than at beginning of lease. Normal wear and tear accepted. See Appendix C.

7. MACHINERY, HOUSING ACCOMODATIONS, INFLAMMABLES, WATER

A. Unless the Lessor gives prior written consent in each and every instance, the Lessee **shall not**: install or operate any steam or internal combustion engine, boiler, machinery, refrigerating or heating device or air-conditioning apparatus in or about the Leased Premises; carry on any mechanical business in the Leased Premises, use the Leased Premises for housing accommodations, lodging, or otherwise for sleeping purposes, do any cooking therein, install or permit the installation of any vending machines, use any illumination other than electric light, use or permit to be brought into the NCAC any inflammable oils or fluids such as gasoline, kerosene, naphtha and benzene, or use any explosive or other articles hazardous to persons or property.

B. The Lessee shall not waste water by tying, wedging or otherwise fastening open, any faucet.

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C. The Lessee shall not install in the Leased Premises any equipment which uses a substantial amount of electricity without the prior written consent of the Lessor.

8. ALTERATIONS

A. The Lessee shall not do any painting or decorating, or erect any partitions, make any alterations in or additions to the Leased Premises or to the NCAC, or do any nailing, boring or screwing into the ceilings, walls or floors, without the Lessor's prior written consent in each and every instance. Unless otherwise agreed by the Lessor and Lessee in writing, all such work shall be performed either by or under the direction of the Lessor, but at the cost of Lessee. The Lessee shall furnish the following to the Lessor for approval before commencement of the work or delivery of any materials onto the Leased Premises or into the Noyes Cultural Arts Center:

1. plans and specifications;
2. names and addresses of contractors;
3. copies of contracts;
4. necessary permits including, but not limited to, electrical;
5. indemnification in form and amount satisfactory to the Lessor and

certificates of insurance from all contractors performing labor or furnishing materials, insuring against any and all claims, costs, damages, liabilities and expenses which may arise in connection with the alterations or additions and naming the Lessor as an additional insured.

B. The Lessor's decision to refuse or approve such consent shall be conclusive. Whether the Lessee furnishes the Lessor the foregoing or not, the Lessee hereby agrees to hold the Lessor and its respective agents and employees harmless from any and all liabilities of every kind and description which may arise out of or be connected in any way with said alterations or additions. Any mechanic's lien filed against the Leased Premises, or the NCAC of which the same form a part, for work claimed to have been furnished to the Lessee shall be discharged of record by the Lessee within ten (10) days thereafter, at the Lessee's expense, see Paragraph 11 for further terms. Upon completing any alterations or additions or at the request of the Lessor, the Lessee shall furnish the Lessor with contractors' affidavits and full and final waivers of lien(s) and use. All alterations and additions shall comply with all insurance requirements and with all ordinances, state and federal laws and regulations and other requirements of any pertinent governmental authority. All alterations and additions shall be constructed in a good and workmanlike manner and good grades of materials shall be used.

C. All additions, decorations, fixtures, hardware, non-grade fixtures and all improvements, temporary or permanent, in or upon the Leased Premises, whether placed there by the Lessee or by the Lessor, shall, unless the Lessor requests their removal, become the Lessor's and shall remain upon the Leased Premises at the termination of this Lease by lapse of time or otherwise without compensation or allowance or credit to the Lessee. If, upon the Lessor's request, the Lessee does not remove said additions, decorations, fixtures, hardware, non-grade fixtures and improvements, the Lessor may remove the same and the Lessee shall pay the cost of such removal to the Lessor upon demand.

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9. LESSEE NOT TO MISUSE, SUBLET, ASSIGN

A. Lessee will not allow said Leased Premises to be used for any purpose other than that specified in Appendix A and only for Lessee's activities for the Leased Premises. Lessee will not allow said Premises to be occupied in whole or in part by any other person for reasons not approved in writing in advance by the Director of Parks, Recreation and Community Services, or his or her designee, and will not assign or sublet the same nor any part thereof, nor lend, transfer, reproduce or give out keys for any door other than those provided by the Lessor without the prior written consent of the Director of Parks, Recreation and Community Services or his or her designee. No locks or similar devices, other than those provided by the Lessor, shall be attached to any door.

B. This Lease may not be assigned by either party without the prior written consent of the Lessor;

C. Lessee shall not co-produce, sponsor, or co-present additional programs, whether or not they generate revenue.

D. Lessee understands and agrees that the NCAC and the Leased Premises are public property and that all activities and productions must be consistent with this public status. Slanderous, libelous, obscene, unlawful, or hazardous actions and/or words are prohibited. Any violation of this provision may, at the Lessor's option, be a material breach of the Lease. See Appendix C.

E. Lessee shall not permit any alteration, renovation, installation, or addition to any part of Leased Premises, or in the public areas of the NCAC, except by the prior written consent of the Director of Parks, Recreation and Community Services or designee. The cost of all such alterations and additions to said Leased Premises shall be borne by Lessee, and shall be performed in accordance with all applicable legislation and may require Lessee to provide the Lessor in advance of such work with insurance in type, form and amount satisfactory to the Lessor. Fixtures shall remain for the benefit of the Lessor unless the Lessor determines otherwise prior to installation, and notifies Lessee in writing of said determination. Improvements made by the Lessee to the studio are fixtures if they require removal and/or replacement of an existing fixture, or installation into or on the foundation, walls, ceiling, floors or windows.

10. TERMINATION

A. Any party hereto may terminate this Lease for any reason upon written notice to the other party hereto, said notice to be delivered not less than ninety (90) days prior to the first day of the month of the contemplated termination. See Appendix F.

B. The Lessor may also terminate this Lease for cause. "Cause" is a material breach of the Lease by the Lessee, including, but not limited to failure to pay rent; failure to provide all required insurance and indemnity; performances and actions inconsistent with the public ownership of the Leased Premises; and actions which create or may create a hazard to the public health, welfare and safety. The Lessor will provide Lessee an opportunity to cure any default (the "Cure Period"). The Cure Period may be up to 30 days; however, a method and schedule to cure must be provided to the Director of Parks, Recreation and Community Services in writing within 24 hours of the next business day of the Lessor's notification to the Lessee. Lessee understands that there is no entitlement to a 30-day cure period, but subject to the discretion of the City.

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Thereafter, if the cure is not completed, the Lessor may terminate this Lease with fourteen (14) days notice to Lessee unless the "cause" is a fore-described hazard to the public, in which case the Lessor may terminate the Lease with five (5) days notice.

C. Notwithstanding anything to the contrary elsewhere in this Lease, if Lessee fails to maintain all insurance as required by this Lease, Lessee shall, upon written notice from the Lessor, cease all operations immediately and shall have no access whatsoever to its Leased Premises. The Lessor shall have no liability to Lessee for any claim of lost profits, revenues or opportunities. The Lessor may, but is not obligated to, give Lessee an opportunity to comply with the insurance requirements of this Lease. In such event, the Lessor reserves the right to increase required policy limits and/or to require Lessee to purchase additional types of insurance if doing so is in the interests of the public welfare. Any cure period the Lessor gives regarding insurance may be given in increments of one business day. Any cure period given does not obligate the Lessor to give additional cure period(s). The Lessor shall have the option of declaring the Lessee in default for failure to comply with the insurance requirements of this Lease. In the event Lessee fails to provide satisfactory evidence of insurance and the Lessor has denied access, Lessee is still liable for rent of the Leased Premises and other charges as assessed. See Paragraph 12 for Insurance obligations for the Lessee.

D. Holding Over; Surrender of Premises. Lessee will, at the termination of this Lease, leave the premises in as good condition as they are in at the time of entry by lessee, except for reasonable use and wear, acts of God, or damage by casualty beyond the control of Lessee. On vacating, Lessee will leave the premises clear of all rubbish and debris. If Lessee retains possession of the Premises or any part thereof after the termination of the term by lapse of time or otherwise, then Lessor may at its option within thirty days after termination of the term serve written notice upon Lessee that such holding over constitutes (a) renewal of this lease for one year, and from year to year thereafter, at double the rental (computed on an annual basis) specified in Section III, or (b) creation of a month to month tenancy, upon the terms of this Lease except at 200% the monthly rental specified rent. If no such written notice is served then a month to month tenancy with rental as stated at (b) shall have been created. Lessee shall also pay to Lessor all damages sustained by Lessor resulting from retention of possession by Lessee. The provisions of this paragraph shall not constitute a waiver by Lessor of any right of re-entry as hereinafter set forth; nor shall receipt of any rent or any other act in apparent affirmation of tenancy operate as a waiver of the right to terminate this Lease for a breach of any of the covenants herein.

11. LIENS AND INDEMNITY.

A. Liens and Encumbrances. The Lessee will hold the Lessor harmless from all claims, liens, claims of lien, demands, charges, encumbrances or litigation arising out of any work or activity of Lessee on the premises. Lessee will, within Sixty (60) days after filing of any lien, fully pay and satisfy the lien and reimburse Lessor for all resulting loss and expense, including a reasonable attorney's fees. Provided, however, in the event that Lessee contests any lien so filed in good faith and pursues an active defense of said lien, Lessee shall not be in default of this paragraph. However, in the event of any final judgment against Lessee regarding such lien, Lessee agrees to pay such judgment and satisfy such lien within 60 days of the entry of any such judgment.

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B. If lessee fails to fully discharge any claim, lien, claim of lien, demand, charge, encumbrance, or litigation, or should proceedings be instituted for the foreclosure of any lien or encumbrance, and if judgment is rendered against Lessee either by a court of competent jurisdiction or by arbitration and Lessee still persists in non-payment of the same within the 60 day set forth above, Lessor will have the right at any time after expiration of the 60-day period, to pay the lien or encumbrance. All amounts so paid will be repaid by the lessee on demand, together with interest at the rate of 10% per year from the date of payment and shall be considered additional rent owed to Lessor by Lessee.

C. **Waiver and Release of Liability.** Lessee covenants to indemnify Lessor, Lessor's agents, employees, attorneys, officers and directors, and the Leased Premises and/or the NCAC against liability arising from the use of the Leased Premises, parking area or common facilities by Lessee or any persons acting under the control of Lessee. Lessee will indemnify Lessor for any penalty or charge incurred by any violation of law by Lessee or any persons acting under the control of Lessee, and from any damage or expense arising from the death of or injury to any persons holding under Lessee, or by Lessor if named as a party Defendant in defending any such proceeding, including reasonable attorney's fees.

12. NON-RENEWAL

Notwithstanding the provision of Paragraph 2 of this Lease, the Lessor may decline to renew the Lease, upon 21 days written notice to the Lessee or sooner, if in the Lessor's sole determination, Lessee's use creates a hazard to the public health, welfare or safety. Lessee shall be afforded the opportunity to cure defects and/or hazards prior to non-renewal or termination of lease upon written request by Lessee and with written approval by the Director of Parks, Recreation and Community Services, or his or her designee, and at Lessee's own expense. Defects must be cured to the Lessor's satisfaction in the time specified by the Lessor. Lessee's failure to provide and maintain insurance required hereunder shall be presumed to create a hazard to the public health, welfare and safety. Such failure shall be cause for the Lessor to require Lessee to cease all activities at the Leased Premises immediately upon written notice to do so by the Lessor.

13. COMMUNITY SERVICE

Lessee hereby covenants and agrees to perform during the term of this Lease the Community Service activity set forth and defined in Appendix B. Community Service is as approved in advance by the Evanston Arts Council and calculated at 15% over and above the annual rent as detailed on page one (1) of this Lease. Lessee may request to opt out of Community Service by submitting a written request to the Director of Parks, Recreation or Community Services or his or her designee. If the Community Service opt-out is approved, Lessee agrees to pay a monthly rent amount that is 15 percent higher than the prevailing square footage rental rate at NCAC.

14. INSURANCE LIABILITY PROVISIONS

A. **Comprehensive General Liability Policy.** Lessee shall, during the entire term hereof, keep in full force and effect a Comprehensive General Liability policy with

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respect to the Leased Premises, and the business operated by the Lessee and any subtenants of the Lessee in the Leased Premises, in which bodily injury limits and property damage limits shall be as set forth in Appendix G to this Lease. Lessee shall also insure the following indemnity provisions and such agreement shall be clearly recited in the Insurance Policy:

“Lessee covenants and agrees that it will protect and save and keep the Lessor forever harmless and indemnified against and from any penalty or damages or charges imposed for any violation of applicable laws or ordinances, including, but not limited to, violations of the ADA, or for any penalty or damages imposed as a result of accidents or other occurrences, relating to Lessee’s use of the leased premises or the NCAC whether occasioned by neglect of Lessee or those holding under Lessee, and including, but not limited to issues arising or alleged to have arisen out of failure to comply with the ADA. The Lessee shall indemnify, protect and hold harmless the City of Evanston, its agents, officials and employees, against all injuries, deaths, loss, damages, claims, patents’ claims, suits, costs and expenses that may in anywise accrue against the City in consequence of the granting of this lease or which may in anywise result therefrom, whether or not it shall be alleged or determined that the act was caused through the negligent act or omission of the Lessee or his employees, if any, and the Lessee shall, at his own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and, if any shall be rendered against the City in any such act, the Lessee shall, at his own expense, satisfy and discharge same.”

In the event of any conflict between the language of the insurance policy(s) and the above-recited indemnity provisions, the indemnity provision stated above shall govern.

B. Certificate of Insurance. Lessee and any Sub-lessees shall furnish the original Certificate of Insurance to the Director of Parks, Recreation and Community Services or designee. The Certificate of Insurance must run concurrent with this Lease term and all terms of renewal set forth in Paragraph 2. The Certificate must name the Lessor as an additional insured with an insurance company acceptable to the Lessor and it shall be the responsibility of the Lessee to furnish the Director of Parks, Recreation and Community Services or designee with updated, original Certificates of Insurance covering the current lease term. The City of Evanston must be named as an additional insured on the Lessee’s policy and failure to do so is a material breach of this Lease. Updated Certificates must be received no later than the current Certificate expiration date held by Lessor. Lessee and Sub-lessee shall furnish, where requested, a certified copy of the policy to the Lessor. Lessee will instruct the Insurance Company to notify the Lessor of any changes or cancellation of Policy. The Policy will provide, in the event the insurance should be changed or cancelled, such cancellation shall not be effective until thirty (30) days after the Lessor has received written notice from the insurance company(s). An Insurance Company having less than an A plus Policyholder’s Rating established by the Alfred M. Best Company will not be acceptable. All Lessees must provide evidence satisfactory to the City of Evanston of compliance with the insurance requirements of this Lease before or at the signing of a new Lease and before renewing a Lease.

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15. ADDITIONAL INSURANCE

The Lessor reserves the right to require additional insurance from Lessee and any Sub-lessees because of any increased risk, improvements made by Lessee or any Sub-lessees or liability not satisfactorily covered, in the Lessor's sole opinion, by the above insurance requirements, and Lessee agrees to promptly provide same.

16. AMERICANS WITH DISABILITIES ACT ("ADA")

All Noyes Resident Artist classes, programs and activities are subject to all applicable laws regarding non-discrimination, including the ADA. ADA prohibits discrimination on the basis of disability. Reasonable accommodations must be made in all NCAC activities and services to enable participation by an individual with a disability. Compliance with the ADA in respect to Lessee/Sub-lessee's activities is the responsibility of Lessee/Sub-lessee.

17. NON-LIABILITY OF LESSOR

The Lessor will neither be liable for any damage nor loss of revenue occasioned by failure to keep the building in repair, including but not limited to: lights and fuses and any problems associated with electrical malfunctions; the heat not operating properly; any damage or loss of revenue caused or occasioned by or from plumbing, gas, water, sprinkler, steam or other pipes or sewage; the bursting, leaking or running of any pipes, tank, or plumbing fixtures, in, above, upon or about the building; any damage or loss of revenue caused or occasioned by water, snow or ice being upon or coming through the roof, skylights or trap; neglect of any owners or occupants of adjacent or contiguous property; or by public or private nuisances, regardless of cause or sources.

18. FIRE/CASUALTY

A. If a substantial portion of the Leased Premises or the NCAC is made untenable by fire or other casualty, the Lessor may elect to:

1. Provide available comparable space within the NCAC, or repair the Leased Premises within sixty (60) days. If the Lessor elects to repair the Leased Premises option but fails to repair the premises within sixty (60) days or upon the destruction of premises by fire, the Lease term shall cease as of the date of the casualty. All outstanding debts and Rent accruing to the Lessor from Lessee prior to date of casualty whether invoiced prior to casualty or not must be paid to the Lessor. The Rent will be calculated on a per diem basis prior to the date of the casualty.

2. To terminate this Lease as of the date of the fire or casualty by notice to the Lessee within sixty (60) days after that date, or

3. Proceed with all due diligence to repair, restore or rehabilitate the NCAC and/or the Leased Premises at the Lessor's expense, in which latter event this Lease shall not terminate.

4. In the event the Lease is not terminated pursuant to these provisions, rent shall abate on a per diem basis during the period of untenability. In the event that the NCAC or the Leased Premises are partially damaged by fire or other casualty but a substantial portion of the NCAC or the Leased Premises are not made untenable, then the Lessor shall proceed as promptly as it can under the circumstances to repair and restore the Leased Premises or the NCAC and the rent shall abate in proportion to

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the non-usability of the Leased Premises during the period of untenability. If an insubstantial portion to the Leased Premises is made untenable, the Lessor shall have the right to terminate this Lease as of the date of the fire or other casualty by giving written notice thereof to Lessee within sixty (60) days after the date of fire or other casualty, in which event the rent shall be apportioned on a per diem basis and paid to the date of such fire or other casualty.

5. If the Leased Premises or the NCAC are made untenable or not useable for the purposes allowed in this Lease, the security deposit will be refunded to Lessee if, and as a result of, war, terrorism, insurrection, civil commotion, riots, acts of God or the enemy, governmental action, strikes, lockouts or picketing, such condition continues for a period of one week, then Lessee shall have the right to terminate this Lease retroactively as of the date of the untenability or unusable condition, by giving the Lessor written notice and vacating the Leased Premises immediately. Such right to terminate shall be Lessee's sole remedy and under no circumstances shall the Lessor have any liability for damages of any nature whatsoever, including, without limitation, business interruption, incidental or consequential.

B. Lessee shall have no recourse for any type of compensation, damages, reimbursement, costs, or insurance proceeds whatsoever against the Lessor for any artwork or other property of any type which was lost or damaged by fire or other casualty, or for any artwork or other property of any type which remains in the leased premises or in or on any location owned or operated by the Lessor after lease termination or non renewal.

19. OCCUPATIONAL HEALTH AND SAFETY ACT (OSHA)

Lessee covenants and agrees that the use of any and all power tools, chemicals, or other harmful or potentially harmful products, devices, or materials on the Leased Premises by Lessee, its agents, employees, students, or any individuals shall be under the care, control or tutelage of Lessee shall be governed by the Occupational Health and Safety Act of 1980 as now or hereafter as amended.

20. SECURITY DEPOSIT

Lessee agrees to deposit with the Lessor a sum equal to one month's rent upon the execution of this Lease, as security for the full and faithful performance by Lessee of each and every term, provision, covenant, and condition of this Lease. If Lessee defaults in respect to any of the terms, provisions, covenants and conditions of this Lease including, but not limited to, payment of the rent, the Lessor may use, apply, or retain the whole or any part of the security deposited for the payment of any such rent in default, or for any other sum which the Lessor may expend or be required to expend by reason of Lessee's default including, without limitation, any damages or deficiency in the reletting of the Leased Premises whether such damages or deficiency shall have accrued before or after any re-entry by the Property's Owner. If any of the security deposit shall be so used, applied or retained by Lessor at any time or from time to time, Lessee shall promptly, in each such instance, upon rendition of an invoice and/or on written demand therefore by the Lessor, pay to the Lessor such additional sum as may be necessary to restore the security to the original amount set forth in the first sentence of this paragraph. Except as otherwise required by law, Lessee shall not be entitled to

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any interest on the aforesaid security. In the absence of evidence satisfactory to the Lessor of an assignment of the right to receive the security or the remaining balance thereof, the Lessor may return the security to the original Lessee, regardless of one or more assignments of this Lease. Upon the transfer of the Lessor's interest under this Lease, the Lessor's obligation to Lessee with respect to the security deposit shall terminate upon assumption of such obligation by the transferee.

21. ATTORNEY'S FEES

Lessee shall pay and discharge all costs, attorney fees and expenses that shall be made and incurred by the Lessor in enforcing the agreements of this lease and all the parties to this lease agree that the agreements herein contained shall be binding upon, apply, and inure to their respective successors and assigns.

22. PARTIES

The City, as the Lessor, and Lessee(s) hereto understand and agree that where two or more persons have executed this lease as Lessee, the word "Lessee" shall be construed to refer to and encompass all such persons and all Lessees and Sub-lessees signing this Lease and shall be jointly and severally liable for the entire rent and for the performance of all other covenants herein. Where necessary to effectuate the purpose of this lease, "Lessee" shall be read as "Lessees," "tenant," "co-lessee" or "Sub-lessees"; "its" shall be read as "his/her/their." Where a joint lease has been approved, and when one or more Lessees terminate this lease with the required ninety (90) days' notice as outlined in Paragraph 10, the remaining Lessee named as Lessee of this lease (not Sub-lessee), see Appendix F, will automatically assume full compliance of this lease effective on the termination date of the terminating party, and continuing throughout the current lease period. The Leased Premises, in whole or in part, shall not be sublet by Lessee without the prior written consent of Lessor. At Lessor's option, should Lessor consent to any assignment or sublease of the demised premises, Lessee shall nevertheless remain liable for all terms and conditions of this Lease until the expiration of the lease term stated above.

23. THE LESSOR'S ACCESS TO LEASED PREMISES

The Lessor shall have the right to retain a set of keys to the Leased Premises, and Lessee shall not change any locks without the Lessor's prior written authorization, and without providing the Lessor with keys for such new locks. The Lessee shall permit the Lessor to erect, use and maintain pipes, ducts, wiring and conduits in and through the Leased Premises. The Lessor or the Lessor's agents shall have the right to enter upon the Leased Premises with 24 hours prior written notice or without notice in case of an emergency, to control heat, electricity and air conditioning, to inspect the same, and to make such decorations, repairs, alterations, improvements or additions to the Leased Premises or the NCAC as the Lessor may deem necessary or desirable, and the Property's Owner shall be allowed to take all material into and upon Leased Premises that may be required therefore without the same constituting an eviction of the Lessee in whole or in part and the rent reserved shall in no wise abate while said decorations, repairs, alterations, improvements, or additions are being made, by reason of loss or interruption of business of the Lessee, or otherwise. If the Lessee shall not be

personally present to open and permit an entry into Leased Premises, at any time, when for any reason an entry therein shall be necessary or permissible, the Lessor or the Lessor's agents may enter the same by using the key, or may forcibly enter the same, without rendering the Lessor or such agents liable therefore (if during such entry the Lessor or the Lessor's agents shall accord reasonable care to Lessee's property), and without in any manner affecting the obligations and covenants of this Lease. Nothing herein contained, however, shall be deemed or construed to impose upon the Lessor any obligations, responsibility or liability whatsoever, for the care, supervision or repair of the NCAC or any part thereof, other than as herein provided. The Lessor shall also have the right at any time without the same constituting an actual or constructive eviction and without incurring any liability to the Lessee therefore, to change the arrangement and/or location of entrances or passageways, doors and doorways, and corridors, stairs, toilets or public parts of the NCAC, and to close entrances, doors, corridors or other facilities. The Lessor shall not be liable to the Lessee for any expense, injury, loss or damage resulting from work done by persons other than the Lessor in or upon, or the use of, any adjacent or nearby building, land, street, or alley.

24. NOTICES

All notices, requests, demands and other communications which are required or permitted to be given under this Lease shall be in writing and shall be deemed to have been duly given upon delivery, if delivered personally, or on the fifth (5th) day after mailing if sent by registered or certified mail, return receipt requested, first-class postage prepaid, as set forth below. Faxed communications are a convenience to the parties, and not a substitute for personal or mailed delivery.

If to the City: Director of Parks, Recreation and Community Services
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201
Fax (847) 448-8051
Phone (847) 866-2914

with a copy to: Law Department
City of Evanston
2100 Ridge Avenue, Room 4400
Evanston, Illinois 60201
Fax (847) 448-8093
Phone (847) 866-2937

If to the Lessee: at the address first above written.

25. RIDERS

All riders attached to this Lease and initialed by the Lessor and the Lessee are hereby made a part of this Lease.

26. MISCELLANEOUS

LESSEE

DATE

A. **Applicable Law.** Lessee agrees to observe all applicable legislation and regulations in its tenancy and use of the Leased Premises. The law of Illinois, including its conflicts of law provisions, shall apply to interpretation and enforcement of this Lease.

B. **Litigation.** In the event of litigation or claim(s) against the City arising out of this Lease by anyone other than the Lessee, the Lessee shall cooperate fully with the City. In the event of litigation between the parties to this lease, the parties waive trial by jury. Venue shall be within Cook County, Illinois.

C. **Severability.** In the event any provision(s) of this Lease are found by a court of competent jurisdiction to be in violation of applicable law, provision(s) unaffected thereby shall be in effect.

D. **Entire Agreement.** This Lease shall constitute the entire understanding of the parties hereto, superseding any and all prior agreements, whether written or oral.

27. AMENDMENTS

This Lease may not be modified or amended except in writing signed by both parties hereto.

LESSEE

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IN WITNESS WHEREOF, the parties have executed this lease on the
_____ day of _____, 2014.

LESSOR: CITY OF EVANSTON
an Illinois municipal corporation

By: _____

Its:

Print Name: _____ ATTEST: _____

LESSEE:

By: _____

Print Name: _____ ATTEST: _____

LESSEE

DATE

**APPENDIX A
FLOOR PLAN**

NOTE: Area marked in red on the floor plan above represents the path(s) to use during evacuation of the building in case of fire or fire alarm. See Appendix C, #18. Shaded areas on the floor plan(s) above represent space(s) the Lessor has agreed to lease to Lessee, to be used for: _____

and reasonable related activities of Lessee with prior written approval by the Director of Parks, Recreation and Community Services or designee.

LESSEE

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APPENDIX B
COMMUNITY SERVICE REQUIREMENTS
FOR
5/1/14 through 12/31/14

REQUIRED AMOUNT: \$

TOTAL APPROVED: \$

COMMUNITY SERVICE. Community Service activities written above must take place between 5/1/14 and 12/1/14. Community Service Proposals for the Lease period 1/1/15 through 12/31/15 must be submitted in writing to the Director of Parks, Recreation and Community Services or designee by November 1, 2014. All Community Service Proposals for each upcoming term must be submitted by November 1 of each year, and must be renegotiated and approved in advance of the next term of the lease.

In the event the Lessee does not satisfactorily perform said cultural Community Service, as outlined above during the term of the lease, the Lessee shall pay the Lessor a prorated sum based on the value of the outstanding requirement that shall not exceed 15% of the total annual rent. Said prorated sum will be billed to Lessee. Community Service Activity Report forms must be submitted to the Director of Parks, Recreation and Community Services or designee no later than ten (10) days after the completion of the approved Community Service activity. Subsequent renewal of this lease shall be conditioned upon the completion of said Community Service in a manner satisfactory and acceptable to the Lessor and any other conditions as established by the Lessor and communicated in writing to Lessee.

In the event fewer than all Co-lessees terminate this lease, upon request of the remaining Lessee, or the Lessor, the Director of Parks, Recreation and Community Services or designee can require the terminating Lessee to perform its obligated Community Service requirements prior to the termination date. If the terminating Lessee does not perform its obligated Community Service requirements prior to Lease termination, the terminating Lessee will be billed, and must pay prior to termination, the sum of the unperformed community service obligation and any other charges accrued to Lessee or accrued by the Lessor as a result of unperformed obligations.

LESSEE

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**APPENDIX C
GENERAL RULES AND REGULATIONS**

CONDITIONS: Lessee and its staff, students, visitors, and patrons agree to follow and obey the General Rules and Regulations of the Noyes Cultural Arts Center (NCAC). Said Rules and Regulations are listed below and subject to modification as distributed and/or posted.

1. **REQUIRED USAGE.** Each Lessee/Sub-lessee/Co-lessee is required to use the leased premises a minimum of 25 hours per week and total use time less than this minimum amount may result in termination of this Lease.

2. **SURCHARGE.**

A. All non-Evanston residents (individuals only) are assessed a 20% surcharge on rent. The 20% surcharge will not be applicable to non-Evanston resident Sub-lessees if the Lessee (individuals only) is an Evanston resident. The 20% surcharge is applicable to a non-Evanston resident Sub-lessee only if and when the Sub-lessee assumes the remainder of the entire lease or a co-lease, or upon lease termination by Lessee or the Lessor. In order for an Organization to be exempt from incurring a 20% surcharge, its principal place of business must be in Evanston. Organizations must attach Articles of Incorporation to this Lease.

B. Monthly rental charges assessed to Sub-lessees will not be in excess of one-half the rent charged to Lessee by the Lessor. A written sublease agreement between Lessee and Sub-lessee must be given to the Lessor covering the lease terms **prior to** Sub-lessee's use of space. The sublease agreement must include the payment schedule and the dollar amount paid by Sub-lessee to Lessee. Community service obligations assessed to Sub-lessee are in addition to the full obligation assessed to Lessee. Therefore, the Community Service obligations assessed to Lessee will not decrease as a result of a sublease.

3. **RESIDENT.** For purposes of this Lease, an individual is a "resident" of Evanston if his/her current driver's license and voter registration card shows an Evanston address. Parties must notify the Director of Parks, Recreation and Community Services or designee in writing within ten (10) days of any address change. Upon request of the Director of Parks, Recreation and Community Services or designee anytime, Lessee must promptly present a current driver's license, voter registration card, utility bill and any other proof of residency required by the Lessor. Failure to submit notification of a non-Evanston residency will result in a retroactive assessment to include applicable late fees for each month or portion of any month for which a non-Evanston residency was established.

4. **NOYES CENTER NOTICES AND SIGNAGE.** Lessees wishing to have banners hung, notices displayed, or other material(s) displayed on poles or in the public areas of the NCAC or grounds including Tallmadge Park and all public area activities announcement bulletin board(s), doors or walls must obtain prior written approval from the Director of Parks, Recreation and Community Services or designee before having

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material(s) hung or displayed. Lastly, the Lessee and any sub-Lessees acknowledge that the City's Fire Ordinance Title 4, Chapter 12, other applicable provisions within the City Code, and the Parks, Recreation and Community Services Department's Banner Policy govern the activities listed.

5. SMOKING. Smoking is prohibited in or within 25 feet from the entrance of the NCAC by the City Code. The code is strictly enforced. Violations are punishable by fines up to and including \$750.00 and may constitute a breach of this lease resulting in termination.

6. ALCOHOL. The consumption of alcohol in the NCAC is permitted, pursuant to a Class Z3 or Class Z4 liquor license as stated in the Evanston City Code. Such special one-day licenses shall be issued subject to the following conditions:

Z3

1. The license shall authorize the consumption of beer and wine only.
2. The service of beer and wine shall only take place from 10:00 a.m. to 10:30 p.m. (Sunday through Thursday) and from 10:00 a.m. to 12:00 midnight (Friday and Saturday), provided also that food is made available during those hours.
3. The license shall be issued to and valid only for the "service premises" described with particularity in the license. A license to use a particular "service premises" is not a license to use any other portion of the building. Chandler-Newberger Center, Robert Crown Community Center/Ice Rink, and Fleetwood-Jourdain Community Center shall be closed to the general public during the hours of service of beer and wine authorized by a class Z3 liquor license.
4. The application, which shall be submitted no later than twenty-one (21) days prior to the date of the service date sought, shall contain the following information:
 - a. The name of applicant, address and phone number.
 - b. The "service premises" for which the license is applicable, a description of the approximate area of the service premises.
 - c. The hours of operation of the event, the service date, the address, completion of a signed rental agreement, security deposit, and approval of the director of parks/forestry and recreation department or his/her designee.
 - d. The name, telephone number and address of the person who is responsible for conducting the event, and who will be on the premises during the actual event. Such person(s) must be at least twenty-one (21) years of age.
 - e. A statement that the applicant will provide security for the event, if and as required by the City.
 - f. A statement that:
If I (we) am (are) granted this special liquor license, I (we) specifically recognize and agree that the Mayor may revoke this license at any time at the absolute discretion of the Mayor; and upon acceptance of this special liquor license, the holder specifically acknowledges the special privilege of

LESSEE

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obtaining this type of license and consents to all requirements, including the requirement of immediate forfeiture without reason.

g. Signature of applicant.

5. A copy of a certificate of liquor liability insurance, naming the City as additional insured in the amount of one million dollars (\$1,000,000.00) for the period during which liquor will be sold.

6. The fee for a class Z3 liquor license shall be seventy-five dollars (\$75.00) for residents and two hundred sixty-five dollars (\$265.00) for nonresidents, and shall be deposited with the application.

7. Applications for special one-day class Z3 liquor licenses shall be submitted to the liquor control commissioner in accordance with the provisions of this Subsection Z3. The liquor control commissioner shall have the authority to grant or refuse to grant all special one-day liquor licenses.

8. No more than one (1) such license shall be granted per any facility, per day.

Z4

1. The license shall authorize the consumption of alcoholic liquor.

2. The service of alcoholic liquor shall only take place from 10:00 a.m. to 10:30 p.m. (Sunday through Thursday) and from 10:00 a.m. to 12:00 midnight (Friday and Saturday), provided also that food is made available during those hours.

3. The license shall be issued to and valid only for the "service premises" described with particularity in the license. A license to use a particular "service premises" is not a license to use any other portion of the building. Chandler-Newberger Center, Robert Crown Community Center/Ice Rink, and Fleetwood-Jourdain Community Center shall be closed to the general public during the hours of service of alcoholic liquor authorized by a class Z4 liquor license.

4. The application, which shall be submitted no later than twenty-one (21) days prior to the date of the service date sought, shall contain the following information:

- a. The name of applicant, address and phone number.
- b. The "service premises" for which the license is applicable, a description of the approximate area of the service premises.
- c. The hours of operation of the event, the service date, the address, completion of a signed rental agreement, security deposit, and approval of the Director of Parks, Recreation & Community Services or his/her designee.
- d. The name, telephone number and address of the person who is responsible for conducting the event, and who will be on the premises during the actual event. Such person(s) must be at least twenty-one (21) years of age.
- e. A statement that the applicant will provide security for the event, if and as required by the City.
- f. A statement that:
If I (we) am (are) granted this special liquor license, I (we) specifically recognize and agree that the Mayor may revoke this license at any time at the absolute discretion of the Mayor; and upon acceptance of this special

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liquor license, the holder specifically acknowledges the special privilege of obtaining this type of license and consents to all requirements, including the requirement of immediate forfeiture without reason.

g. Signature of applicant.

5. A copy of a certificate of liquor liability insurance, naming the City as additional insured in the amount of one million dollars (\$1,000,000.00) for the period during which liquor will be sold.

6. The fee for a class Z4 liquor license shall be one hundred fifteen dollars (\$115.00) for residents and three hundred forty dollars (\$340.00) for nonresidents, and shall be deposited with the application.

7. Applications for special one-day class Z4 liquor licenses shall be submitted to the liquor control commissioner in accordance with the provisions of this Subsection Z4. The liquor control commissioner shall have the authority to grant or refuse to grant any Z4 license.

8. No more than one (1) such license shall be granted per any facility, per day.

7. ACCIDENTS & POLICE REPORTS.

A. Any incident or injury involving persons at the NCAC (whether medical attention is received or not given), while attending an activity under the direction of Lessee and/or staff member of Lessee, or pre-approved user by the Lessor whether occurring in a Lessee's studio space, Community Use Rental space or public area of the NCAC, must be reported on an Accident Report form obtained at the administrative office of the NCAC. Such reports are to be submitted to the Director of Parks, Recreation and Community Services or designee no later than 5 p.m. on the next City of Evanston business day or sooner following the accident.

B. Lessee is responsible for reporting to the Director of Parks, Recreation and Community Services or designee no later than the next City business day all incidents under the direction of Lessee and/or staff member of Lessee, occurring at the NCAC and/or on the NCAC grounds (Tallmadge Park adjacent to the NCAC) which result in a Police Report being made by the Evanston Police Department. Upon completing the Police Report, the Lessee must obtain from the Reporting Officer a card bearing the case number and a copy of the Police Report, and submit it to the Director of Parks, Recreation and Community Services or designee not later than 5 p.m. on the next City of Evanston business day or sooner after the Police Report is available.

8. OBSTRUCTIONS.

A. Lessee will not use, or store at any time, any belongings in any non-leased space, or public areas of the NCAC without prior written consent of the Director of Parks, Recreation and Community Services or designee, or in any leased or non-leased space in violation of City of Evanston Fire Prevention Code F-601.1 "Obstructions," as it may be subsequently amended: "A person shall not at any time place an encumbrance of any kind before or upon any fire escape, balcony or ladder intended as a means of escape from fire. The means of egress from each part of the building, including stairways, egress doors and any panic hardware installed thereon, aisles, corridors, passageways and similar elements of the means of egress, shall at all times be maintained in a safe condition and shall be available for immediate use and free of all

obstructions.” Failure to observe the provisions of this paragraph may subject the Lessee to a fine of up to \$750.00 per day/per violation and/or to non-renewal of this lease.

B. Lessee will not display its furnishings in any non-leased space without prior written approval of the Director of Parks, Recreation and Community Services or designee, and will not allow its staff, students, patrons or participants to conduct any practice event or events related to Lessee’s activities in the public areas of the NCAC. Failure to comply with this provision may result in the City’s refusal to renew this lease for a second and/or third term.

9. INTERFERENCE/TENANTS. Lessee covenants and agrees that Lessee will exercise all due caution, care and control to prevent any interference on the part of Lessee, its agents, employees, students, or other individuals under the care, control or influence of Lessee, with the practice of art by other tenants in the NCAC building. Lessee recognizes that, due to the use of the building wherein the leased premises are located as a cultural arts center, an extraordinary amount of patience and consideration must necessarily be exercised by all parties to promote the creation of art.

10. TIME OF USE. The NCAC building will be locked at all times when not open in accordance with the schedule posted in this lease. See Appendix E. Access to the building by Lessee, its employees, agents, guests, students, or any other individual who shall seek access to the building by nature of their relationship with Lessee, shall be limited to the hours designated by the Lessor for the NCAC’s building’s use. Exceptions to this provision may be made in extraordinary circumstances where Lessee applies in writing, in advance to Director of Parks, Recreation and Community Services or designee.

11. SECURITY DEPOSIT.

A. Lessee, at no time during the term of this Lease shall be allowed to apply any part of said security deposit toward payment of any monies owed under this Lease or in connection with this Lease.

B. If Lessee fails to make repairs or redecorate as specified in Paragraph 5 of the Lease, the security deposit shall remain for benefit of the Lessor and will be applied toward the Lessee’s unfulfilled obligations. Lessee will be billed additional costs over and beyond the amount of security deposit on file associated with returning the leased space to its original condition to include but not limited to the Lessor’s staff time and materials. Upon Lessee’s early termination of the Lease and/or in violation of the notice requirements of Paragraph 24 of the Lease, all security deposits will be forfeited by Lessee. In the event any part of the security deposit is applied during the lease term by the Lessor for breach of any provision of the Lease, Lessee shall, upon rendition of an invoice by the Lessor, deposit with the Lessor an additional sum equal to one month’s rent as additional security for the performance of all covenants and agreements of Lessee hereunder, including Community Service (see Appendix B). Said invoice to be paid by Lessee not later than the due date as specified in the invoice. The Lessor will bill Lessee for any unfulfilled Community Service obligations specified in this Lease unless Lessee secures an alternate Community Service activity, approved in writing, in

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advance by the Director of Parks, Recreation and Community Services or designee, and performs the Community Service at an alternative time agreed upon with the Lessor or as agreed upon prior to the end of this lease term. The security deposit will be returned to Lessee within 45 days of lease termination if money is due to Lessee and/or 45 days after Lessee fulfills lease obligations as applicable.

12. ACCESS AND KEYS.

A. If access is to be gained to Lessee's studio(s) by individuals other than the Lessee, the Lessee is required to submit an "Access Form" available at the office, authorizing access for that individual. Lessee will forever hold the Lessor harmless for any actions and/or omissions of individuals, and for any damage to, or loss of, contents of Lessee's studio(s), mail or mailboxes.

B. Keys to the Leased Premises are available at the office of the Lessor. Lessee will receive two keys free of charge affording access to only the particular areas leased hereunder. See Lease Paragraph 9. The Lessor prohibits the reproduction of keys. Lessee and those holding keys under Lessee will not reproduce keys. The office of the NCAC will maintain records of all keys issued and returned. Keys will only be ordered and issued when the office receives a written request from the Lessee or by those names listed on Lessee's prior written authorization. The Lessee or its authorized agent will receive notification when keys are ready to be picked up. Only the individual receiving the key(s) can sign for that key(s). There will be a \$5.00 charge per key for all keys except in cases where the Lessor incurs a charge more than \$5.00 per key to reproduce. Payment(s) for keys must occur at the time the individual receives the key(s). Upon lease termination date, in compliance with the Lease terms, Lessee will pay any cost relating to the lock/core repair or replacement if the Lessor requests this change or if all keys issued under Lessee's or Lessees' designees' authorization are not returned or anytime during this lease if the Director of Parks, Recreation and Community Services, or designee, determines that any such replacement is necessary. No part of Lessees' security deposit will be returned until all property of the City of Evanston has been returned and all obligations are fulfilled in accordance with the provisions recited in this lease.

13. STORAGE, DANGEROUS MATERIALS.

A. It shall be unlawful and shall constitute grounds for immediate termination of this lease if Lessee engages in any activity involving the handling, storage, or use of materials or substances which are flammable or of materials, substances, or devices which are hazardous, as defined in section F2302.0 of the BOCA National Fire Prevention Code of 1993, or to maintain, store, or use any such flammable or hazardous materials or to conduct processes producing such flammable or hazardous conditions, except with the prior written request and prior written approval of the Director of Parks, Recreation and Community Services or designee, and the Evanston Fire Department, and in accordance with all applicable legislation. The code is strictly enforced. Violations are punishable by fines up to and including \$750.00 and may constitute a breach of this lease resulting in termination.

B. Lessee will not use or permit the use or storage on the premises of materials for which ventilation is required for safe usage without the prior written consent of the

Lessor or the Director of Parks, Recreation and Community Services or designee. Lessee will store all potentially dangerous and/or flammable materials in a fireproof cabinet(s) and/or fireproof container(s) at all times when not in use. The decision of the Lessor or Director of Parks, Recreation and Community Services or designee, with reference to the nature of the materials and its safe usage shall be conclusive. The Director of Parks, Recreation and Community Services or designee and/or Fire Department officials will perform unannounced periodic fire/safety inspections in all leased spaces for compliance. All Lessees must grant access for same. The code is strictly enforced. Violations are punishable by fines up to and including \$750.00 and may constitute a breach of this lease resulting in termination.

14. DISPOSAL OF REFUSE

It is the responsibility of the Lessee to discard its own refuse into the exterior dumpster that does not fit in a standard 20" X 15" trash receptacle. The City of Evanston is not equipped to and does not pick up construction debris to include drywall or cement. However as a courtesy to Lessee, the City will allow Lessee to discard its refuse specified in this paragraph. The City reserves the right to not provide this service at any time during this Lease. Lessee will observe the following guidelines:

All refuse must be bagged to prevent blowing or scattering. At no time will Lessee discard refuse in the City dumpsters causing the dumpster to total over 500 lbs. per refuse pick-up by the City. The City will accept scrap metal. All scrap metal is to be placed neatly inside the dumpster area. Scrap metal and bulk pick ups are by appointment and are not collected by the regular crew. It is the Lessee's responsibility to notify Streets & Sanitation at (847) 866-2940 to pick up any refuse that is placed outside the dumpster. The weight of the scrap metal will not be added to the refuse weight placed in the dumpsters. All items including wood to be discarded must be broken up into sizes not to exceed 2' x 2' x 2'.

At no time will Lessee be permitted to discard any bulk wood (tree branches, tree stumps, larger than 3 inches in diameter) or hazardous waste to include: gas, oil, asbestos, medical waste, car parts, tires, aerosol paints, antifreeze, cleaning products, drain cleaners, fluorescent lamp bulbs, hobby chemicals, oil-based paints, household batteries, insecticides, lawn chemicals, old gasoline, paint thinners, pool chemicals, pesticides, solvents, used motor oil and herbicides, latex paints, agricultural wastes, farm machinery oil, explosives, fire extinguishers, fireworks, lead-acid batteries, propane tanks, smoke detectors, farm machinery oil, institutional wastes, and business/commercial sector wastes. Hazardous waste collection sites around Chicagoland provided by the Illinois Environmental Protection Agency (IEPA) include: Naperville Fire Station #4, 1971 Brookdale Rd., Naperville, IL, and Rock River Reclamation District, 333 Kishwaukee, Rockford, IL, (815) 967-6737.

15. SPACE HEATERS. Lessee shall abide by the manufacturer's safety information before using a space heater. Heaters shall have the UL, FM or other testing agency label. Space heaters shall have tip-over protection: audible alarm or automatic shut off. Do not leave the heater unattended. Space heaters shall have safety features if the device overheats. In addition, space heaters will not be used in conjunction with

extension cords. When operating, space heaters must have at least three feet of clear, unobstructed space in all directions. The code is strictly enforced. Violations are punishable by fines up to and including \$750.00 and may constitute a breach of this lease resulting in termination.

16. COMBUSTIBLES. All combustibles are to be kept a minimum of three feet away from electrical equipment. All combustible and flammable materials shall be stored in accordance with Fire Code. It is the responsibility of the Lessee to provide the appropriate storage cabinets. The code is strictly enforced. Violations are punishable by fines up to and including \$750.00 and may constitute a breach of this lease resulting in termination.

17. EXTENSION CORDS. Extension cords are permitted as long as acceptable load limits are not exceeded. "Fire Prevention Code Section F-310.5 Extension Cords: Extension cords and flexible cords shall not be a substitute for permanent wiring." If space heaters are continued to be used, permanent wiring shall be installed. Surge protectors can be used only in relation to operation of office computer-related equipment.

18. FIRE EVACUATION PLAN. It will be the Lessee's responsibility to post in its studios a copy of the fire evacuation plan and to inform its studio users of the evacuation plan. When the Fire Alarm sounds, whether it is a fire, false alarm, or fire drill, everyone is to evacuate the NCAC immediately and safely. Leased spaces are to be left unlocked in case fire fighters need access. The meeting place during fire emergencies is Tallmadge Park, just north of the NCAC parking lot. Individuals other than the Fire Department and designated authorities are not to block and/or occupy the parking lot, pavement areas or sidewalks around perimeter of the NCAC. Everyone is to remain on the Tallmadge Park grounds grass area until advised otherwise by either the Fire Department or Staff. The code is strictly enforced. Violations are punishable by fines up to and including \$750.00 and may constitute a breach of this lease resulting in termination.

19. ELEVATOR AND CHAIR LIFT. The Elevator and chair lift are to be used to transport passengers only.

20. LESSEE/CO-LESSEE. In the event a Co-lessee (not Sub-lessee) terminates its lease, the Lessor will determine if the space will be put on the market for lease or accept the remaining party as the sole Leaseholder of the space. See Appendix F. The remaining party can request approval from the City of Evanston that another party be approved to either sublease or co-lease for the duration of the lease term or shorter term. All guidelines outlined in the NCAC's studio application packet must be adhered to. Full compliance includes full payments for security deposits, Community Service activity and rent, as well as all other obligations imposed hereunder by this lease. Upon the Director of Parks, Recreation and Community Services or designee's direction or upon the request of the remaining Lessee, the Director of Parks, Recreation and Community Services or designee can require the terminating Lessee to perform their

LESSEE

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obligated Community Service requirements at an arranged rescheduled time or prior to terminating and/or prior to the lease termination date. If the terminating Lessee does not perform its obligated Community Service requirement, the terminating Lessee will be billed and will promptly pay the sum of the unperformed obligation.

21. ENTRY BY THE LESSOR. Lessee shall not unreasonably withhold consent to the Lessor to enter the Leased Premises in order to inspect the premises; make necessary or agreed repairs, decorating, alterations or improvements; supply necessary or agreed services or show the unit to prospective or actual purchasers, mortgagees, tenants or workmen. The Lessor may enter the unit without consent of the Lessee in case of emergency and/or to perform fire/safety inspections, heating, air conditioning, and ventilation inspection/work as necessary or to assess other possible problems or work as required. The Lessor shall not abuse the right of access or use it to harass the Lessee. Except in cases of emergencies, or unless it is impracticable to do so, the Lessor shall give the Lessee at least twenty-four (24) hours notice of its intent to enter and may enter only at reasonable times.

21. ABANDONMENT. Lessee is required to notify the Director of Parks, Recreation and Community Services or designee if Lessee will not occupy its studio for more than seven consecutive days. If the Lessee abandons the unit for thirty (30) consecutive days or more, the Lessor shall attempt to rent the unit at the current rental rate. This shall include the acceptance of reasonable subleases. If the Lessor succeeds in renting the unit at the current rental rate, the abandoning Lessee shall be liable for the amount due from the date of abandonment to the new rental agreement approved by the Lessor. If the Lessor is unsuccessful at re-renting the unit, the abandoning Lessee shall be liable for rent due for the period of the rental agreement. In either event, the Lessee shall be liable for all expenses incurred by the Lessor or imposed by the Lessor as a result of Lessee's abandonment or non-use of space.

22. PARKING REGULATIONS. Annual parking permit fees will be billed separately in monthly installments to the Lessee and are to be paid on or before the first of each month. Parking permit fees are not prorated. All annual parking permits issued will be billed for the entire year and are not returnable with the exception of permits which are transferred. There will be a \$25.00 transfer fee assessed for all annual permits which are to be reissued unless: 1) either the old permit or remnants of the old permit is returned displaying the lot number and the permit number minimally; or 2) proof by a bill of sale is produced as evidence of no longer owning the vehicle.

Monthly and annual parking permits for the NCAC parking Lot #51 are authorized only for Leaseholders, Sub-lessees, staff and/or students attending classes at Noyes on a regular basis. Parking permits are not to be transferred to vehicles other than the vehicle for which the permit was issued unless prior written approval by the Director of Parks, Recreation and Community Services is obtained. Parking Permit privileges are limited to attendance at the NCAC. Parking Permit privileges will be considered by the Director of Parks, Recreation and Community Services or designee for other regular NCAC users on a case-by-case basis. All Authorization Forms must be signed by the

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Leaseholder or the Leaseholder's prior written and arranged designee, and by an NCAC staff member before parking permits can be purchased. Temporary one-day parking permits are available for individuals attending special functions at the NCAC, and for visitors and others who are pre-approved by the Director of Parks, Recreation and Community Services or designee. Temporary parking permits are not available to parents or caregivers waiting for students attending classes. Lessee understands, and will inform its staff, students and patrons to observe all posted parking regulations. Parking permits will not be issued to individuals with an expired driver's license. Resolution of all parking citations issued to Lessee for the NCAC lot is a prerequisite to renewal of this Lease.

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**APPENDIX D
OTHER COSTS**

1. COMMUNITY USE SPACES. Lessee shall have the right to use only the Leased Premises described on page #1 in the lease for the operation of its day-to-day activities as written in Appendix A. Lessee may from time to time, pursuant to arrangements made in advance with and approved by the Director of Parks, Recreation and Community Services or designee, make use of certain other areas, i.e., the Theatre, Studio #106 or the Noyes Center Galleries (see info on Gallery usage below) or other areas on a fee basis (see fee matrix attached for Lessee rates). Lessees using the above spaces for purposes other than arts activities as written in Appendix A may be required to provide additional insurance. When the use of said areas involves the execution of a Community Service project and when the Lessee offers a program of cultural significance to the public free of charge, such rates may be waived at the discretion of the Director of Parks, Recreation and Community Services or designee upon written request and prior approval for the arrangement. Rental cost of Community Use space waived will not be in excess of the dollar value of the required Community Service project. See Appendix B.

2. NOYES CENTER GALLERY. Lessee may from time to time, pursuant to arrangements made in advance with and approved by the Director of Parks, Recreation and Community Services or designee, make use of the Noyes Center Gallery(ies) on a fee basis at established rates. If the use of said areas involves the execution of a Community Service project where the Lessee offers a program of cultural significance to the public free of charge, such rates may be waived at the discretion of the Director of Parks, Recreation and Community Services or designee upon written request and prior approval for the arrangement, made at the time the Community Service project is proposed. In extenuating circumstances a request may also be made at least thirty (30) calendar days before the Community Service project.

3. UTILITIES.

A. The Lessor agrees to pay all water, gas and electricity charges (except for air conditioning) , however, additional fees as listed on the attached fee matrix (see Appendix D, Page 3) could apply anytime and/or if excessive usage as determined by the Property's Owner occurs any time during the term of the Lease.

B. Lessees will be billed for the use of air conditioners and air-handling units. The fees are assessed for the months of June, July, August and September. The monthly fee assessment applies to each air conditioning and/or air handling unit used in each studio. Window air-conditioning units must be removed if not in use, and window, window sills, frames, glass and screens must be restored to their original condition with the same material and quality as that installed at time of occupancy, and at Lessee's expense. Square footage will not be combined to calculate the use of air conditioners for more than one leased space. Fees will not be prorated for partial month's use of air conditioners or air handling units. Additional monthly fees will be assessed to Lessee if air conditioners and/or air handling units are used during other months and will not be prorated. Air conditioner units can be left in windows if prior written permission is

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obtained from the Director of Parks, Recreation and Community Services or designee. Air conditioning units must be properly insulated to minimize energy exhaustion as determined by the Lessor. Failure to remove air-conditioning units from October 1 through May 31 of each year will result in an assessment of usage charge for each month or any portion of a month the air-conditioning units are installed. See attached Appendix D utility fees and other charges associated with NCAC.

C. Additional services such as charges for use of phone service (landline and cell phone) and cable television will not be provided at Lessor expense. If necessary, the Lessor acknowledges and agrees that if he/she seeks to have a new service (cable, phone, etc.) provided to the NCAC for the use in their Lease Premises, the Lessee will follow the proper City procedures and obtain the necessary approvals prior to the installation of the service.

4. ASSOCIATED EXPENSES. If for any reason attributable to Lessee or those holding under Lessee, a Noyes staff member, Facilities Management staff, contractor/sub-contractor, or agent of the City of Evanston has to return to the building on holidays or after the employee's normal work shift(s), Lessee will incur the cost of that employee's salary, plus any charges imposed on or billed to the City of Evanston by service agencies such as the security alarm contractors, the Evanston Police and/or Fire Department, or any other charge the City incurs as a result of such extra work. Lessee shall pay all costs associated with, but not limited to: telephone installation(s) or other telephone service(s), parking permits, custodial and/or staff overtime charges, and other charges as outlined in this lease or necessitated by the nature of Lessee's/Sub-lessee's activities or actions. Prior written approval is needed from the Director of Parks, Recreation and Community Services or designee to perform any licensed trade work, such as but not limited to additional electrical power provided to Lessee's studio(s), installation or relocation of electrical outlets, plumbing, carpentry work, set building for performance productions, any and all construction of temporary or permanent installations connected to or resting on the foundations walls, ceilings, floors and/or existing surfaces prior to and during Lessee's lease of the space. All such work must be performed pursuant to applicable permits and in accordance with all applicable legislation. Lessee's failure to obtain prior written approval and/or applicable permits before performing any licensed trade work may at the Lessor's option constitute a material breach of this Lease and result in termination of this lease.

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**APPENDIX E
TIME OF USE**

TIME OF USE. Lessee will have the right to use its leased premises only during normal hours and days of operation of the NCAC. Said normal hours may be changed by the Lessor. In the event of such changes, resulting in a reduction of hours, Lessee will not be entitled to a reduction in rent or Community Service obligations. Unless required by the City's best interests or particular existing conditions the open hours from September through May shall be between 8:15 a.m. and 11:00 p.m. on Monday through Friday, between 7:30 a.m. and 11:00 p.m. on Saturday, and between 10:00 a.m. and 6:00 p.m. on Sunday. The open hours from June through August shall be between 7:30 a.m. and 11:00 p.m. on Monday through Saturday, and 10:00 a.m. and 6:00 p.m. on Sunday.

The Center will be closed on holidays/days as observed by the City of Evanston. Lessee understands and agrees that Lessee's rent will not be reduced for the weeks in which the aforesaid holidays occur (see Appendix D). The Director of Parks, Recreation and Community Services or designee will notify Lessee of additional dates the NCAC will be closed in addition to those dates stated in Appendix D. The Lessee may, by written arrangement with the Director of Parks, Recreation and Community Services or designee, use the Leased Premises or other rental spaces during other than normal hours and days of operation. In this event, Lessee will pay for overtime custodial charges necessary to keep/have the NCAC open beyond normal building hours in addition to a \$66.00 service fee utility charge and rental charges associated with rental space and equipment if applicable.

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**APPENDIX F
TERMINATION OF ONE CO-LESSEE**

In the event fewer than all Co-Lessees terminate this lease, the remaining Lessee can request approval from the Lessor that another party be approved to either sublease or co-lease for the duration of the lease term. All guidelines outlined in the Studio application packet must be adhered to. If remaining Lessee (Co-lessee, not Sub-lessee) is the only person now on the lease and is not an Evanston resident, said non-Evanston resident is eligible to be accepted as the sole Lessee by the Lessor and/or through termination date of the lease. The non-Evanston resident will assume the 20% surcharge for the entire space if they are accepted as the sole Lessee and the surcharge will not exceed cost applicable to total square feet of leased space. If the remaining party was approved as a Sub-lessee, the Sub-lessee's term will end at the same time the Lessee's term ends and the Leased Premises will be placed on the market. The Sub-lessee may reapply along with other applicants applying for the Leased Premises.

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**APPENDIX G
INSURANCE REQUIREMENTS**

Noyes Lease for Term: 5/1/14 through 12/31/14

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE	
Thirty day notice of cancellation Required on all certificates	Bodily Injury and Property Damage <u>Consequent Death</u>	
	<u>Each Occurrence</u>	<u>Aggregate</u>
Commercial General Liability including:	\$1,000,000	\$1,000,000
1. Comprehensive form		
2. Premises – Operations		
3. Explosion & Collapse Hazard		
4. Underground Hazard		
5. Products/Completed Operations Hazard		
6. Contractual Insurance – With an endorsement on the face of the certificate that it includes the “indemnity” language set forth in Appendix “I” of the Lease.		
****The Certificate must state that the City of Evanston is an <u>Additional Insured on the policy.</u>		
7. Broad Form Property Damage – construction projects only.		
8. Independent Contractors		
9. Personal Injury.		
Automobile Liability Owned, Non-owned or Rented (as related to Tenant’s activities for leased space)	\$1,000,000	\$1,000,000
Workmen’s Compensation and Occupational Diseases	As required by applicable laws.	
Employer’s Liability	\$500,000	

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**APPENDIX H
MISCELLANEOUS DEFINITIONS**

<u>TERM</u>	<u>DEFINITION</u>
ADA	Americans with Disabilities Act of 1990
ITS	His/Her/Their
LESSEE	Lease Holder: Lessees, Co-Lessees, Sublessees
LESSOR	City of Evanston
NCAC	Noyes Cultural Arts Center
OSHA	Occupational Health and Safety Act of 1980
RESIDENT	If current driver's license and voter registration card shows residency in Evanston.

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APPENDIX I

INDEMNITY

Lessee and Lessee's insurance company agree as follows:

The Lessee shall indemnify, protect, and hold harmless the City of Evanston, its agents, consultants, officials and employees, against all injuries, deaths, loss damages, claims, patents claims, suits, judgments, costs and expenses which may in anywise accrue against the City in consequence of the granting of this contract or which may in anywise result therefrom, whether or not it shall be alleged or determined that the act was caused through the negligent act or omission of the Lessee or its employees, of the sub-Lessee or its employees, if any, or of the City or its employees; and the Lessee shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and, if any judgments shall be rendered against the City in any such act, the Lessee shall, at its own expense, satisfy and discharge same.

In the event of any conflict between the language of the insurance policy(s) between the language of the insurance policy(s) and the above-recited indemnity agreement, the indemnity agreement shall govern.

LESSEE'S LIABILITY INSURANCE

- Lessee shall not commence work under this contract until they have obtained all insurance required herein and such insurance has been approved by the City's Law Department. Nor shall the Lessee allow any subcontractor to commence work until all similar insurance required of the subcontractor has been obtained.
- The City of Evanston shall be named as an additional insured on the policy of the contractor for whatever the policy limits are for the contractor, but in no event shall the Comprehensive General Liability limits be less than \$3,000,000.
- If the Lessee has more than one project for which it has a contract with the City of Evanston there shall be separate Certificates of Insurance naming the City as an additional insured on each separate policy.
- In the event of accidents, injuries, or unusual events, whether or not any injury occurred, the Lessee shall promptly furnish the City's Law Department with copies of all reports of such incidents.
- The Lessee shall furnish one (1) copy of a certificate, with the City named as an additional insured, showing the minimum coverage with insurance company acceptable to the City's Law Department outlined in Appendix E.

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