

## LEASE AND USE AGREEMENT

THIS LEASE AND USE AGREEMENT, is made and entered into in duplicate this \_\_\_ day of \_\_\_\_\_, 2010, by and between The School Board of Sarasota County, Florida, a body corporate under the laws of the State of Florida, hereinafter referred to as the Lessor, and The City of North Port, a municipal corporation under the laws of the State of Florida, hereinafter referred to as the Lessee.

### W I T N E S S E T H :

That for and in consideration of the mutual covenants hereinafter contained and the sums of money paid and hereinafter agreed to be paid by Lessee to Lessor and for other valuable considerations, Lessor does hereby demise and lease unto Lessee and Lessee does hereby hire and let from Lessor that certain property depicted on Exhibit A hereto and commonly known as the Music Suite at North Port High School, situate in Sarasota County, Florida, hereinafter referred to as the Demised Premises.

1. TERM. The term of this Lease and Use Agreement shall be for a 30-year period commencing on October 1, 2010, unless otherwise terminated pursuant to the provisions of this Lease. Lessee may terminate this Agreement upon one hundred twenty (120) days written notice if it determines that there are no longer any North Port community-based, not-for-profit, open-to-the-public performing arts organizations wishing to utilize the Demised Premises.

2. QUIET ENJOYMENT. Provided Lessee shall keep and perform all of the terms, covenants and conditions hereof, Lessee shall peaceably possess and quietly enjoy the Demised Premises without hindrance or interruption subject only to the terms hereof, reservations, restrictions and easements of record and applicable zoning and other governmental regulations.

3. USE OF PREMISES. Lessee shall use the Demised Premises primarily for the purpose of musical rehearsals and performances. All other uses shall be coordinated with the Superintendent of the School Board of Sarasota County. Lessee has examined the Demised Premises and agrees that same is in good order and condition and agrees to accept same "as is." Lessee shall make no immoral, offensive or illegal use of the Demised Premises or do anything thereon deemed extra hazardous. Lessee shall keep and abide by all laws, ordinances, rules and regulations of all governmental bodies and their respective regulatory agencies having any jurisdiction over the Demised Premises. Lessee shall not commit or suffer any strip or waste in or about the Demised Premises.

4. MAINTENANCE AND UTILITIES. Lessee shall have sole responsibility for notifying the Lessor in a timely manner regarding all maintenance needed to sustain the facility in good condition. Lessor will perform all required maintenance and bill Lessee at a rate of \$54 per hour for completion of such work. The rate charged by Lessor will be adjusted annually based on actual

bargained labor rates (including benefits). Lessor further reserves the right to inspect the facility and conduct any needed preventive maintenance and bill the Lessee for services at the same labor rate. Lessee shall be solely responsible for the payment of all charges and costs associated with the Music Suite, unless otherwise set forth herein, including the payment of electrical service for lighting and HVAC. Based upon current usage, Lessee shall pay to the Lessor the sum of \$2,025 per month for utilities, which sum shall be increased 4% annually beginning January 1, 2011, and on January 1 of each successive year. Throughout the term of this Lease, the parties agree to work together in good faith and to reconsider whether this monthly utilities payment should be changed based upon a change in the frequency of usage of the Demised Premises by the Lessee or a change in the cost of utilities to the Lessor. Lessee shall keep the Demised Premises in good order, condition and repair and shall also keep the Demised Premises in a clean, sanitary and safe condition in accordance with law and in accordance with rules and regulations promulgated by Lessor from time to time in accordance with all directions, rules and regulations of governmental agencies having jurisdiction. The plumbing facilities shall not be used for any other purposes than that for which they were constructed, and no foreign substances of any kind shall be disposed therein.

5. PARKING. Lessee may utilize the common parking areas adjacent to the Music Suite at North Port High School on a non-exclusive basis in connection with its use of the Music Suite.

6. INDEMNIFICATION. The parties hereby agree that the Lessee shall be responsible for and shall bear any and all liability for personal injuries or property damages arising from any cause, to any and all parties arising out of the maintenance and use of the Music Suite. Lessee further agrees to indemnify and hold harmless the Lessor from and against any and all liabilities, claims, demands, suits, causes of action, losses and expenses including attorney's fees, arising or growing out of the use and maintenance of the Music Suite. Notwithstanding the foregoing, Lessee shall not indemnify and hold harmless the Lessor for any personal injuries or property damages arising from any maintenance done by the Lessor on the Music Suite. Lessee shall pay the expense of Lessor's defense of any and all actions, suits or proceedings which may be brought against Lessor, or in which the Lessor may be impleaded or joined with others, and shall satisfy, pay and discharge any and all judgments, orders and decrees that may be recovered against Lessee or Lessor in any such action or proceedings.

The parties hereby agree that during such time as the Lessor is in use of the Demised Premises, if any, the Lessor shall be responsible for and shall bear any and all liability for personal injuries or property damages arising from the negligence of Lessor, to any and all parties arising out of its use of the Music Suite. Lessor further agrees to indemnify and hold harmless the Lessee from and against any and all liabilities, claims, demands, suits, causes of action, losses and expenses, including attorneys' fees, arising or growing out of its negligence during its use of the Music Suite. To the extent this indemnity by Lessor applies, Lessor shall pay the expense of Lessee's defense of any and all actions, suits or proceedings which may be brought against Lessee or in which the Lessee may be impleaded or joined with others and shall satisfy, pay and discharge any and all judgments, orders and decrees that may be recovered against Lessor or Lessee in any such action or proceeding.

Nothing contained herein shall be deemed to constitute a waiver of sovereign immunity on the part of either Lessor or Lessee or to affect, limit or reduce the protection afforded Lessor or Lessee under the provisions of Section 768.28, Florida Statutes, or to protect Lessee from liability for any deliberate willful or malicious act of Lessee.

7. TAXES. Lessee agrees to assume all responsibility for liabilities that accrue to the Demised Premises or to the improvements thereon, including any and all drainage and special assessments or taxes of every kind and all mechanic's or materialman's liens which may be hereafter lawfully assessed and levied against the Demised Premises during this Lease. Lessee shall pay all occupational licenses, personal property taxes or other obligations attributable to Lessee's use of the Demised Premises.

8. PROPERTY INSURANCE. Lessee shall keep the building and other improvements now or hereafter located on the Demised Premises, together with all fixtures situate therein, insured against loss or damage by fire, water, windstorm, or loss from all other occurrences which could be insured against by "extended coverage" and "additional extended coverage" as may now be available and issued by insurance companies authorized to do business in the State of Florida, for 100% of the full replacement value thereof, said insurance to be issued by an insurance company or companies authorized to do business in the State of Florida satisfactory to Lessor. The insurance purchased by Lessee pursuant to this paragraph shall be primary as to the Demised Premises and Lessee shall be the loss payee.

9. DESTRUCTION OF PREMISES. In the event of the total destruction of the improvements on the Demised Premises by fire or otherwise, or such substantial partial destruction thereof as will cause the entire Demised Premises to be unfit for the aforesaid use, this Lease, at Lessee's sole option, shall terminate and the rights of all parties hereunder shall cease (except such rights and liabilities as may have accrued to the time of such destruction).

If Lessee does not terminate the Lease within a reasonable time period, Lessor shall, at no expense to Lessor and at Lessee's sole expense, rebuild such improvements and allow Lessee to continue its occupancy and usage of the Demised Premises under the terms of this Lease. In the event the Lessee chooses to exercise its right under this paragraph to terminate this Lease, it is the intention of the parties that a partially or substantially destroyed facility or any unsafe condition would not be left on the Demised Premises. Accordingly, at the option of the Lessor, Lessee may be required to remove the structures from the property and return it to its original (unbuilt upon) condition.

Notwithstanding the foregoing, if the destruction of the improvements is caused by Lessor, whether through negligence or intentional act, Lessor shall have the burden of paying for the expense of rebuilding the improvements above the amount of insurance payout. If Lessee instead chooses to terminate the Lease, Lessor would then have the obligation of removing the structures from the property and returning the Demised Premises to its original (unbuilt upon) condition.

10. DEFAULT. In the event Lessee fails to perform any of the covenants or obligations contained herein, or otherwise breaches this Lease Agreement, Lessor shall be entitled to pursue all available legal remedies.

The prevailing party in any action concerning this Agreement shall be entitled to recover its attorneys' fees and costs, including appellate attorneys' fees and costs. Venue for any action shall be in Sarasota County, Florida. The laws of Florida shall govern this Agreement.

11. WAIVER OF DEFAULT. No waiver of any breach of any of the terms, covenants and conditions hereof shall be taken or construed to be the waiver of any other or succeeding breach of the same or any other term, covenant or condition hereof.

12. CORRECTIONS OF DEFAULTS. If Lessee defaults in any of the terms, covenants and conditions hereof, Lessor may perform the same or procure the performance thereof without waiving or affecting the option to terminate the term hereof or waiving said default or waiving any rights hereunder, and all payment or payments or expenditures made by Lessor in so doing shall be charged to Lessee, shall become immediately due and payable and shall bear interest at the rate of 12% per annum from the date of disbursement by Lessor until paid by Lessee.

13. IDENTITY OF INTEREST. The execution of this Lease or the performance of any of the terms hereof shall not be deemed or construed to have the effect of creating, between Lessor and Lessee, the relationship of principal and agent or of a partnership or of a joint venture and the relationship between the parties hereto shall always be and remain that of Lessor and Lessee.

14. ASSIGNMENT AND SUBLETTING. This Lease may not be assigned in whole or in part and no portion of the Demised Premises shall be sublet without the prior written consent of Lessor and any attempted assignment of this Lease or subletting of any of the Demised Premises without such written consent shall be void. Notwithstanding the foregoing, Lessor is aware of and has consented to the use of the Demised Premises by North Port community-based, not-for-profit, open-to-the-public performing arts organizations to use the Demised Premises according to the terms of the Use Agreement entered into by Lessor and Lessee dated October 20, 2008.

15. ACCESS TO PREMISES BY LESSOR. The Lessor or any of Lessor's agents shall have free access to the Demised Premises and all parts thereof at all reasonable times for the purpose of examining same.

16. NOTICES. Any notice given or required to be given in connection with this Lease shall be mailed postage prepaid to Lessor at 1960 Landings Boulevard, Sarasota, Florida 34231, attention: Superintendent, and to Lessee at 4970 City Hall Blvd., North Port, Florida 34286 attention: City Manager, or to such other address as either party may hereafter direct in writing.

17. PARAGRAPH TITLES. Paragraph titles used herein are solely for convenience and are not to be used in interpreting particular provisions hereof.

18. MISCELLANEOUS PROVISIONS AND DEFINITIONS. All of the terms and provisions hereof shall be binding upon and the benefits inure to the parties hereto and their respective successors and assigns. The term "Lessee" and "Lessor" shall include all parties so designated herein, their respective successors and assigns. Whenever used herein, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders. This Lease and all instruments or documents relating to same and all references herein shall be construed under Florida law. In the event of a conflict between this Agreement, and the Interlocal Agreement dated October 20, 1998, this Agreement shall prevail.

19. RADON NOTIFICATION. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your County Public Health Unit.

IN WITNESS WHEREOF, the parties have caused this Lease and Use Agreement to be executed by their respective undersigned officials as of the date hereinabove set forth.

THE SCHOOL BOARD OF SARASOTA  
COUNTY, FLORIDA

BY: \_\_\_\_\_  
Shirley Brown, Chair

Approved for Legal Content  
July 22, 2010, by Matthews, Eastmoore,  
Hardy, Crauwels & Garcia, Attorneys for  
The School Board of Sarasota County, Florida  
Signed: ASH

CITY OF NORTH PORT

BY: \_\_\_\_\_  
David J. Garofalo, Sr., Chair

Attest:

By: \_\_\_\_\_  
Helen Raimbeau, MMC  
City Clerk

Approved as to form and correctness:

By: \_\_\_\_\_  
Robert K. Robinson  
City Attorney