

City of Piedmont
COUNCIL AGENDA REPORT

DATE: November 16, 2020

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Introduction and 1st Reading of Ord. 758 N.S. – Approving an Amended and Restated Agreement with the Piedmont Center for the Arts at 801 Magnolia Avenue

RECOMMENDATION

Conduct a first reading of Ord. 758 N.S., which approves an Amended and Restated Lease Agreement with the Piedmont Center for the Arts at 801 Magnolia Avenue.

EXECUTIVE SUMMARY

In May 2011, the City entered into a lease agreement with the Piedmont Center for the Arts (PCA) for use of portions of City-owned property located at 801 Magnolia Avenue. Since that time the PCA, as an all-volunteer not-for-profit organization, has maintained the leased premises well and has operated the Center in a manner that provides substantial benefit to the community, serving as a prime venue for hosting such activities as author readings, plays, concerts, and art exhibits. Since early 2019, PCA has expressed interest in renewing its lease with the City in order to engage in long term planning for both arts programming as well as facility improvements. Given PCA's investment in rehabilitating the City building at 801 Magnolia Avenue and its commitment to developing a viable gathering space, as well as its willingness to embrace changes to improve and expand benefits to the community, Staff believes it is appropriate for Council to consider PCA's request to continue to operate an arts venue in this City facility.

BACKGROUND

Facility Upgrades and Maintenance:

Since 2011, PCA has transformed the building at 801 Magnolia from a severely underutilized building to a viable and thriving arts venue. At its expense, PCA improvements to the building since 2011 include but are not limited to:

- Roof, gutter and downspout replacement
- Furnace replacement
- Seismic upgrades
- Drainage upgrades
- Electrical box replacement
- Installation of 17 new windows
- Sheetrock for 1 hour fire rating
- New ceiling
- Interior and exterior painting

- Frequent re-painting of interior gallery space
- Removal of carpet
- Installation of new carpeting
- Renovation of original hardwood floors
- Installation of fire alarms
- Installation of security alarms
- Electrical upgrades
- Installation of exit and safety signage
- Installation of exterior railing on main entry staircase
- Installation of self-closing doors for all exits
- Construction of ADA Lift
- Construction of two restrooms and water fountain in shared space
- Bathroom remodel in exclusive space
- Installation of curtains
- Installation of new interior and exterior lighting
- Installation of improved internet capability
- Installation of new front porch flooring

Recent projects (Summer 2020)

- Refinishing of hardwood floors in main hall, stage, board room, back corridor, stage and stage stairs
- Replacement of main entry threshold

Immediate building improvements on the horizon which will incur significant cost for PCA include replacement/widening of the basement door and interior paint.

Community Arts Programming:

Over the term of the existing lease agreement, PCA has grown from a fledgling idea to an organization dedicated to providing an affordable rental venue where artists from the musical, performing, visual, and literary arts have a physical space to perform and display their works of art, and where members of the Piedmont community can gather to experience these creations. PCA has provided valued arts programming not otherwise offered by the City. While the Piedmont Recreation Department provides the youth of Piedmont with broad and expansive programs, PCA has filled a community gap in arts-related programming as well as a long acknowledged shortfall of programs aimed at adults and seniors.

During 2019, PCA hosted 282 arts-related activities, some highlights of which are included below with more detail provided in Attachment B.

The Center hosted local talent, including several Piedmont High School programs, the Piedmont East Bay Children’s Choir, the Piedmont Chamber Orchestra, the Piedmont Arts Fund, and art shows of six Piedmont artists. The Center also hosted Regional, National, and International Musicians including Jazz in the Neighborhood, the Gold Coast Chamber Players, the Piedmont Chamber Music Festival, Berkeley Symphony and Friends, the San Francisco Mandolin Orchestra, Christina Pegoraro, and Jaume Torrent, among others.

Tax Exempt Charitable Organization

PCA is a tax-exempt 501(c)(3) organization in good standing whose primary exempt purpose is to “provide an affordable rental venue for artists to showcase their talents.” PCA’s 2016-2019 tax forms indicate compliance with the requirements of retaining tax-exempt status, dating back

to 2012. In Staff's opinion, with Piedmont Community Hall and the Piedmont Veterans' Memorial Building as a frame of reference, PCA's usage fee schedule indicates it is an affordable rental venue.

LEASE TERMS

Staff approached the draft lease agreement with the aim to make a good partnership better and to present an agreement for Council consideration which is more beneficial to the City and creates expanded benefits to the community. Based on Staff experience and community feedback, the areas of focus for improvement fell into three main categories: broad, fair and equitable community access; diversification of programming; and maximum utilization of space. Generally, the proposed terms of the lease are a consolidation of the existing agreements with a few notable changes described below.

Early Termination Clause

While the term of the proposed lease renewal is the same as existing (10 years, per Section 9.1), Section 9.2 of the Amended and Restated Agreement provides an explicit early termination clause in the event the City desires to undertake significant renovation or replacement of the Fire, Police or Recreation Department buildings requiring closure and/or relocation of City staff.

Increased Community Access to 801 Magnolia Avenue

The PCA and Piedmont Recreation Department (PRD) have always worked collaboratively to share space when needed. This Amended and Restated Agreement includes provisions formalizing this arrangement for last minute sharing of space. Additionally, the proposed agreement provides for City programs and events as well as private non arts-related rentals which do not adversely impact scheduled PCA events or programs to take place in the main hall. Any community member or group is able to access the space directly through PCA for an arts-related event at reasonable rental rates. Non arts-related private events in the PCA may be reserved through the City within 40 days of the event provided space is available. City staff will be responsible for administration of these events and will collect a fee for use of the facility. Should this agreement be approved, a proposed fee schedule for 801 Magnolia would be developed and brought back to the Council. In addition to private event rentals for non arts-related use, City sponsored programs or events that do not conflict with previously scheduled PCA events are also explicitly provided for in the proposed agreement. PCA's existing sub-lease of office space and weekly rental to a local business group would be allowed to continue in the proposed agreement. All new non arts-related requests would be routed to the City for management.

PROGRAM DIVERSIFICATION AND TRANSPARENCY

While not contained in the proposed lease agreement, PCA has made a commitment to transparency as well as to further diversification of arts programming and to seeking input from various community organizations. Current PCA leadership has initiated communication and collaboration with the Piedmont Anti-Racism and Diversity Committee (PADC), the Piedmont Racial Equity Campaign (PREC), and the Piedmont Asian American Club (PAAC).

In order to address any oversight or transparency concerns, as well as to hold both the City and PCA accountable to each other and the terms of the agreement, PCA will extend invitations to include a PRD staff person as well as the Mayor or designee to participate as non-voting liaisons

to its Board of Directors.

FISCAL CONSIDERATIONS

Other than maintenance of the exterior of the building and the landscape, and charges for water and refuse collection, the City does not incur direct expense relative to this proposed Amended and Restated Agreement. It should be noted that in the event the City's use of the space requires PCA to expend funds to restore the space for its own programming, the Agreement would authorize PCA to obtain a reimbursement for any reasonable and necessary costs incurred to restore the space. In exchange for use of part of the building, PCA will continue to maintain and improve this aging facility while providing valuable low-cost arts programming to the community. Concerns have been raised relative to a perceived subsidy of the PCA by the City. Staff believes that subsidy is not entirely accurate as the City's intent in leasing to PCA is to enhance the community's access to arts-related events and activities. Aside from the water and refuse collections fees, no General Fund monies are expended. However, a discussion of opportunity cost is certainly an appropriate consideration for the Council.

If the desire of the Council is to maximize revenue from the facility, the office space could be rented at an estimated market rate of \$50 square foot for annual rental income of \$28,000. For reference, the Piedmont Education Foundation currently rents City office space of nearly identical size in the Veterans' Memorial Building for roughly \$36/square foot resulting in \$19,020 in 2020 rental income. Without major renovation to add a kitchen, the main hall at 801 Magnolia Avenue would be most suited to recreation programming, community group meetings and small events. Recreation programs are generally set up to achieve cost neutrality. Community meetings and small events could generate some net positive revenue. The best comparable location is Veteran's Hall which generated approximately \$17,000 net positive event rental revenue in 2018-19. (\$76,000 rental activity; \$59,000 expenses).

Staff believes the proposed agreement appropriately allows for City programs as well as private events such that the space at 801 Magnolia will be utilized more fully than in the past, will result in some event rental income to the City and allows for the PCA to continue to grow and expand its benefit to the community.

CEQA ANALYSIS

The Amended and Restated Agreement is not a "project" subject to the California Environmental Quality Act, as the lease extension has no potential to result in either a direct or reasonably foreseeable indirect change in the environment. (Pub. Resources Code section 21065; CEQA Guidelines section 15378.) An activity that is not a project under this definition is not subject to CEQA. (Guidelines section 15060(c)(3)).

However, even if the lease extension were found to be a "project" that is subject to CEQA, staff finds the project is exempt under the common sense exemption due to the fact that the lease extension will not result in a change in, or intensification of, existing uses. The Amended and Restated Agreement continues the uses that were approved at the site in 2011. Thus, there is no possibility that the activity in question may have a significant effect on the environment. (Guidelines section 15061(b)(3).)

CONCLUSION

Over the past nine years, the PCA has resurrected an unused City building at its own expense and created a beautiful community arts space for the betterment of Piedmont. Staff recommends approving this Amended and Restated Lease which provides for broader community access to the space, diversification of programming, and increased overall utilization of 801 Magnolia Avenue.

ATTACHMENTS

- A: Ordinance 758 N.S. Approving an Amended and Restated Lease for 801 Magnolia Avenue
- B: 2019 Piedmont Center for the Arts Program Highlights

AMENDED AND RESTATED LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT (“**Restated Agreement**”) dated for reference purposes as of _____ 2020, (“**Effective Date**”) is entered into by and between the CITY OF PIEDMONT, a California municipal corporation (“**Landlord**”), and PIEDMONT CENTER FOR THE ARTS, INC., a California non-profit public benefit corporation (“**Tenant**”). Landlord and Tenant are sometimes referred to individually herein as a “**Party**” and collectively as the “**Parties**”.

R E C I T A L S

- A. Landlord is the owner of certain property located at 801 Magnolia Avenue, Piedmont, California (“Property”).
- B. On May 2, 2011, Landlord and Tenant entered into a Lease Agreement (“Lease Agreement”) for purposes of providing exhibit and performance space for the arts on a portion of the Property.
- C. On August 1, 2011, Landlord and Tenant subsequently entered into a Use Agreement (“Use Agreement”) for purposes of authorizing tenants to construct and use public restrooms on the Property.
- D. On December 2, 2014, Landlord and Tenant executed an Amendment to the Use Agreement (“Amendment to the Use Agreement”).
- E. On August 2, 2016, Landlord and Tenant executed an Amendment to the Lease Agreement (“Amendment to the Lease Agreement”).
- F. City and Tenant now desire to incorporate all provisions of the Lease and Use Agreements into an amended and restated agreement which will replace and supersede all prior agreements between the Parties related to the Property.

A G R E E M E N T

In consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

Definitions. The following terms shall have the following meanings in this Restated Agreement:

1.1 “Approved Uses” shall refer to the Tenant’s ability to use the Leased Premises for the operation of a venue for exhibits, performances, theatre productions, concerts, lectures, and other arts-related events or activities for the benefit of the local community. Approved Uses additionally shall include use of the Leased Premises for office and storage space. Subletting activities are also authorized as an Approved Use, provided that Landlord must provide written consent to any such sub-lease of the Leased Premises in accordance with Section 15.1 of this Restated Agreement.

1.2 “City” shall refer to the City of Piedmont.

1.3 “City Private Rental Activities” shall refer to the City’s rental of its properties or facilities in accordance with the Landlord’s usual and customary practices of renting its other properties or facilities.

1.4 “City-Sponsored Activity” shall refer to programming offered or sponsored by the City, and shall include, but is not limited to, programming offered by the City’s Recreation Department, or City public meetings or events.

1.5 “Commencement Date” means _____, 2020.

1.6 “Damage or Destruction” shall mean the total or partial destruction of the Leased Premises from any cause, rendering the premises totally or partially inaccessible or unusable.

1.7 “Exclusive Use” shall refer to those areas of the Leased Premises depicted as Exclusive Use on Exhibit A attached hereto and incorporated herein by reference, on which Tenant shall have the right to use for its own use, subject to Landlord’s right to enter and use the Leased Premises pursuant to Section 4.2.

1.8 “Facilities” shall refer to any facilities used by the Piedmont Police Department, Piedmont Fire Department, as well as the City of Piedmont Recreation Department Building located at 358 Hillside Avenue in Piedmont.

1.9 “Leased Premises” refers to the portions of the Property which are depicted as Exclusive Use and Non-Exclusive Use areas, on Exhibit A.

1.10 “Major Alterations” refer to improvements that alter the state and/or configuration of the existing floor plan, including walls, ceilings, floors and/or structural systems, utilities, mechanical, electrical, or plumbing systems, or installation of any mechanically attached fixtures or equipment to the Leased Premises.

1.11 “Minor Alterations” shall mean improvements or alterations made on the Leased Premises, including, but not limited to, changes to any floors, ceilings, or partitions of any of the structures or improvements on the Leased Premises.

1.12 “Non-Exclusive Use” shall refer to those areas of the Leased Premises depicted as Non-Exclusive Use on Exhibit A on which the Tenant shall have the right to shared use with Landlord.

1.13 “Property” refers to that certain property located at 801 Magnolia Avenue, Piedmont, California, a legal description of which is provided in Exhibit B, attached hereto and incorporated by reference.

1.14 “Right of Early Termination” shall refer to Landlord’s exclusive right to terminate this Restated Agreement in the manner described in Section 9.2, at the commencement of the third (3rd) year of this Restated Agreement, by providing Tenant with at least one (1) year’s notice of such cancellation.

2. Lease.

2.1. Leased Premises. Landlord hereby leases to Tenant the Leased Premises, portions of which are for the Exclusive Use of Tenant and other portions shall be for Non-Exclusive Use.

2.2. Rent. Tenant shall pay to Landlord as yearly rent, the sum of \$1.00 per year due on the Commencement Date, and each anniversary of the Commencement Date thereafter. All rent shall be paid to Landlord at the address to which notices to Landlord are given.

2.3. Condition. Tenant acknowledges that Leased Premises is leased on an "AS-IS" basis, "WITH ALL FAULTS." Tenant acknowledges and agrees that prior to the date of this Restated Agreement, Tenant has had an opportunity to fully inspect the Leased Premises and that Tenant is familiar with the condition of the Leased Premises. Tenant acknowledges and agrees that Landlord has made no representations or warranties regarding the condition of the Leased Premises or the underlying realty. Tenant further acknowledges that Landlord makes no representations or warranties concerning: (1) the physical condition of the Leased Premises; (2) the suitability of the Leased Premises for suitability for Tenant's use; or (3) the presence of any hazardous substances in or about the Leased Premises or the underlying realty.

3. Use of Leased Premises and Operating Standards.

3.1. Approved Uses. Tenant shall use the Leased Premises for Approved Uses only except as provided by this Section 3.1 and Section 15.1. Tenant shall not use nor permit the use of the Leased Premises for any other purpose without the Landlord's prior written consent.

3.2. Exclusive Use. Tenant shall have Exclusive Use of those areas depicted as Exclusive Use on Exhibit A, subject to Landlord's rights to enter and use the Exclusive Use areas set forth in Section 4.2.

3.3. Non-Exclusive Use. Tenant shall have Non-Exclusive Use of those areas depicted as Non-Exclusive Use on Exhibit A.

3.4. Business Hours. Tenant may use the Leased Premises at any time on any day, provided that Tenant shall have first obtained a permit for any event-related use after 11:00 p.m. on any day.

3.5. Rules and Regulations. Tenant agrees to abide by all rules and regulations attached hereto as Exhibit C as it may be amended from time to time at the Landlord's sole discretion.

3.6. Compliance with Laws. Tenant shall not use, do, or permit anything to be done in or about the Leased Premises, which will in any way conflict with any law, statute, ordinance or governmental rule, regulation, or requirement now in force or which may hereafter be enacted or promulgated. Tenant, at its sole cost and expense, shall promptly comply with all laws, ordinances, zoning restrictions, rules, regulations, orders and any licensing or other requirements of any duly constituted public authorities now or hereafter

affecting the use, safety, cleanliness or occupation of the Leased Premises or performance of Major Alterations or Minor Alterations, including Labor Code and Public Contracts Code requirements; City zoning standards; building, plumbing, mechanical and electrical codes; all other provisions of the Piedmont Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. section 12101, *et seq.*, Government Code section 4450, *et seq.*, Government Code section 11135, *et seq.*, the Unruh Civil Rights Act, Civil Code section 51, *et seq.* Without limiting the generality of the foregoing, Tenant agrees that it shall be solely responsible for obtaining any and all required permits or other land use entitlements that may be required for any activities or improvements built on the Leased Premises. Tenant acknowledges that Landlord has not made any commitment to Tenant regarding the issuance or approval of any such permits or entitlements.

4. Landlord's Right of Entry.

4.1. General. Landlord reserves the right to enter the Leased Premises upon twenty-four (24) hours' notice to Tenant (except that advance notice shall not be required in case of an emergency) for the following purposes: (i) to inspect the condition of Leased Premises; (ii) to ascertain the performance by Tenant of the terms and conditions hereof; (iii) to maintain, inspect, and/or repair the Leased Premises to the extent required or permitted under this Restated Agreement; (iv) to post notices of non-responsibility for Major Alterations, Minor Alterations, additions, or repairs undertaken by Tenant; (v) to post a leasing sign; and (vi) to perform any other right or duty of Landlord under this Restated Agreement.

4.2. Landlord's Use of Exclusive Use Areas. For areas of the Leased Premises that are designated as Exclusive Use, Tenant acknowledges and agrees that Landlord, Landlord's agents, and/or Landlord's licensees or invitees, shall be permitted to enter and use the Exclusive Use area of the Leased Premises for any City Private Rental Activities, City-Sponsored Activities, provided that Landlord complies with the following:

(a) Landlord will strive to ensure that Landlord's use of the Leased Premises will not interfere with Tenant's activities. Landlord agrees not to utilize Tenant's concert grand piano located on the Leased Premises unless Tenant expressly consents to Landlord's use, which consent shall be provided in writing, with Landlord to bear the cost of any required piano tuning.

(b) In the event Landlord desires to use Exclusive Use areas for purposes of City Private Rental Activities, and the areas have not been scheduled by Tenant for Approved Uses, Landlord shall provide between seven (7) and forty (40) days' advance written notice to Tenant. The notice shall briefly describe the proposed activity ("Proposed Activity"). In the event Tenant believes the Proposed Activity unreasonably interferes with Tenant's use of the Leased Premises, Landlord will negotiate in good faith with Tenant to mitigate Tenant's concerns short of rescheduling the Proposed Activity. Landlord agrees to manage City Private Rental Activities occurring at the Leased Premises in a manner similar to Landlord's usual and customary practice employed with Landlord's other facilities.

(c) In the event Landlord desires to use Exclusive Use areas for purposes of conducting City-Sponsored Activities, Landlord shall first make a good faith effort to determine the availability of other facilities owned or controlled by Landlord, and conclude it does not have other suitable premises to conduct the City-Sponsored Activity. Landlord shall provide between one (1) week and six (6) months' advance written notice to Tenant. In such notice, Landlord shall briefly describe the City-Sponsored Activity and its location in the Exclusive Use area. In the event Tenant believes the City-Sponsored Activity unreasonably interferes with Tenant's use of the Leased Premises, Landlord will negotiate in good faith with Tenant to mitigate Tenant's concerns. If Tenant determines that it would like to use the Exclusive Use area previously scheduled for a City-Sponsored Activity, Tenant must submit a written request to Landlord to relocate the City-Sponsored Activity thirty (30) days prior to the scheduled City Sponsored Activity. Upon receipt of any such written request, Landlord will make a good faith effort to relocate its previously scheduled City-Sponsored Activity. Landlord agrees to manage City-Sponsored Activities occurring at the Leased Premises in a manner similar to Landlord's usual and customary practices employed with Landlord's other facilities.

(d) In the event that any of Landlord's activities on the Leased Premises result in any damage to the Leased Premises or requires expenditures by Tenant to resume Approved Uses, the Landlord will pay for any reasonably required repairs. However, Landlord shall have the sole right to determine whether the expenses incurred by Tenant are reasonable and necessary to return the Leased Premises to a condition suitable to continue Tenant's Approved Uses, which discretion Landlord agrees to exercise reasonably. If, Landlord determines that the expenses are reasonable and necessary, Landlord shall reimburse any such reasonable expenses.

5. Taxes and Assessments.

5.1. Tenant's Personal Property. Tenant shall pay prior to delinquency, any and all taxes, assessments, license fees, and other public charges levied, assessed, or imposed or which become payable during the Term of this Restated Agreement upon any furnishings, inventory, equipment and all other personal property of Tenant installed or located on the Leased Premises.

5.2. Possessory Interest. Tenant acknowledges that this Restated Agreement may create a possessory interest subject to: property taxation, utility taxation, and/or assessments, as well as utility taxes levied on such interest. Tenant agrees to pay for any such taxes and/or assessments.

6. Utilities.

6.1. Obligations. Tenant agrees to pay any and all charges for electricity, gas, heat, and telephone associated with the Exclusive Use area of the Leased Premises. Landlord additionally agrees to pay any and all charges for water and refuse collection associated with the Exclusive Use area of the Leased Premises.

6.2. Landlord Not Liable. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service being provided to the Leased Premises unless caused by Landlord's acts or omissions.

7. Maintenance and Repair.

7.1. Compliance with Applicable Codes. Tenant is responsible for compliance with any and all applicable City of Piedmont codes during the Term of this Restated Agreement.

7.2. Maintenance. Tenant shall keep and maintain in good order, condition, and repair (except for reasonable wear and tear) all interior portions of the Leased Premises, including without limitation, all fixtures, interior walls, floors, ceilings, plumbing, glass, heating, and/or lighting. Landlord shall not be required to make or bear the costs of any repair of the Leased Premises, unless caused in whole or in part by Landlord's actions, including its use of the Leased Premises as authorized in Section 4.2. Landlord shall be responsible for all exterior maintenance needs for the Property, including, but not limited to, maintenance related to the structural integrity of the premises, landscaping, and/or adjacent sidewalk maintenance.

7.3. Tenant's Timely Conduct of Repairs. Tenant shall make any and all required repairs upon demand by the Landlord. Failure to make such repairs within sixty (60) days of the Landlord's demand shall constitute a default by Tenant, unless the nature of the repairs require longer than sixty (60) days for completion, provided that Tenant promptly commences efforts to ensure repairs are completed as soon as reasonably practicable.

8. Major and Minor Alterations.

8.1. Major Alterations. Tenant is authorized to make Major Alterations, provided that Tenant first obtains Landlord's prior written consent. Any approved Major Alterations shall be made at Tenant's expense, unless reimbursement occurs in accordance with Section 9.2(b), and shall be in conformance with all applicable laws and in accordance with plans and specifications approved by Landlord.

8.2. Minor Alterations. Tenant agrees not to make any Minor Alterations costing an excess of \$7,000.00 without first providing thirty (30) days' written notice to Landlord. Tenant's notice shall be accompanied by detailed and complete plans and specifications for the proposed changes. If Landlord raises no objections within thirty (30) days' time after receipt of such notice, Tenant may proceed provided Tenant obtains all required permits or entitlements. Any Minor Alterations shall be made at Tenant's expense and shall be in conformance with all applicable laws and in accordance with plans and specifications approved by Landlord.

8.3. Tenant shall require all contractors to provide a labor and materials bond for the full amount of any contract for Major Alterations or Minor Alterations that exceed \$50,000. Tenant shall pay when due, all sums of money that may be due or become due for any labor, services, materials, supplies, or equipment furnished to or for Tenant, in, at,

upon, or about the Leased Premises and which may be secured by any mechanic's material men's or other lien against the premises or Landlord's interest therein.

8.4. Any and all Major Alterations that are now or in the future attached permanently to the Landlord's shall be the property of the Landlord and remain with the Leased Premises at the termination of this Restated Agreement, except Landlord can elect within thirty (30) days of the termination of this Restated Agreement to require Tenant, at its cost, to remove any equipment that Tenant has affixed to the Leased Premises.

9. Termination.

9.1. Term. Unless Landlord exercises its exclusive of Right of Early Termination as provided in Section 9.2 herein, this Restated Agreement shall terminate on the tenth (10th) anniversary of the Commencement Date ("**Term**").

9.2. In the event Landlord determines that it needs to demolish, close, or conduct significant renovations to any of its Facilities, Landlord shall have the sole and absolute Right of Early Termination. Landlord may exercise this Right of Early Termination any time after the commencement of the third (3rd) year of this Restated Agreement with one (1) year's advance written notice. In the event Landlord exercises its Right of Early Termination, Landlord shall comply with the following:

(a) Landlord shall use good faith efforts to arrange for Tenant to have access to other properties belonging to Landlord if available. In the event Tenant is relocated to another property pursuant to Landlord's exercise of this Right of Early Termination, Landlord will consider authorizing Tenant's return to the Leased Premises upon conclusion of any demolition, closure or renovations under terms substantially similar to this Restated Agreement. However, in no event shall Landlord have any obligation to secure any facilities or properties for Tenant's use. In the event Tenant is relocated to another facility or property belonging to Landlord, Tenant shall enter into a new lease agreement with Landlord; and

(b) Landlord shall reimburse Tenant a proportional amount for those actual expenditures Tenant incurred in making Major Alterations as specified in Section 8.1. Reimbursements for Major Alterations shall be calculated as follows:

$(\text{Years remaining on the Restated Agreement} / 10) \times \text{Expenditures actually paid for Major Alterations.}$

10. Indemnification.

10.1. Tenant Indemnity. Tenant covenants and agrees to indemnify, defend, protect and hold Landlord harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against Landlord and arising from or in connection with the Tenant's use of the Leased Premises, including,

but not limited to, loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon the Leased Premises. The obligations of Tenant under this Section 10.1 shall survive the expiration or sooner termination of this Restated Agreement.

10.2. Landlord Indemnity. Landlord covenants and agrees to indemnify, defend, protect and hold Tenant harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) arising from or out of any occurrence in or upon the Leased Premises, caused by Landlord's use of the Leased Premises. The obligations of Landlord under this Section 10.2 shall survive the expiration or sooner termination of this Restated Agreement.

10.3. Exemption of Landlord from Liability. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property including, but not limited to, Tenant's fixtures, equipment, furniture, Major Alterations, Minor Alterations, or injury to persons in or upon the Leased Premises, arising out of Tenant's use or possession of the Leased Premises, including any acts or omissions of any of Tenant's sub-lessees. Tenant hereby waives all claims in respect thereof against Landlord, except to the extent such claims are caused by Landlord's sole negligence or willful misconduct.

11. Insurance.

11.1. Requirements. Tenant at its cost shall maintain public liability and property damage insurance with a single combined liability limit of \$2,000,000.00 and property damage limits of not less than \$200,000 insuring against the liability of Tenant and its authorized representatives arising out of and in connection with the Tenant's use or occupancy of the Leased Premises. Tenant at its cost shall further maintain a master Venue Policy in which all renters and venue-users shall participate and be specifically named. All such insurance shall insure performance by Tenant of the preceding indemnity provisions. All insurance shall name the City of Piedmont, its officers, agents, volunteers, and employees as additional insureds and shall provide primary coverage with respect to the City.

(a) If the insurance referred to in Section 11.1 is written on a Claims Made Form, then following termination of this Restated Agreement, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this Restated Agreement.

(b) Tenant at its sole cost shall maintain on all its personal property, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and the proceeds from any such policy shall be used by Tenant for the replacements of personal property or the restoration of tenants' improvements, Major Alterations, or Minor Alterations. All sub-

lessees shall be required, by the terms of their leases with Tenant, to also carry insurance covering their personal property and improvements.

(c) If Tenant employs any person, it shall carry worker's compensation and employer's liability insurance and shall provide a certificate of insurance to the Landlord. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days prior written notice to the Landlord; and provide for a waiver of any right of subrogation against Landlord to the extent permitted by law.

(d) Tenant shall forward all insurance documents to the City of Piedmont's City Administrator.

12. Compliance with Law and Safety.

12.1. Compliance. Tenant and all sub-tenants shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, and municipal bodies having jurisdiction over any or all of the Tenant's and sub-tenant's activities. All of Tenant's activities must be in accordance with these laws, ordinances, codes and regulations.

12.2. Notification of Injury. If a death, serious personal injury, or substantial property damage occurs in, on, or about the Leased Premises, Tenant shall immediately notify the Landlord by telephone. If any accident occurs on the Leased Premises, Tenant shall promptly submit a written report to Landlord, in such form as Landlord may require. This report shall include the following information: (1) name and address of the injured or deceased person(s), (2) name and address of Tenant's liability insurance carrier, and (3) a detailed description of the accident.

12.3. If a release of hazardous materials or hazardous waste that cannot be controlled occurs on the Leased Premises, Tenant shall immediately notify the City of Piedmont Police Department and Fire Department. Tenant shall not store hazardous materials or hazardous waste on the premises.

13. Damage or Destruction.

13.1. Event of Damage or Destruction. If the Leased Premises suffers from Damage or Destruction, Landlord may elect to terminate this Restated Agreement by giving notice to Tenant within sixty (60) days of the date of the Damage or Destruction, unless Tenant demonstrates to Landlord's reasonable satisfaction within such 60-day period that Tenant has adequate means to repair the Leased Premises which would allow Tenant the ability to continue its activities on the Leased Premises, and Tenant promptly commences repair of the Leased Premises. If Landlord fails to give notice of its decision to terminate, Tenant may elect to terminate this Restated Agreement. Tenant waives the provisions of Civil Code sections 1932(2) and 1933(4) with respect to any Damage or Destruction of the premises. Tenant agrees that Landlord has no obligation to fix, repair, or restore the Leased Premises in the event of Damage or Destruction.

14. Tenant's Default.

14.1. Occurrence of Default. The occurrence of the following shall constitute a default by Tenant: (1) Failure to perform any provision of this Restated Agreement if the failure to perform is not cured within thirty (30) days after notice has been given to Tenant. If the default cannot reasonably be cured within thirty (30) days, Tenant shall not be in default of this Restated Agreement if Tenant commences to cure the default within the 30-day period and diligently and in good faith continues to cure the default.

14.2. Notices given under Section 14.1 shall specify the alleged default and applicable provision of this Restated Agreement, and shall demand that Tenant perform the provisions of this Restated Agreement within the applicable period of time, or quit the premises. No such notice shall be deemed a forfeiture or a termination of this Restated Agreement unless Landlord so elects in the notice. The purpose of the notice requirements set forth in this section is to extend the notice requirements of the unlawful detainer statutes of California.

15. Assignment and Subletting.

15.1. Transfer. Tenant shall not assign, transfer, convey, encumber, or sublease (collectively, "Transfer") its interest, or any portion thereof, provided in this Restated Agreement, without the prior written consent of the Landlord, which consent shall be within the sole discretion of Landlord and shall not be withheld unreasonably. Tenant shall have the right to charge user fees for activities other than Approved Uses, but only upon the prior written consent of the City Administrator. To the extent that Tenant is currently charging user fees for activities other than Approved Uses, those current activities are deemed to have Landlord's written consent. For purposes of this Section 15.1, a Transfer shall be considered to include any assignment to an entity related to Tenant or a change in ownership or control of Tenant. Any Transfer without Landlord's consent shall be voidable, and at the Landlord's election, shall constitute default. Consent prior to a Transfer shall not be construed as consent to any future Transfer.

16. Waiver.

16.1. No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the lease. No act or conduct of Landlord, including, without limitation, the acceptance of the keys to the Leased Premises, shall constitute an acceptance of the surrender of the Leased Premises by Tenant before the expiration of the term. Only a notice from Landlord to Tenant shall constitute acceptance of the surrender of the Leased Premises and accomplish a termination of the lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

17. Excusable Delays.

17.1. If the performance of any act required of Landlord or Tenant is prevented or delayed by reason of strikes, lockouts, labor disputes, act of God, fire, floods, epidemics, freight embargoes or other cause beyond the control Party required to perform an act, the performance of the act shall be excused for the period of the delay and the period for the performance of such act shall be extended for thirty (30) days.

18. Hold Over.

18.1. If Tenant remains in possession of the Leased Premises with Landlord's consent after the expiration of the term of this Restated Agreement, such possession by Tenant shall be construed to be a tenancy from month-to-month, terminable on thirty (30) days' notice given at any time by either Party. All provisions of this Restated Agreement, except those pertaining to the Term, shall apply to the month-to-month tenancy.

19. Surrender of Leased Premises and Removal of Personal Property.

19.1. At the termination of this Restated Agreement, Tenant shall: 1) give up and surrender the Leased Premises, in as good state and condition as reasonable use and wear and tear thereof will permit, damage by fire and the elements excepted; and 2) remove all property which is not a fixture of or permanent attachment to the Leased Premises and which is owned and was installed by Tenant during the Term.

20. Time of Essence.

20.1. Time shall be of the essence of each provision of this Restated Agreement.

21. Covenants and Conditions.

21.1. Each term and each provision of this Restated Agreement performable by Tenant shall be construed to be both a covenant and condition.

22. Governing Law.

22.1. The laws of the State of California shall govern this Restated Agreement.

23. Entire Agreement.

23.1. This Restated Agreement and all exhibits attached and any documents incorporated in this Restated Agreement contain the entire agreement between the Parties regarding the lease of the premises described herein and shall supersede any and all prior agreements, oral or written, between the Parties regarding the lease of these premises. This Restated Agreement cannot be altered or otherwise modified except by a written amendment executed by both Parties.

24. Exhibits.

24.1. Incorporation. The Exhibits attached hereto are incorporated into and made a part of this Restated Agreement.

25. Written Notices.

25.1. Information. Any notice required to be given under this Restated Agreement must be given by personal service, email, fax or by deposit of the notice in the custody of the United States Postal Service or its successor, first class postage prepaid, addressed to the party to be served as follows:

City

Attention: Sara Lillevand, City Administrator

120 Vista Avenue

Piedmont, CA 94611

slillevand@piedmont.ca.gov

Fax: 510-653-8272

Piedmont Center for the Arts

Attention: President

801 Magnolia Avenue

Piedmont, CA 94611

info@piedmontcenterforarts.org

The parties may designate alternate persons to receive notice on their behalf as necessary. Notices will be deemed given as of the date of personal service, email or fax or three days after deposit of the notice in the custody of the Postal Service.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Restated Agreement as of the date and year first written above.

LANDLORD:

TENANT:

CITY OF PIEDMONT, a California municipal corporation

PIEDMONT CENTER FOR THE ARTS, INC., a non-profit corporation

By:

By:

Sara Lillevand, City Administrator

Name:

Title:

APPROVED AS TO FORM:

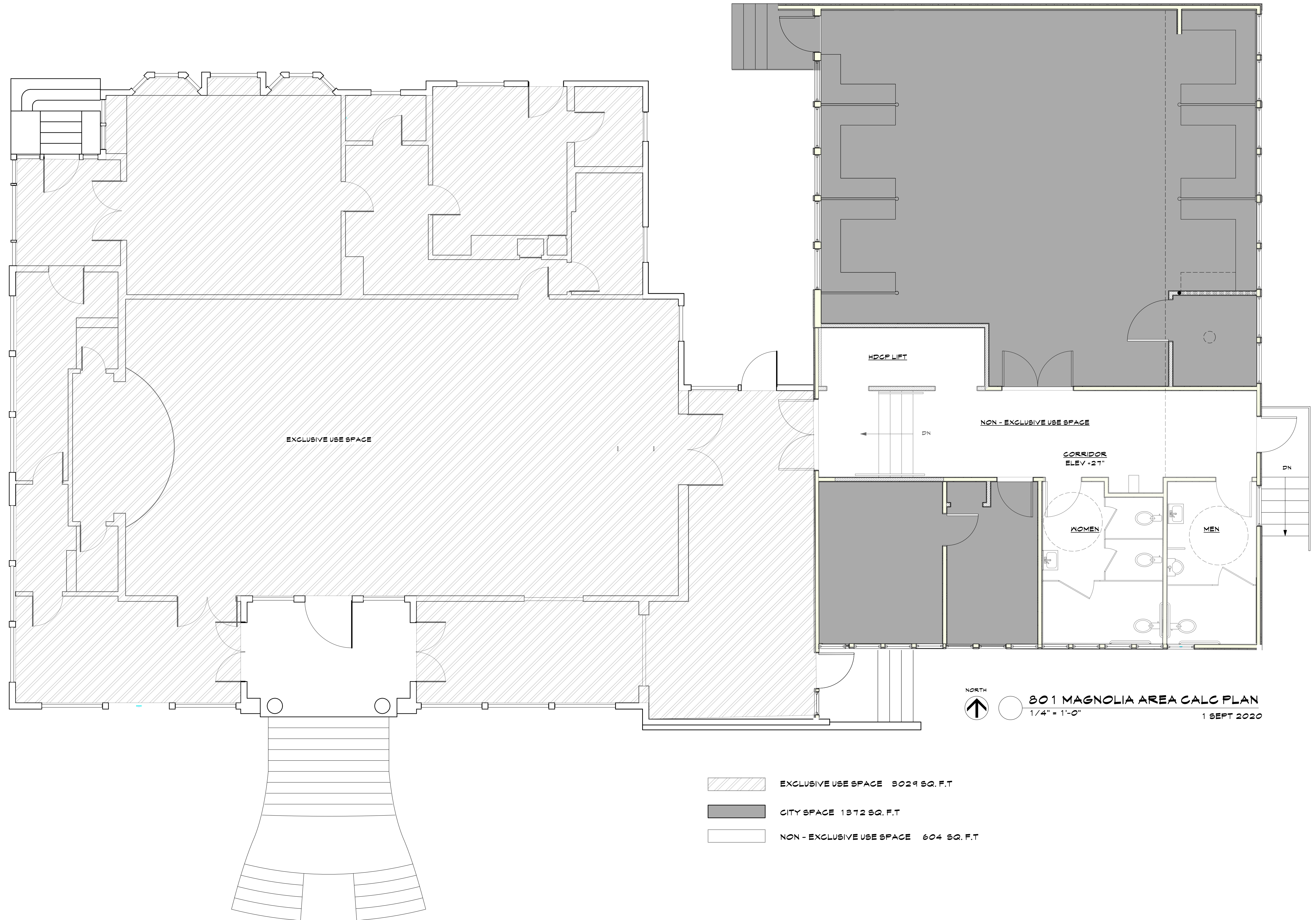
By:

Michelle Marchetta Kenyon, City Attorney

ATTEST:

By:

John O. Tulloch, City Clerk



CITY OF PIEDMONT
 120 VISTA AVE. PIEDMONT, CA 94611
 510.420.3050 www.ci.piedmont.ca.us

REV	DATE	SCALE	AS NOTED
	OCT 2020		

801 MAGNOLIA AVE

A 1

EXHIBIT B

PREMISES DESCRIPTION

A portion of the building and land known as 801 Magnolia Avenue; such portions as shown on the attached Exhibit A. The whole is described as follows:

Beginning at the point of intersection of the northwestern line of Magnolia formerly Piedmont Avenue with the northeastern line of Bonita Avenue as said avenues are shown on said map thence northwesterly along said line of Bonita Avenue 138 feet, 3 inches; thence at right angles northeasterly 130 feet, thence at right angles southeasterly 81.50 feet more or less, to the northwestern line of Magnolia Avenue; thence southwesterly along the last named line 136.77 feet, more or less, to the point of beginning.

EXHIBIT C

RULES AND REGULATIONS FOR THE PIEDMONT CENTER FOR THE ARTS

1. Tenant shall comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the failure of an other tenant or occupant of the building to comply with any of these Rules and Regulations.
2. No sign, placard, picture, name, advertisement, or notice visible from the exterior of the premises will be painted, affixed, or otherwise displayed by tenant on any part of the premises without prior written consent of landlord. Landlord will adopt and furnish to tenant general guidelines relating to signs outside of the Center.
3. Tenant shall assume all responsibility for protecting the premises from theft, robbery, pilferage, vandalism, damage or waste, keeping doors locked and other means of entry to the premises closed and turning off all water faucets, water apparatus, and utilities.
4. Landlord may waive any one or more of these rules and regulations for the benefit of any particular tenant or rental user, and any such waiver by Landlord shall be in writing.
5. Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations or to make any additional reasonable Rules and Regulations that in Landlord's judgment, may be necessary for:
 - A. The management, safety, care, and cleanliness of the Premises, Building, and Real Property.
 - B. The preservation of good order; and
 - C. The convenience of other occupants and tenants in the Premises, Building and Real Property

Sample of 2019 PCA Programming

Local Talent:

- PUSD Advanced Acting plays *Puffs*, *A Few Good Men*, and *Roe*
- Piedmont East Bay Children's Choir regular rehearsals and recording sessions
- PHS Art Jam
- Piedmont Chamber Orchestra (rehearsals and performance)
- Piedmont Art Fund (formerly PAINTS/CHIME) two week Art Show fundraiser
- 20 Student recitals
- PHS Troubadours as opening act for Yale Society of Orpheus and Bacchus (S.O.B.'s)
- 6 Piedmont artist art shows (Mike Walsh, Keith Ferris, Lorna Strotz, Mike Manente, Susie Skugstad and Michael Stehr)

Regional/National/International Musicians

- **Jazz in the Neighborhood** (3 concerts in 2019), with a mission of working to improve the economics of jazz performance in the Bay Area by presenting affordable concerts, paying musicians a guaranteed wage, and supporting the work of established and aspiring jazz artists. <https://jazzintheneighborhood.org/about/mission/>
- **Gold Coast Chamber Players** (4 concert series), with a mission to foster greater connection and transformation through top-quality, thematic concert experiences with internationally renowned musicians. <https://www.gccpmusic.com/about-gccp>
- **Piedmont Chamber Music Festival (PCMF)** (<http://www.piedmontcmf.org/>): a 10 day festival where well-established musicians are invited from all over the country for an intensive series of workshops and concerts. PCMF's mission is to engage audiences for chamber music, to promote music education and community-building in the East Bay, and to present an annual music festival featuring world-class artists, programming, and performances. The founder of the Festival is Wayne Lee PHS 2001 and graduate BA and MA of Juilliard and former Juilliard faculty member.
- **Berkeley Symphony and Friends Series** is a PCA collaboration with their conductor and Artistic Director Rene Mandel featuring Berkeley Symphony members as well as visiting musicians from all over including on several occasions Stuart Canin.
- **Christiana Pegoraro** is an Italian and a pianist who has soloed in every major concert hall in the world came to play at PCA because of her musical collaborations with Debbie Dare and Joe Gold at the Narnia Summer Music Festival in Narni Italy.
- **Jaume Torrent** of Barcelona, Spain is the most prolific composer for classical guitar in the world. He often performs with Joe Gold and Debbie Dare nationally and internationally as the Paganini Trio.
- **SF Mandolin Orchestra** is a plucked string orchestra of 15-25 Mandolins or related instruments.