

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2017 Legislative Session

Legislative Day No. 9

Bill No. 49-2017

Introduced by: The Chairperson at the request of the County Executive

AN ACT pursuant to Section 612 of the Howard County Charter, approving a multi-year Agreement of Lease between Howard County, Maryland and The Howard County Arts Council, Inc., a non-profit Maryland corporation, for approximately 12.652 acres of land at 8510 High Ridge Road, Ellicott City, Maryland, under the terms of which the County agrees to pay certain costs associated with the premises; authorizing the County Executive to enter into the Agreement and to make changes to the Agreement before executing it, under certain conditions; and generally relating to a multi-year lease of certain premises owned by Howard County to The Howard County Arts Council, Inc.

Introduced and read first time _____, 2017. Ordered posted and hearing scheduled.

By order _____
Jessica Feldmark, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2017.

By order _____
Jessica Feldmark, Administrator

This Bill was read the third time on _____, 2017 and Passed ____, Passed with amendments ____, Failed ____.

By order _____
Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for his approval this ____ day of _____, 2017 at ____ a.m./p.m.

By order _____
Jessica Feldmark, Administrator

Approved/Vetoed by the County Executive _____, 2017.

Allan H. Kittleman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike out~~ indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **WHEREAS**, Howard County, Maryland (hereinafter the “County”) is the owner of
2 an improved parcel of land acquired from the Board of Education for Howard County by
3 deed dated December 30, 1989 and recorded among the Land Records of Howard County,
4 Maryland in Liber 2116, Folio 276, and known as 8510 High Ridge Road, Ellicott City,
5 Maryland (hereinafter the “Premises”); and

6
7 **WHEREAS**, since the County acquired the Premises in 1989, The Howard County
8 Arts Council, Inc. (hereinafter the “Arts Council”) has occupied the Premises as its place of
9 business; and

10
11 **WHEREAS**, the County and the Arts Council entered into an Agreement of Lease
12 dated June 18, 2007 for a term commencing on July 1, 2007 and terminating on June 30,
13 2017, and the parties desire to continue the use of the Premises on the terms and conditions
14 as substantially in the form set forth in the attached Agreement of Lease, which is attached
15 hereto as Attachment 1 and incorporated herein as if set forth in full; and

16
17 **WHEREAS**, the County and the Arts Council desire to enter into the Agreement for
18 a term expiring on June 30, 2022, with subsequent one-year renewals; and

19
20 **WHEREAS**, the Agreement requires the County to provide utility and general
21 maintenance services to or for the benefit of the Premises, including electricity, water, sewer,
22 heating, janitorial service, and trash removal service during the term of the Agreement; and

23
24 **WHEREAS**, the Agreement requires the payment by the County of funds from an
25 appropriation in a later fiscal year and therefore requires the County Council approval as a
26 multi-year agreement pursuant to Section 612 of the Howard County Charter.

27
28 **NOW, THEREFORE,**

29
30 *Section 1. Be It Enacted by the County Council of Howard County, Maryland, that, in*
31 *accordance with Section 612 of the Howard County Charter, it approves the Agreement of*

1 *Lease between Howard County, Maryland and The Howard County Arts Council, Inc.,*
2 *substantially in the form attached as Attachment 1.*

3

4 ***Section 2. And Be It Further Enacted*** *by the County Council of Howard County, Maryland,*
5 *that the County Executive is authorized to enter into the Agreement of Lease in the name of*
6 *and on behalf of the County.*

7

8 ***Section 3. And Be It Further Enacted*** *by the County Council of Howard County, Maryland,*
9 *that the County Executive, prior to execution and delivery of the Lease Agreement, may make*
10 *such changes or modifications to the Lease Agreement as he deems appropriate in order to*
11 *accomplish the purpose of the transaction authorized by this Act, provided that such changes*
12 *or modifications shall be within the scope of the transaction authorized by this Act; and the*
13 *execution of the Lease Agreement by the County Executive shall be conclusive evidence of*
14 *the approval by the County Executive of all changes or modifications to the Lease Agreement,*
15 *and the Lease Agreement shall thereupon become binding on the County in accordance with*
16 *its terms.*

17

18 ***Section 4. And Be It Further Enacted*** *by the County Council of Howard County, Maryland,*
19 *that this Act shall become effective immediately upon its enactment.*

ATTACHMENT 1

AGREEMENT OF LEASE
by and between
HOWARD COUNTY, MARYLAND
and
THE HOWARD COUNTY ARTS COUNCIL, INC.

AGREEMENT OF LEASE
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HOWARD COUNTY, MARYLAND
and
THE HOWARD COUNTY ARTS COUNCIL, INC.

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AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE (this "Agreement"), is made the ____ day of _____, 20____, by and between HOWARD COUNTY, MARYLAND, a body corporate and politic, having an address at 3430 Court House Drive, Ellicott City, Maryland 21043 (the "County"), and THE HOWARD COUNTY ARTS COUNCIL, INC. (the "Arts Council"), a nonprofit corporation organized and in good standing under the laws of Maryland having an address at 8510 High Ridge Road, Ellicott City, Maryland 21043 (the "Property").

WHEREAS, the County, in support of the pursuit of fine arts within Howard County, has provided a facility for the use of the Arts Council since the County acquired the Property from the Board of Education for Howard County by deed dated December 30, 1989 and recorded among the Land Records for Howard County at Liber 2116, Folio 276*et. seq.*; and

WHEREAS, the County and the Arts Council entered into an Agreement of Lease dated June 8, 2007 for a term commencing on July 1, 2007 and terminating on June 30, 2017, and the parties desire to continue the use of the Premises (as defined in Section 1) by the Arts Council on the terms and conditions hereinafter set forth.

WHEREAS, the County Council of Howard County approved this Agreement as a multi-year obligation pursuant to Section 612 of the Howard County Charter in Bill Number _____, which was approved by the County Executive on _____, 20____.

NOW THEREFORE, in consideration of the mutual entry into this Agreement by the County and the Arts Council, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, the County hereby permits the Arts Council to use and the Arts Council hereby agrees to use the Premises hereinafter described in accordance with the terms of this Agreement.

SECTION 1 - DEFINITIONS

The capitalized terms used in this Agreement shall, unless the context requires otherwise, have the definition and meaning specified in this Section 1.

Agreement – means this Agreement of Lease, as it may be amended from time to time, as the context requires.

Arts Council – means the The Howard County Arts Council, Inc., a nonprofit corporation organized and existing under the laws of Maryland and its successors and assigns.

Building – means the bi level-story building located on the Property and known as the "Howard County Center for the Arts".

Commencement Date – means July 1, 2017.

Common Areas – means the common stairways, lobbies, common hallways, parking areas, ingress and egress drives, grounds, and other portions of the Building and Property intended for use by all occupants of the Building.

The County – means Howard County, Maryland, a body corporate and politic and its successors and assigns.

Event of Default – means an event of default as defined herein.

Fiscal Year – means the twelve-month period beginning on July 1 and ending on June 30.

Premises – means the area of the Building leased to the Arts Council pursuant to this Lease and consisting of those rooms shown on Exhibit A.

Property – means the property comprising 12.652 acres of land more or less located at 8510 High Ridge Road, Ellicott City, Maryland 21043 and owned by the County.

Rent – means the rent described in Section 3 hereof.

Term – has the meaning set forth in Section 2.1 hereof, and shall include the “Renewal Term” when applicable.

Termination Date – means June 30, 2022, except that if the Lease is renewed pursuant to Section 2.1.2 hereof, then the Termination Date for all purposes of the provisions of this Lease shall be the date to which the Lease is extended.

SECTION 2 – TERM

2.1. Length. The Term of this Agreement shall be for (a) term commencing as of July 1, 2017, the Commencement Date, and (b) terminating at 11:59 p.m., local time on June 30, 2022, the Termination Date.

2.1.2. Renewal Terms. The Arts Council may request to renew this Agreement from time to time for additional terms of one (1) year each (each individually, and all collectively, the “Renewal Term”), commencing on July 1, 2017 and July 1st of each Fiscal Year thereafter, and terminating on June 30 of the following Fiscal Year, by giving the County express written notice of such request for renewal by not less than ninety (90) days before the date on which such Renewal Term is to commence and with the County’s express written consent, at the County’s option, the Renewal Term shall be effective. Any such renewal shall be upon the terms and subject to the conditions which are set forth in the provisions of this Agreement.

2.2. Surrender. The Arts Council shall at its expense, at the expiration of the Term or any earlier termination of this Agreement, (a) promptly surrender to the County possession of the Premises, in good order and repair (ordinary wear and tear excepted) and broom clean, (b) remove therefrom all of the Arts Council’s signs, goods and effects and any machinery, trade fixtures and equipment which are used in conducting the Arts Council’s trade or business and are not owned by the County, and (c) repair, to the County’s satisfaction, any damage to the Premises or the Building caused by the removal of the Arts Council’s signs, machinery, trade fixtures, equipment, and goods and effects.

2.3. Holding Over. If the Arts Council continues to occupy the Premises after the expiration of the Term or any earlier termination of this Agreement, such occupancy shall be under a month-to-month tenancy which may be terminated by the County upon the provision of thirty (30) days’ written notice. The month-to-month tenancy shall be upon the terms and subject to the conditions of this Agreement.

2.4. Termination. Notwithstanding anything herein contained to the contrary, if the County determines, in its sole discretion, that the Premises are required for use by the County, the County shall have the right to terminate this Agreement upon ninety (90) days prior written notice to the Arts Council.

The Arts Council shall have the right in its sole discretion to terminate this Agreement upon ninety (90) days prior written notice to the County.

SECTION 3 – RENT

3.1. Notwithstanding any provision to the contrary herein, the Rent for the Premises shall be one dollar (\$1.00) per Fiscal Year. The Arts Council acknowledges the County's fiscal support for the use of the Premises is in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) per Fiscal Year.

SECTION 4 – USE OF PREMISES

4.1. Limitation of Use. The Arts Council shall, continuously throughout the Term, occupy and use the Premises for and only for the promotion of the arts in the Howard County community in a manner consistent with the mission and purpose of the Arts Council. The County recognizes, and approves the fact that, the Arts Council may sublease portions of the Premises to artists and may occasionally lease a portion of the Premises to members of the community and private groups consistent with the mission and purpose of the Arts Council in accordance with this Agreement. The list of subtenants occupying and utilizing, respectively, a portion of the Premises, as of the date of the execution of this Agreement, is attached hereto as Exhibit B. The Arts Council agrees to provide the County, on or before July 1 of each year, any revisions to Exhibit B. The Arts Council shall make available, upon request of the County, a copy of the lease for each subtenant's lease which shall be in the form of the lease attached hereto as Exhibit C.

4.2. In its use of the Premises and the Common Areas, the Arts Council agrees as follows:

4.2.1. The Arts Council shall comply with all federal, state, county and municipal laws, ordinances, or regulations.

4.2.2. The Arts Council shall not (either with or without negligence) (a) cause or permit (or allow its subtenants to cause or permit) the escape, disposal or release of any "hazardous substance" or pollutant as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, *et. seq.*, in a manner that violates any Federal, State, County or municipal laws, ordinances or regulations, or (b) handle, store, or utilize (or allow its subtenants to handle, store, or utilize) in the Building any substance or material in any manner that violates any Federal, State, County or municipal laws, ordinances or regulations. The term "hazardous substance" does not include small quantities of supplies normally found in a typical office setting or for use by the artists to which the Arts Council subleases portions of the Premises (provided, however, that all said substances shall be handled in a reasonable manner and shall be stored and disposed of in commercially approved containers).

The County shall not (either with or without negligence) (a) cause or permit the escape disposal or release of any "hazardous substance" or pollutant as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et. seq.*, in connection with its ownership, maintenance or other use of the Building in a manner that violates any Federal, State, County or municipal laws, ordinances or regulations, or (b) allow any other occupant of the Building to store, handle or use such substances or materials in any manner that violates any Federal, State, County or municipal laws, ordinances or regulations.

4.2.3. The Arts Council shall refrain from activities (and shall cause its subtenants to refrain from activities) which would not allow the County to maintain the Building (through its janitorial services) in a clean, orderly and sanitary condition. The Arts Council shall keep all trash (and shall cause its subtenants to keep all trash) in approved disposal containers.

4.3. Common Areas. The County hereby grants the Arts Council a nonexclusive license to use throughout the Term any common stairways, lobbies, common hallways, parking areas, driveways, grounds, and other portions of the Building and Property which, by their nature, are manifestly designed and intended for common use by the occupants of the Building.

4.4. Improvements by Arts Council. The Arts Council shall not make any alteration, addition, or improvement to the Premises (including, but not limited to, painting of walls and installing signs and fixtures) without first obtaining the County's written consent thereto except general maintenance or temporary signs connected with arts activities. If the County consents to any such proposed alteration, addition, or improvement, it shall be made at the Arts Council's sole expense and the Arts Council shall indemnify, defend and hold the County harmless from any and all costs and all claims resulting therefrom. The Arts Council shall not permit any encumbrance of the Premises by any mechanic's lien and if any mechanic's lien is filed against the Premises, the Arts Council shall discharge or bond such lien within ten (10) days of the date an order is entered.

4.5. Relocation of Arts Council. The County shall have the right from time to time during the Term, at the County's expense, to relocate the Premises from its present location within the Building to another location within the Building having at least the same floor area as that of the Premises, provided that the County gives the Arts Council written notice of the County's intention to do so at least ninety (90) days before undertaking such relocation. Such notice shall designate the place of relocation and the date that the Premises must be surrendered. Upon the completion of such relocation, this Agreement shall automatically cease to cover the space constituting the Premises immediately before such relocation, and shall automatically thereafter cover the space to which the Premises have been relocated, as aforesaid, all on the same terms and subject to the same conditions as those set forth in the provisions of this Agreement as in effect immediately before such relocation, and all without the necessity of further action by either party hereto; provided, that each party hereto shall, promptly upon its receipt of a written request therefor from the other, enter into such amendment of this Agreement as is reasonably necessary to confirm such relocation.

SECTION 5 – INSURANCE AND INDEMNIFICATION

5.1. Increase in Risk. The Arts Council (a) shall not do or permit to be done any act or thing as a result of which either (i) any policy of insurance of any kind covering (1) any or all of the Premises or (2) any liability of the County in connection therewith may become void or suspended, or (ii) the insurance risk under any such policy would (in the opinion of the County) be made greater; and (b) shall pay as "Additional Rent" the amount of any increase in the cost of self-insurance or in any premium for such insurance resulting from any breach of the aforesaid covenant, within ten (10) days after the County notifies the Arts Council in writing of such increase.

5.2. Insurance to be Maintained by the Arts Council. The Arts Council shall obtain and keep in force, at its sole cost and expense, throughout the Term, the following policies of insurance:

- (a) Workers' Compensation Insurance covering the jurisdiction of Maryland for any of its employees.
- (b) Commercial General Liability Insurance against loss or liability in connection with bodily injury, death, property damage or destruction, occurring within the Premises or arising out of the use of the Premises by the Arts Council or its agents, employees, officers, tenants, subtenants, invitees, visitors and guests with combined single limits of not less than One Million Dollars (\$1,000,000.00) for each occurrence. The policy shall include an endorsement for Fire Legal Liability for the Premises and name "Howard County, Maryland,

its elected and appointed officials, officers, employees and authorized volunteers” as Additional Insured.

- (c) All-Risk Property insurance, including theft, with replacement cost endorsement, covering personal property and tenant and subtenant improvements and betterments owned by, or in the care of, the Arts Council or any subtenant or occupant of the Premises. The Arts Council may cause subtenants’ property to be insured directly by subtenants in lieu of including subtenants under the Arts Council’s property insurance policy.

Each policy shall (a) by its terms, be cancelable only on at least thirty (30) days prior written notice to the County, and (b) be issued by an insurer of recognized responsibility licensed to issue such policy in Maryland. The Arts Council shall deliver to the County evidence of all such policies of insurance upon the execution of this Agreement and annually upon the anniversary of this Agreement.

5.3. Insurance to be Maintained by the County. The County shall maintain All-Risk Property coverage on the building.

5.4. Waiver of Subrogation. If either party hereto is paid any proceeds under any policy of property insurance naming such party as an insured, on account of any loss or damage, then such party’s insurer shall release the other party hereto, to the extent of the amount of such proceeds, from any and all liability for such loss or damage, notwithstanding that such loss, damage or liability may arise out of the negligent or intentionally tortious act or omission of the other party, its agents or employees. Each party hereto shall use reasonable efforts to have a clause to such effect included in its property insurance policy or to obtain an endorsement in which the insurer waives all of its rights of subrogation against the party that is not the insured party, and shall promptly notify the other in writing if such clause cannot be included in any such policy or if such an endorsement cannot be obtained.

5.5. Consequential Loss. Neither party will be liable to the other party for any consequential damages including but not limited to loss of revenue or profits resulting from any damage to or interference with the operation of facilities no matter what the cause of damage or loss.

5.6. Personal Property, Tenant Improvements and Betterments. All personal property and tenant and subtenant improvements and betterments within the Premises are the responsibility of the Arts Council. The County shall not be responsible for any damage to property owned or installed by the Arts Council, its clients, agents, employees, licensees, contractors, tenants, subtenants or invitees no matter what the cause of loss or damage.

5.7. Indemnification. The Arts Council shall be responsible for all damage to life and property due to its activities or those of its subcontractors, agents, invitees or employees, in connection with this Agreement. The Arts Council shall indemnify, defend and hold harmless the County, its officials, agents, employees, successors and assigns against and with respect to any and all losses, damages, suits, claims, judgments and expenses whatever (“losses”), including without limitation costs of investigation, litigation and attorneys’ fees, arising directly or indirectly from use of the Premises by the Arts Council, its officers, employees, agents, subcontractors, tenants, subtenants or invitees, or otherwise arising directly or indirectly from this Agreement, regardless of whether such losses be sustained by the County directly, or by their respective employees, agents, invitees, licensees or other persons, except only when such losses are solely attributable to and proximately caused by the gross negligence or the willful, malicious, or wanton misconduct of the County or its respective officials, employees or agents. The foregoing shall apply, without limitation, to losses of all types including destruction or degradation of the environment

including land, air, water, wildlife or vegetation, and all clean-up costs, fines, penalties and other pollution-related items. This indemnification is not to be deemed as a waiver of any immunity which may exist in any action against the County.

SECTION 6 – MAINTENANCE AND SERVICES

6.1 County's Responsibilities. The County shall be responsible for maintaining the heating, ventilation, air conditioning, electric, water, and plumbing system serving the Premises. The County shall maintain the grass, landscaped areas and parking areas serving the Premises, including the removal of snow from the parking areas. The County shall provide custodial services for the Premises. The County shall pay all utilities, excluding telecommunications, on behalf of the Arts Council. The Arts Council recognizes that the County's obligations herein are subject to the availability of funds in each fiscal year. The County shall not be liable to the Arts Council and there shall be no allowance for the Arts Council for any failure, modification or interruption of any such service.

6.2 Arts Councils' Responsibilities. The Arts Council shall ensure that the Premises are operated in a clean and sanitary condition, and that trash and recyclable materials are removed weekly and placed in a proper container at the designated location for the removal by the County. The Arts Council shall promptly notify the County regarding any condition of the Premises requiring repair or maintenance by the County. The Arts Council shall keep the parking areas in a safe and clean condition.

SECTION 7 – COUNTY'S RIGHT TO ENTRY

The County and its agents shall be entitled to enter the Premises at any time to inspect the Premises or to make any alteration, improvement or repair to the Premises. Additionally, the County and its agents shall be entitled to enter the Premises at any time to conduct monitoring visits in connection with any local, state or federally funded programs where the County is the Grantee or Grantor.

SECTION 8 – FIRE AND OTHER CASUALTIES

8.1 General. If the Premises are damaged by fire or any other casualty during the Term, the County, subject to budgetary constraints, may restore the Premises and may temporarily enter and possess any or all of the Premises for such purpose (provided, that the County shall not be obligated to repair, restore or replace any fixture, improvement, alteration, furniture or other property owned, installed or made by the Arts Council).

8.2 Arts Council's Negligence. Anything contained in any provision of this Agreement to the contrary notwithstanding, if any such damage to all or any portion of the Premises is caused by or results from the negligent or intentionally tortious act or omission of the Arts Council, or those claiming under the Arts Council or any of their respective officers, employees, agents or invitees, the Arts Council shall pay to the County upon demand, the cost of (i) any repairs and restoration made or to be made as a result of such damage to restore the Building less reasonable wear and tear at the time of such loss, or (ii) if the County elects not to restore the Building, any damage or loss which the County incurs as a result of such damage.

SECTION 9 – ASSIGNMENT AND SUBLETTING

The County acknowledges that the Arts Council may sublet a portion of the Premises to persons who advance the purposes set forth in the Arts Council's articles of incorporation. The Arts Council acknowledges that the County desires to lease the Premises for periods in excess of seventy-two (72) hours only to persons engaged in the promotion of the arts in the Howard County, Maryland community.

Anything contained in the foregoing provisions of this Agreement to the contrary notwithstanding, neither the Arts Council nor any other person having an interest in the possession, use or occupancy of the Premises or any portion of the Premises shall enter into any lease, sublease, license, concession or other agreement for the possession, use or occupancy of space in the Premises in contravention of the purposes set forth in the Arts Council's articles of incorporation or the aforementioned desires of the County. To the extent that the County determines that any such subtenancy violates the intended use of the Premises as herein set forth, then the County shall advise the Arts Council to terminate such subtenancy. The Arts Council shall sublet the Premises if and only if the subtenants shall sign the form of Lease attached hereto as Exhibit C, which incorporates all of the terms and conditions of this Agreement. No right or privilege shall inure to the benefit of any assignee of the Arts Council, immediate or remote, unless the assignment to such assignee is made in accordance with the provisions of this Section. The Arts Council shall update Exhibit B attached hereto on or before July 1 of each year.

SECTION 10 – DEFAULT

10.1. Definition. As used in the provisions of the Agreement, each of the following events shall constitute, and is hereinafter referred to as an "Event of Default": If the Arts Council fails to (a) pay any Rent or any other sum which it is obligated to pay by any provision of this Agreement, when and as due and payable hereunder and without demand therefor; (b) provide the updated list of users and lessees of the Premises as provided herein; or (c) perform any of its other obligations under the provisions of this Agreement.

10.2. Notice to Arts Council: Grace Period. Anything contained in the provisions of this Section to the contrary notwithstanding, on the occurrence of an Event of Default the County shall not exercise any right or remedy on account thereof which it holds under any provision of this Agreement or applicable law unless and until the County has given written notice thereof to the Arts Council, and the Arts Council has failed within five (5) days thereafter to cure such Event of Default.

10.2.1 Notwithstanding the foregoing, no such notice shall be required to be given, and the Arts Council shall be entitled to no such grace period, (i) in any emergency situation in which, in the County's reasonable judgment, it is necessary for the County to act to cure such Event of Default without giving such notice, or (ii) the event in question has occurred more than twice during any twelve (12) month period, or (iii) if the Arts Council has substantially terminated or is in the process of substantially terminating its continuous occupancy and use of the Premises for the purpose set forth in the provisions of Section 4.

10.3. County's Rights on Event of Default.

10.3.1. On the occurrence of any Event of Default, the County may (subject to the operation and effect of the provisions of Section 11.2) take any or all of the following actions: (a) reenter and repossess any or all of the Premises and any or all improvements thereon and additions thereto; or (b) terminate this Agreement by giving written notice of such termination to the Arts Council, which termination shall be effective as of the date of such notice or any later date therefor specified by the County therein.

10.3.2. The Arts Council hereby expressly waives, so far as permitted by law, the service of any notice of intention to reenter provided for in any statute, and except as in herein otherwise provided, the Arts Council, for itself and all persons claiming through or under the Arts Council (including any leasehold mortgagee or other creditors), also waives any and all right to redemption or reentry or repossession in case the Arts Council is dispossessed by a judgment or warrant or any court or judge or in case of reentry or repossession by the County or in case of any expiration or termination of

this Agreement. The terms "enter," "reenter," "entry," or "reentry" as used in this Agreement are not restricted to their technical legal meanings.

10.3.3. Each party hereto hereby waives any right which it may otherwise have at law or in equity to a trial by jury in connection with any suit or proceeding at law or in equity brought by the other against the waiving party or which otherwise relates to this Agreement, as a result of an Event of Default or otherwise.

SECTION 11 – QUIET ENJOYMENT

The County hereby covenants that the Arts Council, on paying the Rent and performing the covenants set forth herein, shall peaceably and quietly hold and enjoy, throughout the Term the Premises. Nothing in the provisions of this Agreement shall be deemed to impose upon the County any liability on account of any act or failure to act by any person other than the County (or, where expressly so provided herein, the County's agents and employees).

SECTION 12 – NOTICES

Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to a party hereto shall be (a) in writing, (b) deemed to have been provided (i) forty-eight (48) hours after being sent by the United States mails, postage prepaid, or (ii) (if such party's receipt thereof is acknowledged in writing) upon being given by hand or other actual delivery to such party; and (c) if to the County, addressed to the attention of the Director of the Department of Public Works, at the address set forth hereinabove, and if to the Arts Council, addressed to the attention of the Executive Director at the address set forth above with a copy to the Director of Building Services, at the address set forth above.

SECTION 13 – GENERAL

13.1. Effectiveness. This Agreement shall become effective upon and only upon its execution and delivery by each party hereto.

13.2. Complete Understanding. This Agreement represents the complete understanding between the parties hereto as to the subject matter hereof, and supersedes all prior written or oral negotiations, representations, warranties, statements or agreements between the parties hereto as to the same. No inducements, representations, understandings or agreements have been made or relied upon in the making of this Agreement. Neither party hereto has any right to rely on any other prior or contemporaneous representation made by anyone concerning this Agreement which is not set forth herein.

13.3. Amendment. This Agreement may be amended by and only by an instrument executed and delivered by each party hereto.

13.4. Applicable Law. This Agreement shall be given effect and construed by application of the law of Maryland, and any action or proceeding arising hereunder shall be brought in the courts of Maryland.

13.5. Waiver. The County shall not be deemed to have waived the exercise of any right which it holds hereunder unless such a waiver is made expressly and in writing (and no delay or omission by the County in exercising any such right shall be deemed a waiver of its future exercise.) No such waiver made as to any instance involving the exercise of any right shall be deemed a waiver as to any other such instance, or any other such right. Without limiting the generality of the foregoing, no action taken or not

taken by the County under the provisions of this Section or any other provision of this Agreement shall operate as a waiver of any right or remedy which the County would otherwise have against the Arts Council on account of such Event of Default under the provisions of this Agreement or applicable law.

13.6. Time of Essence. Time shall be of the essence of this Agreement.

13.7. Headings. The headings of the Sections and subsections hereof are provided herein for and only for the convenience of reference, and shall not be considered in construing their contents.

13.8. Construction. As used herein, (a) the term "person" means a natural person, a trustee, a corporation, a partnership and any other form of legal entity; and (b) all references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (iii) to any Section or paragraph shall, unless therein expressly indicated to the contrary, be deemed to have been made to such Section, or paragraph of this Agreement.

13.9. Exhibits. Each writing or plat referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof.

13.10. Severability. No determination by any court, governmental body or otherwise that any provision of this Agreement or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provisions, (b) such provision in any circumstances not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

13.11. Conflict of Interest. The Arts Council certifies that it has read and understands the provisions of Section 901(a) of the Howard County Charter and Section 22.204 of the Howard County Code relating to conflicts of interests, attached hereto as Exhibit D and hereby incorporated herein.

IN WITNESS, each party hereto has executed and ensealed this Agreement or caused it to be executed and ensealed on its behalf by its duly authorized representatives, the day and year first above written.

ATTEST:

**THE ARTS COUNCIL:
THE HOWARD COUNTY ARTS
COUNCIL, INC.**

By: _____
Julie Hughes-Jenkins
President

[Signatures follow on the next page.]

ATTEST:

Lonnie R. Robbins
Chief Administrative Officer

**THE COUNTY:
HOWARD COUNTY, MARYLAND**

By: _____
Allan H. Kittleman
County Executive

APPROVED:

James M. Irvin, Director
Department of Public Works

APPROVED FOR SUFFICIENCY OF FUNDS:

Stanley J. Milesky, Director
Department of Finance

APPROVED FOR FORM AND LEGAL SUFFICIENCY

This _____ day of _____, 2017

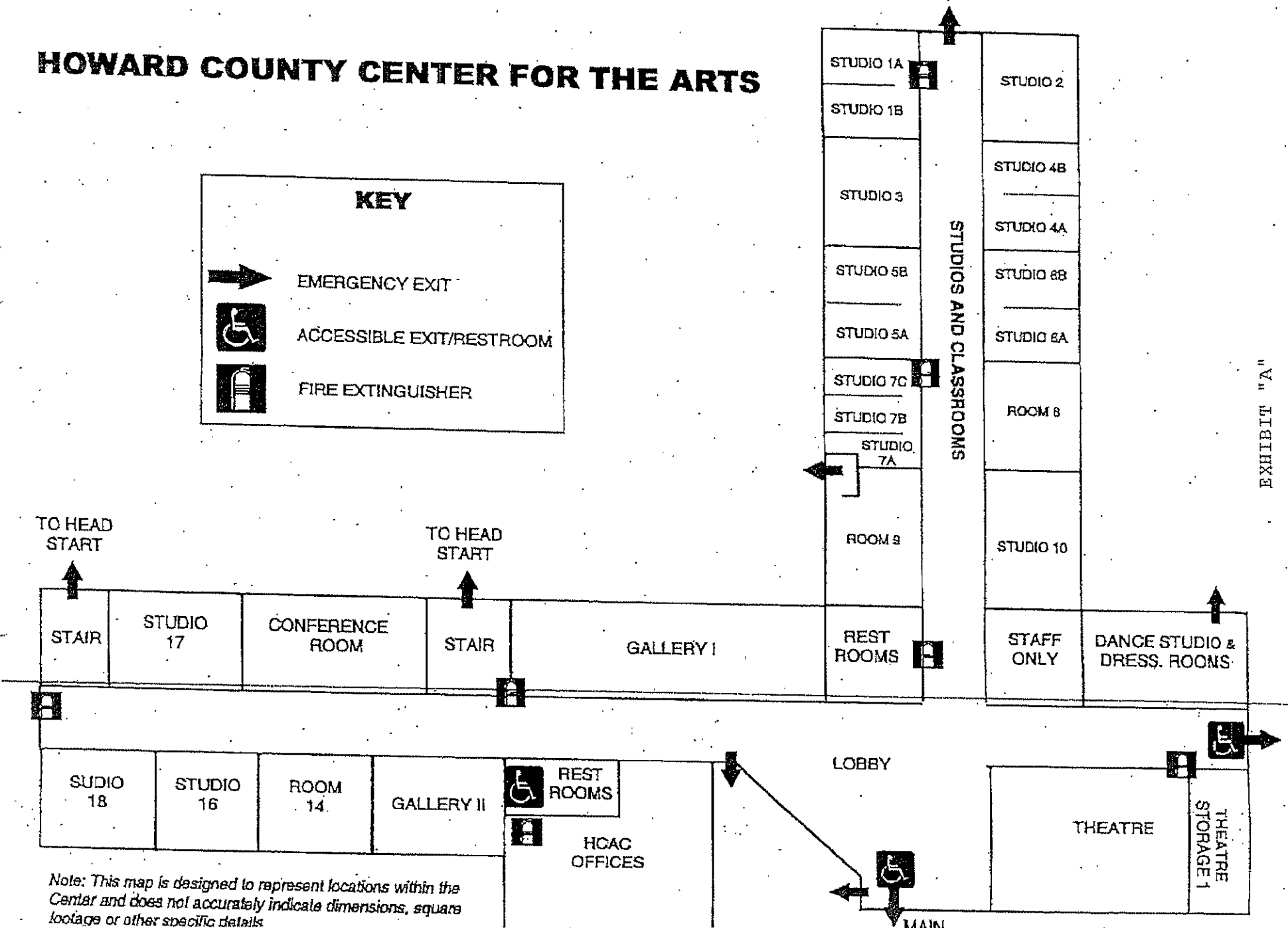
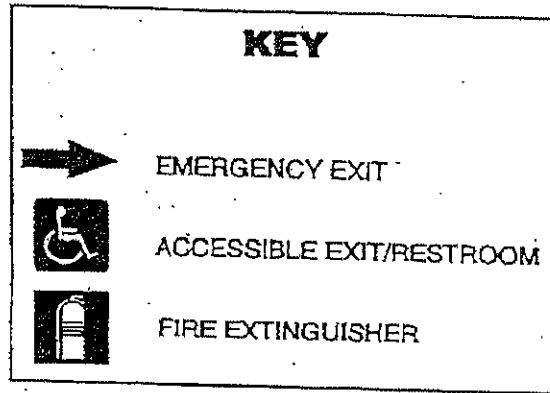
Gary W. Kuc
County Solicitor

Reviewing Attorney:

Morenike Euba Oyenusi
Senior Assistant County Solicitor

EXHIBIT A – Floor Plan

HOWARD COUNTY CENTER FOR THE ARTS



Note: This map is designed to represent locations within the Center and does not accurately indicate dimensions, square footage or other specific details.

EXHIBIT B



HOWARD COUNTY CENTER FOR THE ARTS
Current Resident Artists and Arts Organizations as of April 2017

Artist/Organization*	Studio	Artistic Media
Joan Bevelaqua	1A	Painting, Drawing
Alice St. Germain-Gray	1A	Glass /Fine Metals, Lampwork, Beads/Jewelry
James Adkins	2	Painting, Drawing
Diana Marta**	3	Painting, Drawing, Mixed Media
Myungsook Ryu Kim	4A	Painting, Drawing
Jamie Travers	4B	Sculpture
Stanley Agmontaen (beginning July 1)	5A	Painting, Sculpting, Metal Work
Amanda Gordon Miller (through June 30)	5A	Printmaking
Art Landerman	5B	Illustration, Painting
Andrei Trach	6A	Painting, Drawing
Mary Jo Tydlacka	6B	Painting, Drawing
Jereme Scott	7A	Painting
Joyce Ritter	7B	Painted Art Quilts, Quilted Sculpture
Brendan Nass	7C	Painting, Drawing Wood work, Sculptor, designer
David Zuccarini**	10	Painting, Drawing
Columbia Orchestra	16	Music (Community Orchestra)
Heralds of Hope Theatre**	17	Theatre Performance and Classes
Ballet Mobile**	18	Dance Company and Classes

*Resident Arts Organizations must be incorporated as tax-exempt 501(c)(3) organizations

**Resident Artists and Organization who teach classes in their studios

EXHIBIT C – SUBTENANT LEASE

LEASE

THIS LEASE, made this _____ day of _____, 20____ by and between **THE HOWARD COUNTY ARTS COUNCIL, INC.** (the "Arts Council") a non-profit corporation existing under the laws of the State of Maryland, and _____ (the "Tenant").

WHEREAS, Howard County, Maryland, a body corporate and politic (the "County") is the fee simple owner of the building located at 8510 High Ridge Road, Ellicott City, Howard County, Maryland and known as the "Howard County Center for the Arts" (hereinafter referred to as the "Building");

WHEREAS, the County and the Arts Council entered into an Agreement of Lease dated _____, 20____ (hereinafter referred to as the "Master Lease"), for certain space located in the Building; and

WHEREAS, the Arts Council desires to sublease a portion of said space to Tenant;
and

NOW, THEREFORE, in consideration of the rents and covenants herein set forth, the Arts Council hereby rents to the Tenant the premises herein described upon the following terms and conditions.

SECTION 1 - PREMISES

1.1 The leased premises shall consist of the area of the Building leased to the Tenant pursuant to this Lease and consisting of the room(s) listed below and/or more particularly described on Exhibit A, attached hereto, hereafter referred to as the "Premises".

Room: Studio # _____.

SECTION 2 - USE

The Premises shall be used and occupied by Tenant solely for the following purpose:

2.1. Tenant understands and agrees that the Premises are to be included in an arts center operated by the Arts Council in exercise of its educational and charitable purposes, and that the Arts Council has no authority to engage in or authorize the Tenant to engage in activities inconsistent with those purposes. The Tenant agrees to abide by such rules as the Arts Council may prescribe for operation of the Building including, but not limited to, rules governing public access, rules requiring the Tenant to allow a reasonable number of hours for public viewing of activities in the Premises and rules governing activities of the Tenant as they pertain to the safety, care and

cleanliness of the Premises and the safety, comfort and convenience of other tenants and guest users of the Building.

2.2. The purpose of the Howard County Center for the Arts, a facility of the Arts Council, shall be to operate a nonprofit arts center as a focus of the community arts in Howard County, where artists representing visual and performing arts will be afforded studios/spaces in which to work where the public will have an opportunity to observe their working processes as well as the creative products, with the goal of enhancing the public's art appreciation and education (a "public viewing"). The Tenant has read and agrees at all times during the term of this Lease to be a member of the Howard County Arts Council.

2.3. The Tenant understands and agrees that in accordance with the purpose of the Howard County Center for the Arts, the Tenant is required to be present and open the Tenant's studio for public viewing for five (5) public events per year, including the annual open house at the Howard County Center for the Arts. Schedule conflicts for any such public events must be presented to the Arts Council in writing in advance of the event. If Tenant is a visual artist, the Tenant is required to participate in the annual Howard County Center for the Arts resident artists' exhibition featuring current work. If Tenant is a performing arts organization, then Tenant is required to have at least one (1) live performance, which is free and open to the public, at the Howard County Center for the Arts per year. Said public activities, meetings, live performances, seminars, or other similar events of Tenant may occur in the Premises, provided that the prior written consent of the Arts Council is obtained.

2.4. The Tenant agrees not to use the Premises for teaching without the prior express written permission of Arts Council.

2.5. No partitions, fixtures or apparatus of any kind may be attached to the walls, floors, or ceiling of the Premises, nor may utilities of any type including, by way of example rather than limitation, water, sewer, phone, electric, cable, or internet, without the express written approval of the Arts Council.

2.6. The Tenant shall not place any signs, lights, awning, or poles upon the exterior of the Premises, or any signs upon the interior if visible from the street or in common areas of the Building without prior written consent and approval of the Arts Council.

2.7. The Tenant will, at the Tenant's own expense, keep and maintain the Premises in good, clean, safe and healthy condition and appearance and in good order and repair, and the Tenant will, at the termination of this Lease, remove the Tenant's goods and effects and all installations and improvements the Arts Council wishes removed from the Premises and will surrender the Premises to the Arts Council, in as good condition as when delivered to Tenant, ordinary wear and tear

excepted.

2.8. During the hours in which the Building is not "open to the public," as such term is defined by the Arts Council, and the Tenant is using the Premises, the Tenant shall not allow any visitors to enter the Building at any time without the advance express written permission of the Arts Council. During the hours in which the Building is not "open to the public," the Tenant agrees (i) to keep the Building locked from the outside, and (ii) not to allow any visitors to enter the Building. The Tenant further agrees to check that all doors providing access to the Premises, including the front doors, the parking lot doors, and the end of the wing doors are securely locked from the inside when the Tenant leaves the Premises. The Arts Council guarantees no specific open hours and reserves the right to adjust the hours that the Building is open to the public.

2.9. The Tenant agrees to comply, at the Tenant's own expense, with all federal, state, county, and municipal laws and ordinances, all recorded covenants, and all rules and regulations and orders of any duly constituted authority, present or future, which affect the conduct of the Tenant's activities on the Premises.

2.10. The Tenant agrees to use the Premises at least an annual average of eight (8) hours per week. Exceptions may be made by the Arts Council in case of special circumstances. The Tenant further agrees to advise the Arts Council in writing of the Tenant's use of the Premises and to advise the Arts Council in writing in advance of any public activities or performances the Tenant plans to conduct in the Premises.

2.11. Resident Arts Organizations must be tax exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding section of any future federal tax code.

2.12. If the Tenant is not allowed access to the Premises for a period of no more than ten (10) calendar days, for reason of health and safety, in the Arts Council's sole reasonable discretion, such denial of access shall not constitute or be deemed a constructive eviction. For each full day that the Tenant is denied access to the Premises, there will be a pro rata deduction in the next monthly rent payable by Tenant upon the resumption of Tenant's access to the Premises. The Arts Council shall notify the Tenant of the amount and method of deduction within ten (10) calendar days of the resumption by Tenant of access to the Premises.

2.13. At the beginning of the fiscal year (July 1) if the Tenant offers classes or other public activities in the Premises, the Tenant will provide the Arts Council with an annual schedule of such classes and public activities. In addition, the Tenant will provide the Arts Council with a written report at the end of the fiscal year (June 30),

indicating the total number of class or activity participants and a brief summary of activities.

2.14. If the Tenant's lease is renewed on a probationary basis after the initial review period referred to in Section 3.4. below ("probationary lease") the Tenant must provide the Arts Council with monthly summaries of the Tenant's studio usage, including hours worked and a basic narrative of studio activities, for the duration of the probationary lease. The reports are due to the Arts Council within seven days of the close of the month. If the Tenant is not meeting the 8-hour usage requirement of the probationary period the Tenant must submit a monthly status report to the Arts Council and indicate the timeframe for becoming compliant.

SECTION 3 - TERM

3.1. The term of this Lease shall commence on _____ and shall terminate 11:59 o'clock p.m. local time on _____ (hereinafter referred to as the "Term").

3.2. Any termination of the Master Lease between the Arts Council and the County or any restriction subsequently placed by the County which would preclude the Arts Council from leasing all or part of the Premises to the Tenant will operate as a termination of this Lease, and the Arts Council shall not be liable for any damages to the Tenant for any such termination.

3.3. Tenant may, upon thirty (30) days' notice, terminate this Lease before the actual termination date set forth above, provided that in that event the Tenant shall forfeit the Security Deposit to the Arts Council; and provided further that the rent must be paid in full through the date of such termination, including the last day of occupation in the studio, which shall be no less than thirty (30) days after notice is given to vacate; and provided further that Tenant shall surrender the Premises to Arts Council in their original condition, normal wear and tear excepted; and provided further that such termination shall not release Tenant from any other obligation or liability to Arts Council, including, without limitation, liability to Arts Council for any breach of this Lease that has occurred up to the date of termination.

3.4. Leases for all new Howard County Center for the Arts tenants are subject to an initial review period of six (6) months. At the conclusion of the sixth month, Tenant will be reviewed for compliance with the performance or observance of all covenants and agreements of this Lease. Should the Arts Council determine, in its sole discretion, that Tenant is not compliant with such covenants and agreements, Tenant will either be granted a probationary lease or considered in "Default," under the terms of this Lease. In the latter instance, the Arts Council may move forward as specified under Section 10 of this Lease.

SECTION 4 - RENT

4.1. Tenant covenants and agrees to pay the Arts Council, as rental for the Premises, a rental of _____ per annum from _____, 20____ through _____, 20____ payable in twelve (12) equal monthly installments of _____ in advance on the first day of each full calendar month during the Term; the first such payment to include also any prorated rental for the period from the date of the commencement of the Term to the first day of the first full calendar month in the Term.

4.1.2 The Arts Council reserves the right to increase the annual rate of rent by not less than 1% and not more than 5% of the annual rate of rent for the fiscal year immediately preceding the fiscal year for which such increase in the annual rate of rent is determined. Rent will be paid during each such fiscal year in equal consecutive monthly installments, in advance, on the first day of each calendar month during such fiscal year. Annual rental rate increases will be determined by the Arts Council in its sole, absolute, and unquestioned discretion. Tenant will be notified in writing as to the exact amount of increase by no less than thirty (30) days prior to the effective date of the proposed increase.

4.1.3 All rent payable by Tenant to the Arts Council under this Lease shall be paid to the Arts Council at the Management Office of the Howard County Center for the Arts, or as the Arts Council may otherwise designate. Tenant will promptly pay all rent herein prescribed when and as the same shall become payable and due.

4.2 The Tenant shall promptly pay all other sums of money to be paid by the Tenant hereunder, all of which sums shall be deemed additional rent hereunder, when and as the same shall become due and payable.

4.3 All payments of rent shall be made and paid to the Arts Council without notice or demand. The extension of any time or times for payment of any installment or installments of rent shall not be deemed a waiver or release of the rights of the Arts Council to insist on having any or all of said payments of said rent made in the manner and at the time herein specified.

4.4 Anything in this Lease to the contrary notwithstanding, at the Arts Council's option, the Tenant shall pay, as additional rent, a "late charge" of six percent (6%) of any installment of rental (or any rental under this Lease) when paid more than five (5) days after the due date thereof, to cover the extra expense involved in handling delinquent payments.

4.5 Tenant will deposit with the Arts Council as a Security Deposit the sum equal to one month's rent, which shall be held as part of the Arts Council's general

funds and which, at the termination of the tenancy, the Arts Council may retain and apply, as full or partial payment for (a) payment of the rent in default or other monies in arrearage or otherwise owing to the Arts Council, and/or to the damages and costs incurred by the Arts Council as a result of any other Default hereunder, and/or to costs incurred by the Arts Council in rectifying such Default, and (b) any damages to the Premises other than such as may be caused by ordinary wear and tear, damage by fire, or other casualties not occurring through the Tenant, or the Tenant's agents or invitees. The portion of the Security Deposit not so retained and applied will be refunded to the Tenant within fifteen (15) days after the Tenant has terminated possession of the Premises and the Arts Council has inspected the Premises. In the event this Lease shall be terminated prior to the expiration date set forth herein, other than by written agreement of the parties, by virtue of the procedure identified in Section 3.3. of this Lease for early termination with notice, the Security Deposit may be retained by the Arts Council as liquidated damages for the premature termination, without regard to or diminution of the Arts Council's rights regarding any other obligation of the Tenant hereunder and in addition to the Arts Council's rights contained herein or otherwise allowed by law. The Arts Council has elected at this time to keep the studio rental Security Deposits in a separate account bearing 4% simple, not compounded, interest for the Term.

SECTION 5 - IMPROVEMENTS

The Premises have been inspected by the Tenant who accepts same as existing in their present "AS IS" condition. The Tenant shall not make any alteration, addition, or improvement to the Premises (including, but not limited to, painting of walls, installation of phones and other utilities, and installation of signs and fixtures) without first obtaining the Arts Council's written consent thereto except general maintenance or temporary signs and fixtures connected with art activities. If the Arts Council consents to any such proposed alteration, addition, or improvement; it shall be made at the Tenant's sole expense and Tenant shall indemnify and hold the Arts Council harmless from any and all costs and claims resulting therefrom, including reasonable attorneys' and experts' fees and court costs. Tenant shall not do or permit any encumbrance of the Premises or the Building or the property on which the Building is situated by any mechanic's lien and if a mechanic's lien is filed against the Property, Tenant shall discharge or bond such lien within ten (10) days of the date an order is entered. In any event, at or before the expiration of the Term, Tenant shall restore the Premises to as good condition as when delivered to Tenant, normal wear and tear excepted. All fixtures shall remain the property of the Arts Council.

SECTION 6 - COMMON AREAS

6.1. In addition to the Premises, Tenant shall have the right of nonexclusive use, in common with others, of automobile parking areas, driveways and footways, common stairways, lobbies, restrooms, common hallways, and other portions of the Building and property which, by nature, are manifestly designed and intended for

common use by the occupants of and visitors to the Building; subject to such reasonable rules and regulations as prescribed from time to time by Arts Council.

6.2. Tenant shall neither distribute nor duplicate keys to the outside doors or to closets or other locked spaces located in the Building to anyone without the prior written approval of the Arts Council. The names, addresses, and telephone numbers of any persons desiring such keys must be submitted to the Arts Council before said approval will be given. Fees may be charged for keys.

SECTION 7 - UTILITIES

7.1. The County, in accordance with the "Master Lease," is obligated to provide, subject to the availability of the County's funds for the Building, the following services to or for the benefit of the Premises:

(a) heating during the season of the year in which it is necessary for the occupancy of the Premises, electricity, and water, all between 8:30 a.m. and 10:30p.m., Monday through Friday, and between 9:00 a.m. and 5:00 p.m. on Saturday (in each case except for legal holidays), of each week during the Term.

(b) janitorial service in common areas and building maintenance, subject to the County budgetary constraints. The Tenant is responsible for cleaning services in the Premises.

(c) trash removal service, subject to the County's budgetary constraints.

In the event that the County shall be unable to provide the above services because of the County's budgetary constraints, or for any reason whatsoever, the Arts Council shall be under no obligation to provide said services.

7.2 The Tenant shall not, without first obtaining the Arts Council's written consent thereto, install within the Premises any electrical machinery or equipment (including, by way of example rather than of limitation, any air-conditioning, electrical heating, cooking, water-heating, kiln, kitchen, photocopying or refrigeration equipment) which (a) uses electrical current exceeding 10 amperes at 110 volts, or (b) in any way increases the amount of electricity consumed upon the Premises. The Tenant shall pay periodically any additional expense incurred by the Arts Council as a result of any such installation of equipment including that resulting from any such increase in electric consumption.

7.3 The Arts Council shall not be liable to the Tenant and there shall be no allowance for the Tenant for a diminution of rental value or abatement of rent for any failure, modification or interruption of any such service.

SECTION 8 - RIGHT OF ENTRY

The Arts Council and representatives of the County shall be entitled to enter the Premises at any time without notice during the Arts Council's business or public hours and at any other reasonable time (a) during a public viewing, (b) to inspect the Premises, (c) to exhibit the Premises to any existing or prospective purchaser or tenant thereof, (d) to make any alteration, improvement or repair to the Building or the Premises, or (e) for any other purpose relating to the operation or maintenance of the Building; provided, that the Arts Council shall use reasonable efforts to avoid thereby interfering more than is reasonably necessary with the Tenant's use and enjoyment thereof.

SECTION 9 - ENVIRONMENTAL MATTERS

9.1. The Tenant shall not (either with or without negligence) (a) cause or permit the escape, disposal or release of any "hazardous substance" or pollutant as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 96701 et seq., in a manner that violates any Federal, State, County or municipal laws, ordinances or regulations, or (b) without the prior written consent of the Arts Council, allow the storage, handling, disposal or use of such substances or materials in any manner that violates any regulations. The term "hazardous substance" does not include small quantities of supplies normally found in a typical office setting.

9.2. The Tenant shall notify the Arts Council if, at any time after the Tenant is granted a lease, Tenant's artistic media changes to one that may be dangerous or perceived as dangerous to the health or safety of other tenants or visitors to the facility, or judged by the Arts Council, at its sole discretion, to be inappropriate for the facility due to health or safety concerns.

9.3. The Arts Council may require the Tenant to provide special storage and handling of any and all potentially hazardous materials stored or used by the Tenant in the Premises. Any such materials will be identified by the Arts Council and at its sole discretion. If Arts Council requires any such special storage or handling, it shall be provided at the Tenant's sole expense and the Tenant shall indemnify, defend and hold the Arts Council harmless from any costs and all claims resulting therefrom, including reasonable attorneys' and experts' fees and court costs.

SECTION 10 - DEFAULT

10.1. Any one or more of the following events shall constitute a "Default" under the terms of this Lease:

(a) The sale of the Tenant's interest in the Premises under attachment, execution or similar legal process, or if the Tenant is adjudicated as bankrupt or insolvent under any state bankruptcy or insolvency law.

(b) The commencement of a case under any chapter of the Federal Bankruptcy code by or against the Tenant or any guarantor of the Tenant's obligations hereunder or the filing of a voluntary or involuntary petition proposing the adjudication of the Tenant as bankrupt or insolvent.

(c) The appointment of a receiver or trustee for the business or property of the Tenant.

(d) The failure of the Tenant to pay any rental or other sum of money within five (5) days after the same is due hereunder.

(e) Default by the Tenant in the performance or observance of any covenant or agreement of this Lease (other than a default involving the payment of money), which Default is not cured within a ten (10) day period after the giving of notice thereof by the Arts Council, unless such default is of such a nature that it cannot be cured within such ten (10) day period, in which case no Default shall occur so long as Tenant shall commence the curing of same within such ten (10) day period and shall thereafter diligently prosecute the curing of same.

(f) The vacation or abandonment of the Premises by Tenant at any time following delivery of possession of the Premises to the Tenant.

(g) Any violation of or nonconformance with the terms of Section 2 of this Lease.

(h) Any violation or nonconformance with the Arts Council and the Howard County Center for the Arts' General Rules & Regulations currently in effect.

10.2. Upon the occurrence of a "Default," Arts Council, without notice to Tenant in any instance, may do any one or more of the following:

(a) Enter the Premises and take possession of any and all goods, inventory, equipment, fixtures and all other personal property of the Tenant, which is or may be put into the Premises during the Term, and the Arts Council may sell all or any part thereof at public or private sale. The Tenant agrees that five (5) days prior notice of any public notice of any public or private sale shall constitute reasonable notice. The proceeds of any such sale shall be applied first toward the cost of conducting such sale or caring for or storing said property (including reasonable attorneys' fees); second, toward the payment of any indebtedness for rental which may be or may become due from the Tenant to the Arts Council; and third, to pay the Tenant, on demand, any surplus remaining after all indebtedness of the Tenant to the Arts Council has been fully paid.

(b) Elect to terminate this Lease and the tenancy created hereby giving notice of such election to Tenant, and reenter the Premises.

(c) Perform, on behalf and at the expense of the Tenant, any obligation of the Tenant under this Lease that the Tenant has failed to perform and of which the Arts Council shall have given the Tenant notice.

(d) Exercise any other legal or equitable right or remedy which it may have.

10.3. Any costs and expenses incurred by Arts Council (including without limitation, reasonable attorneys' fees and experts' fees and court costs in enforcing any of its rights or remedies under this Lease) shall be deemed to be additional rent and shall be repaid to the Arts Council by the Tenant upon demand. The Tenant hereby agrees to indemnify and hold harmless the Arts Council from and against any liability, damage, cost or expense (including, without limitation reasonable attorneys' fees and experts' fees and court costs) rising from or connected with any Default and any of the foregoing remedies exercised by the Arts Council.

SECTION 11 - REMEDIES CUMULATIVE

No mention in this Lease of any specific right or remedy shall preclude the Arts Council from exercising any other right or from having any other remedy, or from maintaining any action to which it may otherwise be entitled either at law or equity; and the failure of the Arts Council to insist in any one or more instances upon a strict performance of any covenant of this Lease or to exercise any option or right herein contained shall not be construed as a waiver or relinquishment for the future of such covenant, right or option, but the same shall remain in full force and effect unless the contrary is expressed in writing by the Arts Council.

SECTION 12 - INSURANCE

12.1. The Tenant will keep in force at its own expense so long as this Lease remains in effect, a policy of general liability insurance with respect to the Tenant's operations on the premises in a form acceptable to the Arts Council, with a minimum policy limit of One Million Dollars (\$1,000,000) Combined Single Limit per occurrence. The policy shall name both the Arts Council and Howard County, MD, their elected and appointed officials, officers, employees and authorized volunteers as Additional Insured as their interests may appear and shall provide that the Arts Council will be given notice at least ten (10) days in advance of any termination of such insurance for any cause. Evidence of insurance shall be provided to the Arts Council prior to occupancy and at the time of each policy renewal thereafter during the Term.

12.2. It is expressly understood and agreed that neither the County nor the Arts Council will be responsible for any property of the Tenant or any of Tenant's improvements or betterments to the Premises that are lost, damaged or destroyed by any cause whatsoever. The Tenant shall carry adequate insurance to cover its

property and any non-owned property for which the Tenant is responsible. The Tenant agrees to waive any claims against the Arts Council and the County for loss of the Tenant's property and any consequential loss resulting therefrom and further agrees to indemnify the Arts Council and the County for any claims made by the owner of property for which the Tenant had possession or responsibility.

12.3. If either party hereto is paid any proceeds under any policy of property insurance naming such party as an insured, on account of any loss or damage, then such party's insurer shall release the other party hereto, to the extent of the amount of such proceeds, from any and all liability for such loss or damage, notwithstanding that such loss, damage or liability may arise out of the negligent or intentionally tortious act or omission of the other party, its agents or employees. Each party hereto shall use reasonable efforts to have a clause to such effect included in its property insurance policy or to obtain an endorsement in which the insurer waives all of its rights of subrogation against the party that is not the insured party, and shall promptly notify the other in writing if such clause cannot be included in any such policy or if such an endorsement cannot be obtained.

12.4. Neither party will be liable to the other party for any consequential damages including but not limited to loss of revenue or profits resulting from any damage to or interference with the operation of facilities no matter what the cause of damage or loss.

12.5. The Tenant will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the building that is considered hazardous or may increase the risk of fire or explosion without written permission of the Arts Council.

SECTION 13 - INDEMNITY

Tenant will defend and indemnify the Arts Council and the County hold them harmless from and against any and all claims, actions, damages, liability and expense, including reasonable attorneys' fees and experts' fees and court costs, in connection with loss of life, personal injury and/or damage to property arising from or out of the occupancy or use by the Tenant of the Premises or any part thereof or any other part of the Arts Council's property, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractor, invitees or employees.

SECTION 14 - NO ASSIGNMENTS OR SUBLETTING

Tenant will not assign this Lease in whole or part, nor sublet all or any part of the Premises for any duration, without the written consent of the Arts Council first obtained. Such consent may be withheld in the sole and absolute subjective discretion of the Arts Council. Consent by the Arts Council to any assignment or subletting shall

not constitute a waiver of the necessity for such consent to any subsequent assignment of subletting. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law.

SECTION 15 - CASUALTY

In the event of fire or other casualty, the Arts Council shall have no obligation with respect to repair of the Premises if the County does not undertake the repairs under the provisions of the Master Lease. Other rights of the Tenant in the case of fire or casualty shall be subject to the rights and elections of the Arts Council under the Master Lease. If there is any abatement of rent under the Master Lease as a result of fire or casualty, the Tenant shall enjoy the same percentage of abatement with respect to the Premises as may be enjoyed by Arts Council, except that there shall be no abatement if the damage was caused by the Tenant, its employees or invitees.

SECTION 16 - MASTER LEASE

This is a sublease, which is subordinate to the Master Lease. The Arts Council's interest in the Premises is as the tenant under the Master Lease. In addition to (and not in limitation of) the covenants, conditions and restrictions contained in this Lease, the Tenant will be bound by and will honor the terms, conditions and restrictions of the Master Lease as they would apply if the Tenant were the tenant under the Master Lease and the Arts Council were the landlord. Tenant shall neither do nor permit anything to be done which would cause the Master Lease to be breached by the Arts Council or which would otherwise cause the Master Lease to be terminated. The Arts Council shall have all of the rights, privileges and remedies hereunder with respect to the Premises and the Tenant which the County has under the Master Lease with respect to the Premises and the Arts Council. Tenant acknowledges that it has read and understands the provisions of the Master Lease.

SECTION 17 - SUBORDINATION

Tenant accepts this Lease and the leasehold interest of Tenant in the Premises subject and subordinate to the operation and effect of all mortgages, deeds of trust, security agreements and other liens and encumbrances now or hereafter placed by the Arts Council or the County upon the leasehold or fee interest in the Premises, the Building or the property on which the Building is situated, and the improvements, fixtures, equipment or other property thereon. The Tenant shall execute, acknowledge and deliver to the Arts Council or the County, as the case may be, such instruments and documents, and shall name the holders as additional insured under any insurance policies affecting the Premises, as shall be required or desired by, and in form satisfactory to, the holders of such liens or encumbrances.

SECTION 18 - ATTORNMENT

Upon foreclosure or sale under any mortgage or deed of trust to which this Lease and the leasehold interest of the Tenant in the Premises is now or shall ever become subject and subordinate, or upon any sale or conveyance of any part or all of the Building, or any assignment of this Lease by the Arts Council, the Tenant shall attorn to the mortgagee, purchaser, the County or assignee of the Arts Council's interest, as the case may be, and the Tenant shall, after prior notice to the Tenant pay to such party all rent required to be paid by the Tenant hereunder and shall perform all of the other terms, covenants, conditions and obligations of the Tenant hereunder.

SECTION 19 - TENANT'S ESTOPPEL CERTIFICATE

The Tenant shall from time to time, upon at least ten (10) days' prior written notice by the Arts Council or the County, execute, acknowledge and deliver to the Arts Council or the County, a written statement certifying that this Lease is unmodified and in full force and effect, the dates to which the rent and other charges have been paid, and whether or not to the best of the Tenant's knowledge the Arts Council is in default hereunder (and if so, specifying the nature of the default).

SECTION 20 - ARTS COUNCIL'S LIABILITY

Subject to the waiver of subrogation contained in Section 12.3. of this Agreement which shall control in cases of loss or damage arising out of causes of loss insured against or that could have been insured against by a policy of property insurance, the Arts Council shall not be liable or responsible in any way for any injury to person or damage to or loss or theft of property sustained in or about the Premises however the same may be caused, unless due to the Arts Council's own willful or negligent act. Tenant absolves and releases the Arts Council and the County from damage to person or property caused by breakage of glass, or by leaks, breaks or overflow of roof, pipes, drains or plumbing fixtures, or by falling plaster, imperfect wiring or construction.

SECTION 21 - RULES AND REGULATIONS

The Tenant shall observe and comply with all reasonable rules and regulations as the Arts Council may prescribe on written notice to the Tenant, for the safety, care and cleanliness of the Building and the comfort and convenience of other occupants of and visitors to the Building.

SECTION 22 - SUCCESSORS OR ASSIGNS

This Lease and the covenants and conditions herein contained shall inure to the

benefit of and be binding upon the Arts Council, its successors and assigns, and shall be binding upon the Tenant, its successors and assigns, and shall inure to the benefit of the Tenant and only such assigns of the Tenant to whom the assignment by the Tenant has been consented to by the Arts Council.

SECTION 23 - NOTICES

23.1 All notices or other communications pursuant to this Lease shall be in writing and shall be deemed to have been duly given or made when personally delivered in writing or when mailed by United States certified or registered mail, postage prepaid, return receipt requested, or by overnight delivery service (including United States Express Mail) with receipt acknowledged and with all charges prepaid by the sender, to the following address:

To Arts Council:

The Howard County Arts
Council
Howard County Center for the
Arts 8510 High Ridge Road
Ellicott City, Maryland 21043

To Tenant:

Tenant's Name: _____

Howard County Center for the Arts
Studio # _____
8510 High Ridge Road Ellicott
City, Maryland 21043

Either party may, at any time or from time to time, designate in writing a substitute address from the above set forth, and thereafter notices shall be directed to such substitute address.

23.2. It is understood and agreed that the Tenant shall have an emergency file in the management office of the Building. Said file will include address and telephone numbers at which the Tenant can be reached in case of an emergency, and a statement of the Tenant's liability insurance coverage and certification that coverage is in effect for the duration of this Lease.

SECTION 24 - APPLICABLE LAW

This Lease shall be construed under the laws of the State of Maryland. The parties hereby consent to the jurisdiction and venue of the federal and state courts of the State of Maryland with respect to any matter arising from this Lease.

SECTION 25 - CAPTIONS AND HEADINGS

The captions and headings throughout this Lease are for convenience and reference only and words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions or the scope or intent of this Lease nor in anyway affect this Lease.

SECTION 26 - NO MODIFICATION

This writing and the provisions of the Master Lease are intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms hereof, all negotiations, considerations and representations between the parties having been incorporated herein. This Lease can only be modified in writing and signed by all parties hereto or their duly authorized agents.

SECTION 27 - PARTIAL INVALIDITY

If any provision of this Lease shall for any reason be held invalid or unenforceable by any court, governmental agency or arbitrator, of competent jurisdiction, such invalidity or unenforceability shall not affect any other provision hereof, but this Lease shall be construed as if such invalid or unenforceable provision had never been contained herein.

SECTION 28 - NO PARTNERSHIP OR AGENCY

The Arts Council shall in no event be construed or held to be the partner or co-venturer of the Tenant in the conduct of the Tenant's business, nor shall the Arts

Council be liable for any debts incurred by the Tenant in the conduct of the Tenant's business, it being understood and agreed that the relationship shall at all times remain solely that of landlord and tenant.

SECTION 29 - TIME OF ESSENCE

Time shall be of the essence with respect to each and every term, obligation and covenant contained in this Lease to be performed on the part of the Tenant.

SECTION 30 - EQUAL INTERPRETATION

This Lease has been prepared by the Arts Council and reviewed by the Tenant and the Tenant's own legal counsel. The parties agree that this Lease should not be interpreted in favor of either party merely because of its preparation by the Arts Council.

SECTION 31 - WAIVER OF JURY TRIAL

THE TENANT HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, OR ANY OF ITS PROVISIONS, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM OF INJURY OR DAMAGE.

SECTION 32 - TAXES OR OTHER CHARGES

In the event that any real property, front-foot benefit, metropolitan district, or other taxes or public or private assessments (hereinafter referred to as "Taxes") are levied against the Building or the property upon which the Building is situated, Tenant shall pay Tenant's share of such Taxes computed by multiplying the Tenant's percentage of leased space in the Building by the amount of Tax.

SECTION 33 - TENANT AT WILL

If the Tenant holds possession of the Premises after the termination of this Lease, Tenant shall become a tenant from month to month at the same rent and upon all other terms herein specified. Nothing contained in this Lease shall be construed to be consent by the Arts Council to the occupancy or possession of the Premises by the Tenant after termination of this Lease. If Tenant shall hold over after the

expiration of the Term and after the Arts Council has given written notice to the Tenant to vacate the Premises, then the Tenant shall become a tenant from month to month upon the terms herein specified, except that the rent shall be at the rate of One Hundred Fifty Percent (150%) of the rental set forth herein (pro-rated on a monthly basis).

IN WITNESS WHEREOF, the parties hereto have executed this Lease under their respective seals as of the day and year first above written.

ATTEST:

**ARTS COUNCIL:
THE HOWARD COUNTY ARTS COUNCIL,
INC.**

By: _____

Name: _____

Title: _____

Date: _____

(TENANT):

By: _____

Name: _____

Date: _____

EXHIBIT D

Howard County Charter Section 901. - Conflict of interest.

(a) **Prohibitions.** No officer or employee of the County, whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefit of the profits or emoluments of any contract, job, work, or service for the County. No such officer or employee shall accept any service or thing of more than nominal value, directly or indirectly, from any person, firm or corporation having dealings with the County, upon more favorable terms than those granted to the public generally, nor shall he or she receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable by the County, or by any person in connection with any dealings with the County, or by any person in connection with any dealings with or proceedings before any branch, office, department, board, commission or other agency of the County. No such officer or employee shall directly or indirectly be the broker or agent who procures or receives any compensation in connection with the procurement of any type of bonds for County officers, employees or persons or firms doing business with the County. No such officer or employee shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his or her public work; provided, however, that the head of any department or board of the County may permit an employee to receive a reward publicly offered and paid for, for the accomplishment of a particular task.

(b) **Rules of construction; exceptions by Council.** The provisions of this Section shall be broadly construed and strictly enforced for the purpose of preventing officers and employees from securing any pecuniary advantages, however indirect, from their public associations, other than their compensation provided by law.

In order, however, to guard against injustice, the Council may, by resolution, specifically authorize any County officer or employee to own stock in any corporation or to maintain a business in connection with any person, firm or corporation dealing with the County, if on full public disclosure of all pertinent facts to the County Council by such officer or employee, the Council shall determine that such stock ownership or connection does not violate the public interest.

The County Council may, by ordinance, delegate to the Howard County Ethics Commission the power to make such determinations and to authorize the ownership or connection. Any ordinance which delegates this power shall provide for procedures including a public hearing, and shall establish criteria for determining when the ownership or connection does not violate the public interest.

(c) **Penalties.** Any officer or employee of the County who willfully violates any of the provisions of this Section shall forfeit his or her office, or shall suffer such other penalty as provided by law. If any person shall offer, pay, refund or rebate any part of any fee, commission, or other form of compensation to any officer or employee of the County in connection with any County business or proceeding, he or she shall, on conviction, be punishable by imprisonment for not less than one or more than six months or a fine of not less than \$100.00 or more than \$1,000.00, or both. Any contract made in violation of this Section may be declared void by the Executive or by resolution of the Council. The penalties in this Section shall be in addition to all other penalties provided by law.

Editor's note— An amendment to § 901(b) proposed by Res. No. 16, 1990 was approved at an election held Nov. 6, 1990, and became effective Dec. 6, 1990. Amendments proposed by Res. Nos. 122, 123, and 126, 1996 were approved at an election held Nov. 5, 1996, and became effective Dec. 5, 1996.

Howard County Code Sec. 22.204. - Prohibited conduct and interests. (a) *Participation Prohibitions.*

(1) Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

(i) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee or a qualified relative of the official or employee has an interest.

(ii) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

a. A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;

b. A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;

c. A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating or has any arrangement concerning prospective employment;

d. If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;

e. An entity, doing business with the County, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or

f. A business entity that:

1. The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and

2. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

(2) A person who is disqualified from participating under paragraph 1. of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:

(i) The disqualification leaves a body with less than a quorum capable of acting;

(ii) The disqualified official or employee is required by law to act; or

(iii) The disqualified official or employee is the only person authorized to act.

(3) The prohibitions of paragraph 1. of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.

(b) *Employment and Financial Interest Restrictions.*

(1) Except as permitted by regulation of the commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

(i) Be employed by or have a financial interest in any entity:

a. Subject to the authority of the official or employee or the County agency, board, commission with which the official or employee is affiliated; or

b. That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or

(ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

(2) The prohibitions of paragraph (1) of this subsection do not apply to:

(i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;

(ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;

(iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted and in accordance with regulations adopted by the Commission; or

(iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

(c) *Post-Employment Limitations and Restrictions.*

(1) A former official or employee may not assist or represent any party other than the County for compensation in a case, contract, or other specific matter involving the County if that matter is one in which the former official or employee significantly participated as an official or employee.

(2) For a year after the former member leaves office, a former member of the County Council may not assist or represent another party for compensation in a matter that is the subject of legislative action.

(d) *Contingent Compensation.* Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the County.

(e) *Use of Prestige of Office.*

(1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.

(2) This subsection does not prohibit the performance of usual and customary constituent services by an elected official without additional compensation.

(f) Solicitation and Acceptance of Gifts.

(1) An official or employee may not solicit any gift.

(2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.

(3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has the reason to know:

(i) Is doing business with or seeking to do business with the County office, agency, board or commission with which the official or employee is affiliated;

(ii) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;

(iii) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or

(iv) Is a lobbyist with respect to matters within the jurisdiction of the official or employee.

(4) (i) Subsection (4)(ii) does not apply to a gift:

a. That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;

b. Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or

c. Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.

(ii) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:

a. Meals and beverages consumed in the presence of the donor or sponsoring entity;

b. Ceremonial gifts or awards that have insignificant monetary value;

c. Unsolicited gifts of nominal value that do not exceed \$20.00 in cost or trivial items of informational value;

d. Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;

e. Gifts of tickets or free admission extended to an elected official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;

f. A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the County and that the gift is purely personal and private in nature;

g. Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee; or

h. Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is not related, in any way, to the official's or employee's official position.

(g) Disclosure of Confidential Information. Other than in the discharge of official duties, an official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the official's or employee's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.

(h) Participation in Procurement.

(1) An individual or a person that employs an individual who assists a County, agency or unit in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement, may not submit a bid or proposal for that procurement, or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement.

(2) The Commission may establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring agency.

(C.B. 50, 2011, § 1)