

**REQUEST FOR BOARD ACTION**  
**HENDERSON COUNTY**  
**BOARD OF COMMISSIONERS**

**MEETING DATE:** November 4, 2019  
**SUBJECT:** Approval of lease to Hola Community Arts  
**PRESENTER:** Charles Russell Burrell  
**ATTACHMENT(S):** Proposed Lease

**SUMMARY OF REQUEST:**

Pursuant to N.C. Gen. Stat. §160A-272(a1), the Board was required to give notice of its intent to lease property to Hola Community Arts. (No public hearing is required, but notice is required prior to entering the lease.) Notice was published in the Hendersonville Lightning on October 2, 2019, and this matter appeared on the Board's agenda on October 7, 2019.

This matter is now on for final approval of the lease.

County staff will be present and prepared if requested to give further information on this matter.

**BOARD ACTION REQUESTED:**

Final lease approval.

If the Board is so inclined, the following motion is suggested:

*I move that the Board approve the proposed lease.*

## LEASE AGREEMENT

THIS LEASE (this "Lease") is dated this 8th day of October, 2019, between the County of Henderson, a body corporate and politic of North Carolina of 1 Historic Courthouse Square, Hendersonville, NC 28792, Telephone: (828) 697-4884 (the "Landlord"), and Hola Community Arts, a North Carolina non-profit corporation whose address during the term of this agreement shall be 801 Fourth Avenue East, Suite 1, Hendersonville, NC 28792 (the "Tenant").

IN CONSIDERATION OF the Landlord leasing certain premises to the Tenant, the Tenant leasing those premises from the Landlord and the mutual benefits and obligations set forth in this Lease, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties to this Lease (the "Parties") agree as follows:

### *Basic Terms*

1. The following basic terms are hereby approved by the Parties and each reference in this Lease to any of the basic terms will be construed to include the provisions set forth below as well as all of the additional terms and conditions of the applicable sections of this Lease where such basic terms are more fully set forth:

- a. Landlord: County of Henderson, a body corporate and politic of North Carolina.
- b. Landlord's Address: 1 Historic Courthouse Square, Hendersonville, NC 28792
- c. Tenant: Hola Community Arts, a North Carolina non-profit corporation
- d. Tenant's Address: 801 Fourth Avenue East, Suite 1, Hendersonville, NC 28792
- e. Commencement Date of Lease: October 8, 2019
- f. Rent:
  - (1) Leasehold improvements (described in Paragraph 23, below);
  - (2) One (1) full-page advertisement in Hola Carolina magazine per month for Henderson County Parks and Recreation Department, each month this lease (and any renewal thereof) is in effect;
  - (3) bilingual outreach support at six Landlord (Henderson County Parks and Recreation Department) events per year for Henderson County Parks and Recreation Department, each year this lease (and any renewal thereof) is in effect; and,
  - (4) translation of Henderson County Parks and Recreation Department documents into Spanish as requested by Landlord.

### *Definitions*

2. When used in this Lease, the following expressions will have the meanings indicated:

- a. "Premises" means that part of the building and facilities from time to time located at 801 Fourth Avenue East, Suite 1, Hendersonville, NC 28792, as shown on the attached diagram;
- b. "Common Areas and Facilities" mean:
  - (1) those portions of the building in which the Premises is located which are not designated or intended by the Landlord to be leased to Tenant, including, without limitation, exterior weather walls, roofs, entrances and exits, parking areas, driveways, loading docks and area, storage, mechanical and electrical rooms, areas above and below leasable premises and not included within leasable premises, security and alarm equipment, grassed and landscaped areas, retaining walls and maintenance, cleaning and operating equipment serving the Building; and
  - (2) those lands, areas, buildings, improvements, facilities, utilities, equipment and installations which serve or are for the useful benefit of the Building, the tenants of the Building or the Landlord and those having business with them, whether or not located within, adjacent to or near the Building and which are designated from time to time by the Landlord as part of the Common Areas and Facilities;

### *Leased Premises*

3. The Landlord agrees to rent to the Tenant the Premises for only the permitted use (the "Permitted Use") of: Office space, meeting space, and use for Visual Arts, Gallery Exhibitions, Events, Performances, and Educational Classes. However, Tenant will not permit use of the space for political (partisan or non-partisan) purposes (as noted below).

4. Subject to the provisions of this Lease, the Tenant is entitled to the use of parking (the 'Parking') on or about the Premises. Only properly insured motor vehicles may be parked in the Tenant's space.

5. The Landlord reserves the right in its reasonable discretion to alter, reconstruct, expand, withdraw from or add to the Building from time to time. In the exercise of those rights, the Landlord undertakes to use reasonable efforts to minimize any interference with the visibility of the Premises and to use reasonable efforts to ensure that direct entrance to and exit from the Premises is maintained.

6. The Landlord reserves the right for itself and for all persons authorized by it, to erect, use and maintain wiring, mains, pipes and conduits and other means of distributing services in and through the Premises, and at all reasonable times to enter upon the Premises for the purpose of installation, maintenance or repair, and such entry will not be an interference with the Tenant's possession under this Lease.

7. The Landlord reserves the right, when necessary by reason of accident or in order to make repairs, alterations or improvements relating to the Premises or to other portions of the Building to cause temporary obstruction to the Common Areas and Facilities as reasonably necessary and to interrupt or suspend the supply of electricity, water and other services to the Premises until the repairs, alterations or improvements have been completed. There will be no abatement in rent because of such obstruction, interruption or suspension provided that the repairs, alterations or improvements are made as expeditiously as is reasonably possible.

8. Subject to this Lease, the Tenant and its employees, customers and invitees will have the nonexclusive right to use for their proper and intended purposes, during business hours in common with all others entitled thereto those parts of the Common Areas and Facilities from time to time permitted by the Landlord. The Common Areas and Facilities and the Building will at all times be subject to the exclusive control and management of the Landlord. The Landlord will operate and maintain the Common Areas and Facilities and the Building in such manner as the Landlord determines from time to time.

#### *Term*

9. The term of the Lease commences at 12:00 noon on October 8, 2019 and ends at 12:00 noon on June 30, 2020 (the "Term").

10. Should the Tenant remain in possession of the Premises with the consent of the Landlord after the natural expiration of this Lease and any renewals thereof as specified herein, a new tenancy from month to month will be created between the Landlord and the Tenant which will be subject to all the terms and conditions of this Lease but will be terminable upon either party giving one month's notice to the other party.

#### *Rent*

11. Subject to the provisions of this Lease, the Tenant will pay the rent specified in 1.f., above, without setoff, abatement or deduction.

12. No acceptance by the Landlord of any amount less than the full amount owed will be taken to operate as a waiver by the Landlord for the full amount or in any way to defeat or affect the rights and remedies of the Landlord to pursue the full amount.

#### *Use and Occupation*

13. The Tenant will open the whole of the Premises for business to the public fully fixtured, stocked and staffed on the date of commencement of the Term and throughout the Term and any renewals thereof, and will continuously occupy and utilize the entire Premises in the active conduct of its business in a reputable manner on such days and during such hours of business as may be determined from time to time by the Landlord.

14. The Tenant covenants that the Tenant will carry on and conduct its business from time to time carried on upon the Premises in such manner as to comply with all statutes, bylaws, rules and regulations of any federal, state, municipal or other competent authority and will not do anything on or in the Premises in contravention of any of them.

#### *Quiet Enjoyment*

15. The Landlord covenants that on paying the Rent and performing the covenants contained in this Lease, the Tenant will peacefully and quietly have, hold, and enjoy the Premises for the agreed term.

#### *Default*

16. If the Tenant is in default in the payment of any money, whether hereby expressly reserved or deemed as rent, or any part of the rent, and such default continues following any specific due date on which the Tenant is to make such payment, or in the absence of such specific due date, for the 30 days following written notice by the Landlord requiring the Tenant to pay the same then, at the option of the Landlord, this Lease may be terminated upon 30 days notice and the term will then immediately become forfeited and void, and the Landlord may without further notice or any form of legal process immediately reenter the Premises or any part of the Premises and in the name of the whole repossess and enjoy the same as of its former state anything contained in this Lease or in any statute or law to the contrary notwithstanding.

17. Unless otherwise provided for in this Lease, if the Tenant does not observe, perform and keep each and every of the non-monetary covenants, agreements, stipulations, obligations, conditions and other provisions of this Lease to be observed, performed and

correct or comply or, in the case of such default which would reasonably require more than 60 days to rectify, unless the Tenant will commence rectification within the said 60 days notice period and thereafter promptly and diligently and continuously proceed with the rectification of any such defaults then, at the option of the Landlord, this Lease may be terminated upon 60 days notice and the term will then immediately become forfeited and void, and the Landlord may without further notice or any form of legal process immediately reenter the Premises or any part of the Premises and in the name of the whole repossess and enjoy the same as of its former state anything contained in this Lease or in any statute or law to the contrary notwithstanding.

#### *Inspections and the Landlord's Right to Enter*

18. During the Term and any renewal of this Lease, the Landlord and its agents may enter the Premises to make inspections or repairs at all reasonable times. However, except where the Landlord or its agents consider it is an emergency, the Landlord must have given not less than 24 hours prior written notice to the Tenant.

19. The Tenant acknowledges that the Landlord or its agent will have the right to enter the Premises at all reasonable times to show them to prospective purchasers, encumbrancers, lessees or assignees, and may also during the ninety days preceding the termination of the terms of this Lease, place upon the Premises the usual type of notice to the effect that the Premises are for rent, which notice the Tenant will permit to remain on them.

20. The Landlord may inspect the Tenant's goods on the Premises and the Tenant's records relating to those goods during normal business hours, with at least five (5) days' written notice, to identify the nature of the goods, compliance with this Lease, or compliance with any laws, regulations, or other rules.

#### *Renewal of Lease*

21. Upon giving written notice no later than 90 days before the expiration of the term (or renewal term) of this Lease, and with the express agreement of the Board of Commissioners of Henderson County, the Tenant may renew this Lease for one additional year (that is, the renewal term (and any subsequent renewal terms) would begin on July 1, and end on June 30). The Tenant may exercise this annual renewal up to four (4) times, each time subject to Board of Commissioners' approval, such that the entire tenancy under this lease could extend for five (5) years.

#### *Tenant Improvements*

22. The Tenant may make the leasehold improvements to the Premises, valued at \$10,000.00, including the following:

- a. Deep cleaning and pest control of the entire house.
- b. Gallery Lighting and additional electrical requirements (1st Floor Main Room, Entrance and 2X Small Rooms).
- c. Audio/Video Installation (1st Floor Main Room)
- d. Removal of existing reception desk and carpet (1st Floor Small Entrance Room)
- e. Flooring Restoration (1st Floor Main Room, Entrance and 2X Small Rooms)
- f. Cosmetic Improvements, such as wall repair, paint, trim, etc.
- g. Removal of wood stove (1st Floor Main Room)
- h. Decorative Improvements, such as window treatments, fixtures, etc. (1st Floor Main Room, Entrance and 2X Small Rooms).

In addition, the Tenant may made such other leasehold improvements to the Premises as the Landlord may agree.

23. The actual cost of Tenant Improvements (up to a maximum cost of \$10,000.00) may be reimbursed on a prorated basis (with a proration period of five years) if the Landlord does not approve any requested renewal of this lease by the Tenant. By way of example, if after year three (i.e., after the first Term plus two one-year renewals) the renewal for year four is not approved, forty percent of the actual cost of the Tenant Improvements would be reimbursed to the Tenant, such that if the cost of the Tenant Improvements was the \$10,000.00 maximum, \$4,000.00 would be reimbursed. In the case, however, where either the Lease is abandoned by the Tenant or no renewal is requested by the Tenant, then the Tenant shall not be entitled to any reimbursement of the actual cost of Tenant Improvements.

#### *Utilities and Other Costs*

24. The Landlord is responsible for the payment of the following utilities and other charges only in relation to the Premises: electricity, natural gas, water and sewer.

25. The Tenant is responsible for the direct payment of the following utilities and other charges in relation to the Premises: telephone, internet and cable television.

*Signs*

26. The Tenant may erect, install and maintain a sign of a kind and size in a location as first approved in writing by the Landlord. The Tenant will not erect, install or maintain any sign other than in accordance with this section.

*Insurance for Tenant's Property*

27. The Tenant is hereby advised and understands that the personal property of the Tenant is not insured by the Landlord for either damage or loss, and the Landlord assumes no liability for any such loss. The Tenant is advised that, if insurance coverage is desired by the Tenant, the Tenant should inquire of Tenant's insurance agent regarding a Tenant's policy of insurance.

*Tenant's Insurance*

28. The Tenant will, during the whole of the Term and during such other time as the Tenant occupies the Premises, take out and maintain the following insurance, at the Tenant's sole expense, in such form as used by solvent insurance companies in the State of North Carolina comprehensive general liability insurance against claims for bodily injury, including death, and property damage or loss arising out of the use or occupation of the Premises, or the Tenant's business on or about the Premises; such insurance to be in the joint name of the Tenant and the Landlord so as to indemnify and protect both the Tenant and the Landlord and to contain a 'cross liability' and 'severability of interest' clause so that the Landlord and the Tenant may be insured in the same manner and to the same extent as if individual policies had been issued to each, and will be for the amount of not less than \$1,000,000.00 combined single limit or such other amount as may be reasonably required by the Landlord from time to time; such comprehensive general liability insurance will for the Tenant's benefit only include contractual liability insurance in a form and of a nature broad enough to insure the obligations imposed upon the Tenant under the terms of this Lease.

29. The Tenant's policies of insurance hereinbefore referred to will contain the following:

- a. provisions that the Landlord is protected notwithstanding any act, neglect or misrepresentation of the Tenant which might otherwise result in the avoidance of claim under such policies will not be affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the insured(s);
- b. provisions that such policies and the coverage evidenced thereby will be primary and noncontributing with respect to any policies carried by the Landlord and that any coverage carried by the Landlord will be excess coverage;
- c. all insurance referred to above will provide for waiver of the insurer's rights of subrogation as against the Landlord; and
- d. provisions that such policies of insurance will not be cancelled without the insurer providing the Landlord thirty (30) days' written notice stating when such cancellation will be effective.

*Landlord's Insurance*

30. The Landlord will maintain and keep or cause to be kept in full force and effect during the whole of the Term:

- a. fire and extended coverage insurance on the Building, except foundations, on a replacement cost basis, subject to such deductions and exceptions as the Landlord may determine; such insurance will be in a form or forms normally in use from time to time for buildings and improvements of a similar nature similarly situate, including, should the Landlord so elect, insurance to cover any loss of rental income which may be sustained by the Landlord;
- b. boiler and machinery insurance of such boilers and pressure vessels as may be installed by, or under the exclusive control of, the Landlord in the Building (other than such boilers and pressure vessels to be insured by the Tenant hereunder); and
- c. comprehensive general liability insurance against claims for bodily injury, including death and property damage in such form and subject to such deductions and exceptions as the Landlord may determine; provided that nothing in this clause will prevent the Landlord from providing or maintaining such lesser, additional or broader coverage as the Landlord may elect in its discretion.

31. The Landlord agrees to request its insurers, upon written request of the Tenant, to have all insurance taken out and maintained by the Landlord provide for waiver of the Landlord's insurers' rights of subrogation as against the Tenant when and to the extent permitted from time to time by its insurers.

*Abandonment*

32. If at any time during the Term, the Tenant abandons the Premises or any part of the Premises, the Landlord may, at its option, enter the Premises by any means without being liable for any prosecution for such entering, and without becoming liable to the Tenant for damages or for any payment of any kind whatever, and may, at the Landlord's discretion, as agent for the Tenant, relet the Premises, or any part of the Premises, for the whole or any part of the then unexpired Term.

*Subordination and Attornment*

part of the Lands or Building, as now or later constituted, and to all advances made or afterwards made upon such security; and, upon the request of the Landlord, the Tenant will execute such documentation as may be required by the Landlord in order to confirm and evidence such subordination.

34. The Tenant will, in the event any proceedings are brought, whether in foreclosure or by way of the exercise of the power of sale or otherwise, under any other mortgage or other method of financing or refinancing made by the Landlord in respect of the Building, or any portion of the Building, attorn to the encumbrancer upon any such foreclosure or sale and recognize such encumbrancer as the Landlord under this Lease, but only if such encumbrancer will so elect and require.

35. Upon the written request of the Tenant, the Landlord agrees to request any mortgagee or encumbrancer of the Lands (present or future) to enter into a non-disturbance covenant in favor of the Tenant, whereby such mortgagee or encumbrancer will agree not to disturb the Tenant in its possession and enjoyment of the Premises for so long as the Tenant is not in default under this Lease.

#### *Tenant's Indemnity*

36. The Tenant will and does hereby indemnify and save harmless the Landlord, or any other person claiming through or under the Landlord, of and from all loss and damage and all actions, claims, costs, demands, expenses, fines, liabilities and suits of any nature whatsoever for which the Landlord will or may become liable, incur or suffer by reason of a breach, violation or nonperformance by the Tenant of any covenant, term or provision hereof or by reason of any builders' or other liens for any work done or materials provided or services rendered for alterations, improvements or repairs, made by or on behalf of the Tenant to the Premises, or by reason of any injury occasioned to or suffered by any person or damage to any property, or by reason of any wrongful act or omission, default or negligence on the part of the Tenant or any of its agents, concessionaires, contractors, customers, employees, invitees or licensees in or about the Building, including any losses caused, or contributed to by, any trespasser while that trespasser is in or about the Building.

#### *Governing Law*

37. It is the intention of the Parties to this Lease that the tenancy created by this Lease and the performance under this Lease, and all suits and special proceedings under this Lease, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of North Carolina, without regard to the jurisdiction in which any action or special proceeding may be instituted.

#### *Severability*

38. If there is a conflict between any provision of this Lease and the applicable legislation of the State of North Carolina (the 'Act'), the Act will prevail and such provisions of the Lease will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Lease.

39. If there is a conflict between any provision of this Lease and any form of lease prescribed by the Act, that prescribed form will prevail and such provisions of the lease will be amended or deleted as necessary in order to comply with that prescribed form. Further, any provisions that are required by that prescribed form are incorporated into this Lease.

#### *Amendment of Lease*

40. Any amendment or modification of this Lease or additional obligation assumed by either party to this Lease in connection with this Lease will only be binding if evidenced in writing signed by each party or an authorized representative of each party.

#### *Assignment and Subletting*

41. The Tenant will not assign this Lease, or sublet or grant any concession or license to use the Premises or any part of the Premises. An assignment, subletting, concession, or license, whether by operation of law or otherwise, will be void and will, at Landlord's option, terminate this Lease.

#### *Use of Premises*

42. The Landlord is a governmental body, and does not desire to allow the premises to become a public forum or a limited public forum for any purposes. Tenant agrees that it will not permit the use of the property (1) for political purposes (either partisan or non-partisan), including education regarding existing or potential political issues; (2) for purposes not permitted for a corporation permitted to receive charitable donations pursuant to Section 501(c)(3) of the Internal Revenue Code as it may be amended; (3) for purposes not permitted for a non-profit corporation existing under the laws of North Carolina.

43. The Tenant will promptly notify the Landlord of any damage, or of any situation that may significantly interfere with the normal use of the Premises.

44. The hallways, passages and stairs of the Building in which the Premises are situated will be used for no purpose other than going to and from the Premises and the Tenant will not in any way encumber those areas with boxes, furniture or other material or place or leave rubbish in those areas and other areas used in common with any other user of the Premises.

### *Surrender of Premises*

45. The Tenant covenants to surrender the Premises, at the expiration of the tenancy created in this Lease, in the same condition as the Premises were in upon delivery of possession under this Lease, reasonable wear and tear, damage by fire or the elements, and unavoidable casualty excepted, and agrees to surrender all keys for the Premises to the Landlord at the place then fixed for payment of Rent and will inform the Landlord of all combinations to locks, safes and vaults, if any. All alterations, additions and improvements constructed or installed in the Premises and attached in any manner to the floor, walls or ceiling, including any leasehold improvements, equipment, floor covering or fixtures (including trade fixtures), will remain upon and be surrendered with the Premises and will become the absolute property of the Landlord except to the extent that the Landlord requires removal of such items. If the Tenant abandons the Premises or if this Lease is terminated before the proper expiration of the Term due to a default on the part of the Tenant then, in such event, as of the moment of default of the Tenant all trade fixtures and furnishings of the Tenant (whether or not attached in any manner to the Premises) will, except to the extent the Landlord requires the removal of such items, become and be deemed to be the property of the Landlord without indemnity to the Tenant and as liquidated damages in respect of such default but without prejudice to any other right or remedy of the Landlord. Notwithstanding that any trade fixtures, furnishings, alterations, additions, improvements or fixtures are or may become the property of the Landlord, the Tenant will immediately remove all or part of the same and will make good any damage caused to the Premises resulting from the installation or removal of such fixtures, all at the Tenant's expense, should the Landlord so require by notice to the Tenant. If the Tenant, after receipt of such notice from the Landlord, fails to promptly remove any trade fixtures, furnishings, alterations, improvements and fixtures in accordance with such notice, the Landlord may enter into the Premises and remove from the Premises all or part of such trade fixtures, furnishings, alterations, additions, improvements and fixtures without any liability and at the expense of the Tenant, which expense will immediately be paid by the Tenant to the Landlord. The Tenant's obligation to observe or perform the covenants contained in this Lease will survive the expiration or other termination of the Term.

### *No Waiver*

46. No provision of this Lease will be deemed to have been waived by the Landlord unless a written waiver from the Landlord has first been obtained and, without limiting the generality of the foregoing, no acceptance of rent subsequent to any default and no condoning, excusing or overlooking by the Landlord on previous occasions of any default nor any earlier written waiver will be taken to operate as a waiver by the Landlord or in any way to defeat or affect the rights and remedies of the Landlord.

### *Remedies Cumulative*

47. No reference to or exercise of any specific right or remedy by the Landlord will prejudice or preclude the Landlord from any other remedy whether allowed at law or in equity or expressly provided for in this Lease. No such remedy will be exclusive or dependent upon any other such remedy, but the Landlord may from time to time exercise any one or more of such remedies independently or in combination.

### *General Provisions*

48. The Tenant authorizes the Landlord to make inquiries to any agency related to the Tenant's compliance with any laws, regulations, or other rules, related to the Tenant or the Tenant's use of the Premises. The Tenant will provide to the Landlord any written authorization that the Landlord may reasonable require to facilitate these inquiries.

49. This Lease will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each party to this Lease. All covenants are to be construed as conditions of this Lease.

50. All sums payable by the Tenant to the Landlord pursuant to any provision of this Lease will be deemed to be Additional Rent and will be recoverable by the Landlord as rental arrears.

51. Where there is more than one Tenant executing this Lease, all Tenants are jointly and severally liable for each other's acts, omissions and liabilities pursuant to this Lease.

52. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Lease. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

53. This Lease may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.

54. This Lease will constitute the entire agreement between the Landlord and the Tenant. Any prior understanding or representation of any kind preceding the date of this Lease will not be binding on either party to this Lease except to the extent incorporated in this Lease. In particular, no warranties of the Landlord not expressed in this Lease are to be implied.

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**IN WITNESS WHEREOF**, the parties have executed this Lease the 8<sup>th</sup> day of October, 2019.

COUNTY OF HENDERSON

By: \_\_\_\_\_  
STEVE WYATT, County Manager

Attest:

\_\_\_\_\_  
TERESA WILSON  
Clerk to the Board of Commissioners

HOLA COMMUNITY ARTS

By: \_\_\_\_\_  
ADRIANA CHAVELA, President

Attest:

\_\_\_\_\_  
RONALD STAMEY  
Corporate Secretary