

RESOLUTION NO. 2014-068

**A RESOLUTION APPROVING THE LEASE AGREEMENT BETWEEN THE CITY OF ROHNERT PARK AND THE SENIORS' CRAFT SHOPPE FOR USE OF ROOM SPACE AT THE ROHNERT PARK SENIOR CENTER**

**WHEREAS**, a portion of the building located at 6800 Hunter Drive, Suite A, which hereinafter shall be referred to as the Rohnert Park Senior Center, continues to be used by the City of Rohnert Park as a Senior Center, and

**WHEREAS**, the Seniors' Craft Shoppe has previously leased space in the Rohnert Park Senior Center for use to store, display, and sell crafts, and

**WHEREAS**, the design of the Rohnert Park Senior Center incorporated space for the operation of a craft shoppe.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the Rohnert Park City Council that that certain Lease Agreement entitled "Rohnert Park Senior Center Space Lease/Rental, Seniors' Craft Shoppe" for space rental at the Rohnert Park Senior Center, dated July 1, 2014, by and between the City of Rohnert Park and the Seniors' Craft Shoppe, in substantially similar form to Exhibit A, which is attached hereto and incorporated by this reference ("Lease"), is hereby ratified and approved and the City Manager is hereby authorized to execute the Lease as well as subsequent extensions of the Lease, subject to minor modification by the City Attorney.

**DULY AND REGULARLY ADOPTED** by the Rohnert Park City Council this 24th day of June, 2014.

CITY OF ROHNERT PARK

  
Joseph T. Callinan, Mayor

ATTEST:

  
JoAnne Buerger, City Clerk



Attachment: Exhibit A – lease

BELFORTE: Aye MACKENZIE: Aye STAFFORD: Absent AHANOTU: Aye CALLINAN: Aye  
AYES: ( 4 ) NOES: ( 0 ) ABSENT: ( 1 ) ABSTAIN: ( 0 )

**LEASE AGREEMENT BETWEEN THE CITY OF ROHNERT PARK AND THE  
SENIORS' CRAFT SHOPPE FOR USE OF ROOM SPACE  
AT THE ROHNERT PARK SENIOR CENTER**

**1. Date and Parties**

This LEASE AGREEMENT, ("LEASE"), effective this first day of July 1, 2014 ("Effective Date"), between the City of Rohnert Park, a municipal corporation, ("Landlord" or "City"), and the Seniors' Craft Shoppe, a California non-profit corporation ("Tenant").

**2. Leased Premises**

City hereby leases to Tenant, and Tenant leases from City, for the Term (defined below) for the Rent (defined below) and upon the conditions set forth herein, those certain premises situated in the City of Rohnert Park, County of Sonoma, State of California, more particularly described as follows ("Premises"):

A space containing approximately 485 square feet located at 6800 Hunter Drive, Suite A.

**3. Covenants**

It is mutually agreed this Lease is upon and subject to the following terms, covenants, and conditions and the Tenant covenants as a material part of the consideration for this lease, to keep and perform each and all of said terms, covenants, and conditions, and this Lease is made upon the condition of such performance.

**4. Use**

The Premises are to be used for the storage, display, and consignment sales of crafts on such days and at such times as correspond to the regular operating days and hours, or portion thereof, of the Rohnert Park Senior Center, and for no other business or purpose, without the written consent of the City.

Tenant shall not use the Premises or permit acts to be done on the Premises which would increase the existing rate or cause the cancellation of any existing insurance coverage for the Premises or the building thereon, or any part thereof. Tenant shall not sell or permit to be kept, used, or sold, in or about the Premises, any item which would be prohibited by the standard form of fire insurance policies.

**5. Term**

The term ("Term") of this Lease shall be three (3) successive one (1) year terms, commencing on the Effective Date and automatically renewing each year. The Lease shall terminate on December 30, 2017, unless: (i) either party elects to terminate this Lease earlier by providing ninety (90) days prior written notice of termination to the non-terminating party, or (ii) in the event City terminates this Lease due to a default by Tenant in accordance with Section 16. This lease may be modified by mutual written consent of Senior's Craft Shoppe and City Manager of the City.

## **6. Rental**

Tenant shall pay City, no later than the 15<sup>th</sup> day of each calendar month during the Term beginning July 15, 2014, at the office of the City or such other place designated by the City, without any prior demand therefore, and without any deduction or set-off whatsoever, as monthly rental for the Premises, ten percent (10%) of total gross revenues from all sales made by Tenant during the previous calendar month ("Rent").

## **7. Report of Gross Consignment Sales Revenues**

Tenant agrees to submit to the City by the 15<sup>th</sup> day of each calendar month beginning July 15, 2014 at the office of the City or such other place designated by the City, a financial report of gross sales revenues received by Tenant during the previous calendar month. Tenant shall maintain and preserve at the Premises, for at least one year, its books and records which support or contain information used in connection with Tenant's preparation of the financial reports described in this Section 7. From time to time, City shall have the right during business hours to make any examination or audit of such books and records. If any such audit discloses that the actual gross sales revenues by Tenant was underreported by more than five percent (5%), Tenant shall pay the reasonable costs of such audit and examination.

## **8. Indemnification of the City of Rohnert**

To the full extent permitted by law, Tenant shall indemnify, hold harmless, release and defend (with counsel acceptable to City) City and its officials, employees, volunteers and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs and liabilities of any nature that may be asserted by any person or entity including Tenant, arising out of or connected with the conduct or management of the business conducted by Tenant on or about the Premises, or the occupancy or use by Tenant of the Premises or any party thereof, or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to this Lease or from any acts or omissions of Tenant or any person on or about the Premises by license or invitation of Tenant or occupying the Premises or any part thereof under Tenant, excepting damage caused by the sole negligence or willful misconduct of City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Tenant under Worker's Compensation, disability or other employee benefit acts, or the terms, applicability or limitations of any insurance held or provided by Tenant. Tenant's indemnification obligations under this Section 8 shall survive the termination of this Agreement.

## **9. Insurance Requirement**

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be born by the Lessee.

### Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
- B. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance (for lessees with employees).

- C. Property, insurance against all risks of loss to any tenant improvements or betterments.

#### Minimum Limits of Insurance

Lessee shall maintain limits no less than:

- A. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- B. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- C. Property Insurance: Full replacement cost with no coinsurance penalty provision.

#### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

#### Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

- A. The City, its officers, officials, employees and volunteers are to be covered as insured's with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to the lessee.
- B. The Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
- C. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given the City.

Lessee shall furnish the city with original certificates and amendatory endorsements affecting coverage required by this clause. The endorsements must be on forms provided by the city. All certificates and endorsements are to be received and approved by the city before work commences. The city reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

### **10. Waiver of Loss**

The City and its officials, employees, volunteers and agents will not be liable and/or held responsible for the loss of or damage to any items displayed or stored by Tenant in the Premises due to theft, fire, flood, earthquake or otherwise. Any such losses are the sole responsibility of the Tenant. All property of Tenant kept or stored on or in the Premises shall be kept or stored at the sole risk of Tenant and Tenant shall hold City harmless from any claims arising out of damages to the same, including subrogation claims by Tenant's insurance carriers.

### **11. Statement Regarding Possessory Interest Tax**

This Lease creates a possessory property interest in Tenant. Tenant's property interest may be subject to property taxation, and Tenant and/or any other party in whom possessory interest is vested may be subject to the payment of property taxes levied on such possessory property interest.

## **12. Utility Charges**

So long as Tenant is not in default under this Lease, City will pay reasonable charges for heat, water, sewer, gas, electricity, garbage service, and janitorial service for the Premises.

## **13. Advertising / Publicity**

Tenant, at its sole cost and expense, shall pay for and be solely responsible for all advertising or publicity incidental to its operations.

## **14. Assignment and Subletting**

Tenant acknowledges that it has entered into this Lease in order to acquire the Premises for its own personal use and has not entered into this Lease for the purpose of obtaining the right to convey the leasehold to others.

Tenant will not assign or encumber the Lease in whole or in part, nor sublease all or any part of the Premises or allow any other person or entity to occupy all or any part of the Premises, without the prior written consent of the City.

## **15. Waste, Nuisance, Additions and Alterations**

Tenant will not commit, or cause to be committed, any waste upon the Premises, or any public or private nuisance, or other act or thing which may disturb the quiet enjoyment of the City, the public, or any other tenant in the building in which the Premises is located. Tenant will not make, or cause to be made, any alterations, decorations, additions, improvements, or fixtures to the Premises for any reason whatsoever, including the purposes of advertising or publicity, without the prior written consent of the City. Upon the termination of this Lease, all such alterations, decorations, additions, improvements and fixtures, and any personal property left on the Premises shall become the property of the City without compensation to the Tenant; provided, however, that City shall have the option to require Tenant, at Tenant's sole cost and expense, to remove said items and repair any damage thereby caused to the Premises.

## **16. Governmental Regulations**

Tenant shall, in Tenant's use of the Premises and at its sole cost and expense, comply with all the requirements of county, municipal, state and federal laws applicable to this Lease and Tenant's use of the Premises and any and all other applicable laws from governmental authorities now in force, or which may hereafter be in force.

## **17. Default of Tenant**

In the event of any failure of the Tenant to: (i) pay when due any rental or other payment obligation hereunder, or, (ii) perform any other of the terms, conditions or covenants of this Lease to be observed or performed by the Tenant, Tenant shall be deemed to be in default of this Lease. If such default continues for thirty (30) days after written notice from City to Tenant specifying the default, City, in addition to all other rights or remedies City may have hereunder

or by law or in equity, shall have the sole option to terminate this Lease to be effective immediately upon notice to Tenant.

## **18. Entry and Inspection**

Tenant will permit the City and its agents to enter into and upon the Premises at all reasonable times for the purpose of inspecting same, making alterations or additions to the Premises or to any other portion of the building in which the Premises are situated, or to clean and maintain the Premises or any other portion of the building in which the Premises are situated, without any rebate or rent to the Tenant for any loss of occupancy or quiet enjoyment of the Premises, or damage, injury or inconvenience thereby occasioned. The City will permit the Tenant and its agents access through common areas and other portions of the building in which the Premises are situated at all reasonable times.

## **18. Notice.**

Notice is considered given either (1) when delivered in person to the recipient named as below, or (2) two days after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage and postal charges prepaid, or (3) the next business day if sent by nationally recognized courier service addressed by name and address to the party or person intended as follows:

To Landlord:           City of Rohnert Park  
City Manager  
130 Avram Ave.  
Rohnert Park, CA 94928

To Tenant:             Eileen Paul  
6800 Hunter Dr.  
Suite A  
Rohnert Park, CA 94928

## **19. Miscellaneous.**

19.1 Time of Essence. Time is of the essence of this Lease.

19.2 Attorneys' Fees. In any action or proceeding which either party brings against the other to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees, which amounts shall be a part of the judgment in said action or proceeding.

19.3 Severability. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

19.4 Law. This Lease shall be construed and enforced in accordance with the laws of the state of California, without reference to its choice of law provisions.

19.5 No Option. Submission of this Lease to Tenant for examination or negotiation does not constitute an option to lease, offer to lease or a reservation of, or option for, the Premises; and

this document shall become effective and binding only upon the execution and delivery hereof by City and Tenant.

19.6 Third Party Beneficiaries. Nothing herein is intended to create any third party benefit.

19.7 Headings. Section headings have been inserted solely as a matter of convenience and are not intended to define or limit the scope of any of the provisions contained therein.

19.8 Prior Agreements. This Lease contains all agreements of the parties with respect to the use of the Premises by Tenant as of the Effective Date. No provision of any prior agreement or understanding, oral or written, specifically pertaining thereto shall be effective.

19.9 Severability. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19.10 Authorship; Amendments. This Lease is a jointly negotiated work product and authorship shall not be ascribed to any particular party. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification.

19.11 Waivers. No waiver of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach of the same or any other provision. The acceptance of Rent by City shall not be a waiver of any preceding breach by Tenant of any provision hereof.

19.13 Counterparts. This Lease may be executed (whether simultaneously or on separate counterpart pages) in more than one counterpart, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, City and Tenant have hereunto and to a duplicate hereof, set their respective hands and seals, the day and year first written above written.

CITY OF ROHNERT PARK  
a municipal corporation

SENIORS' CRAFT SHOPPE  
a California non-profit corporation

By: \_\_\_\_\_  
City Manager

\_\_\_\_\_  
Manager

Signature provisions (City approval required)

**ATTEST:**

\_\_\_\_\_  
Deputy City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney