



Covenants, and any reservations, and easements of record, and all valid zoning ordinances.

2. **LEASE TERM.** The term of this Agreement shall be effective as of \_\_\_\_\_, 2017 (the “Commencement Date”), for a period of four (4) years from the Commencement Date. The parties may agree to two (2) additional four (4) year extensions, unless sooner terminated by a breach of the terms of this Agreement by either party.
3. **RENT.** CMF shall pay to the County a yearly rental of one and 00/100 (\$1.00) dollar per year. The annual payment to be made by CMF to County shall be made on \_\_\_\_\_ of each year of the Agreement.
4. **USE OF THE PROPERTY.**
  - a. During the term of this Agreement, or any extensions thereof, CMF shall operate the Museum Facility in a manner consistent with the Restrictive Covenants.
  - b. During the term of this Agreement, or any extensions thereof, the Museum Facility shall be used by CMF primarily as a museum for the Carolina Clavier Collection, more fully described in Exhibit “A” with limited incidental use for music organizations in Greenville County such as the Guild of the Greenville Symphony Orchestra and SC Bach.
  - c. CMF further agrees that it shall not use, or allow the Museum Facility to be used for any purpose other than as specified herein and shall not permit the Museum Facility to be used for any unlawful, disreputable or immoral purpose or in any way that, in the sole discretion of the County, will injure the reputation of the County, Heritage Green or the Museum Facility.
  - d. Any requests by CMF to conduct additional activities not described in this Agreement shall be consistent with the Restrictive Covenants and all requirements set forth herein and submitted in writing to County for approval of same, such approval not to be unreasonably withheld.
  - e. In addition to the above, should CMF desire to alter or modify the grounds surrounding the building and/or the exterior of the building, the CMF must

submit a written request to the County for approval of same. Said alterations and modifications must be approved by the County prior to the commencements of any improvements.

- f. In the event CMF discontinues the use of the Museum Facility for the aforesaid purposes or operates the Museum Facility in anyway inconsistent with the requirements set forth herein, then this Agreement, insofar as it applies to the Museum Facility, shall terminate forthwith.

5. **COUNTY'S RESPONSIBILITIES.**

- a. County agrees to maintain the structural components of the Museum Facility to include the roof, exterior walls (exclusive of glass, plate glass doors, and door mountings) and foundations.
- b. County agrees to maintain the grounds of the Museum Facility.
- c. County agrees to repair the HVAC and keep the HVAC system and its components and the elevator in good operating condition for a period of two (2) years after the Commencement Date. Furthermore, at the expiration of the County's repair obligations, County will transfer to CMF any service warranties to the extent said warranties have not expired.
- d. County may enter the Museum Facility at reasonable hours and to make repairs required of County under the terms of this Agreement.
- e. County shall provide the Museum Facility with, at a minimum, the same amount of general liability and property insurance coverage that it provides all County owned facilities through the South Carolina Insurance Reserve Fund, subject to changes from year to year based on County's risk management policies.

6. **CMF'S RESPONSIBILITIES.**

- a. CMF shall provide utility services, maintenance, and other support except as otherwise provided herein.

- b. CMF will keep and maintain the Museum Facility at its sole expense in a good state of condition and repair except those items referred to in Paragraph 5.
- c. CMF will keep all fixtures pertaining to the ventilating, electrical, plumbing and sprinkler systems (if any) in good order and repair at its sole expense.
- d. After the expiration of two (2) years after the Commencement Date, CMF will keep all fixtures pertaining to the HVAC system and its components and the elevator in good order and repair at its sole expense.
- e. CMF will at once report to County any defective condition known to CMF which County is required to repair. Failure to report such defects shall make CMF responsible to County for any liability incurred by County by reason of such defect.
- f. CMF shall carry at its own expense and pay all premiums for insurance to cover its personal property, trade fixtures and merchandise contained within the Museum Facility. CMF will also carry and keep in force a policy of comprehensive public liability insurance, including property damage, with respect to the Museum Facility. This policy shall provide at least the following limits: bodily injury \$1,000,000 each person, \$1,000,000 each occurrence and property damage \$500,000 each occurrence. In addition to CMF, the policy shall also name County as an additional insured at the cost of CMF. CMF shall, upon demand, deliver to County from time to time a certificate or other evidence that this public liability insurance coverage is being maintained by CMF.
- g. CMF may place or attach to the Museum Facility signs or other such identification as needed after receiving written permission from County. Any signs or other form of identification allowed must conform to City or County ordinances governing at the time, and any damage caused to the Museum Facility by CMF's erecting or removing such signs will be repaired promptly by CMF at CMF's expense. CMF also agrees to have any window or glass identification completely removed and cleaned at its expense promptly upon vacating the Museum Facility.

- h. CMF will set reasonable performance goals for the operation of the Museum Facility that will promote and support CMF's strategic priorities and mission.
  - i. CMF shall hire full-time and/or part-time staff, as required, and solicit volunteers to work in the Museum Facility.
  - j. CMF shall create a mission and vision for the Museum Facility.
  - k. CMF shall collaborate with County to set reasonable performance goals for the operation of the Museum Facility that will promote and support County's strategic priorities and mission.
  - l. CMF shall establish policies for specific activities which will take place in the Museum Facility (e.g., exhibitions, collections, and programming).
  - m. CMF shall set fees and charges for museum products and services.
  - n. CMF shall procure appropriate products and services required to operate the Museum Facility.
  - o. CMF shall provide any additional insurance required by the owners of art displayed in the Museum Facility or as identified by CMF's Board of Directors in excess of County's general liability and property insurance coverage, and shall name County as additional insurance on all policies purchased.
  - p. CMF shall be responsible for the payment of costs associated with the operation, maintenance, and administration of the Museum Facility, including utilities provided, however, that the County will continue to pay utilities from the Commencement Date until the earlier of (i) March 31, 2018 or (ii) the date that CMF substantially opens the Museum Facility to the public.
  - q. CMF shall set the hours of operation of the Museum Facility.
  - r. CMF shall adopt an annual budget.
  - s. CMF shall use its best efforts to seek funding through donations, sponsorships, grants, and user fees.
7. **DEFAULT.** The occurrence of any of the following shall constitute a material default and breach of this Agreement by CMF:
- a. Failure by CMF to observe or perform any other non-monetary provision or covenant of this Agreement, including the Restrictive Covenants, where such

failure continues for fifteen (15) calendar days after receipt of written notice thereof from County to CMF, provided, however that if the nature of the default is such that the same cannot reasonably be cured through the exercise of due diligence within such fifteen (15) day period, County shall grant CMF such additional time as County deems necessary to permit CMF to cure using due diligence.

- b. The filing of any materialman's, mechanic's or other lien is filed against the Museum Facility in connection with any improvements, alterations, or repairs made by CMF pursuant to Paragraphs 4 and 6 of this Agreement and CMF is responsible for the cost of the improvements, alterations, or repairs but allows the lien or liens to stand against the Museum Facility and does not secure the discharge of the property from such liens by filing an appropriate bond pursuant to applicable law. If CMF does file a bond and elects to contest the liens, there shall be no default pending final determination of such disputed matter.
- c. The filing of a petition by or against CMF for adjudication as a bankrupt or insolvent or for its reorganization or for the appointment pursuant to any local, state or federal bankruptcy or insolvency law of a receiver or trustee of CMF's Property or an assignment by CMF for the benefit of creditors or the taking possession of the Museum Facility by any local, state, or federal governmental office or agency or court appointed official for the dissolution or liquidation of CMF, provided however, that if any such action is commenced against CMF, the same shall not constitute a default if CMF causes the same to be dismissed within thirty (30) calendar days after the filing of same.

8. **RIGHT TO TERMINATE.**

- a. County may elect, upon a default, to terminate this Agreement immediately. In such event, this Agreement shall be regarded as cancelled as of the date County serves notice of County's election to terminate to CMF. CMF shall remain liable to County for all rentals, charges and payments accrued to the time of such termination.

- b. County's right to terminate this Agreement is in addition to and not in lieu of any other rights or causes of action that County may have against CMF because of a default by CMF. If County does not elect to terminate this Agreement as above provided, then County shall utilize and pursue such other rights as it may have against CMF under the other terms of this Agreement, the laws of the United States or the City, County and State in which the Museum Facility are located.

9. **SURRENDER OF MUSEUM FACILITY: HOLD OVER.**

The Agreement shall terminate and CMF shall deliver up and surrender possession of the Museum Facility on the last day of the term hereof. CMF covenants that upon the expiration or sooner termination of this Agreement it shall deliver up and surrender possession of the Museum Facility in the same condition in which CMF has agreed to keep same during the continuance of this Agreement and in accordance with the terms hereof. All permanent structures, fixtures, and buildings shall remain on the Property, except for personal property, which shall be retained by the CMF.

10. **INDEMNIFICATION.** CMF shall indemnify, hold harmless, and forever defend County, its agents, servants, and employees, from and against any and all costs, expenses, including reasonable legal fees, legal costs, including paralegal expenses, liabilities, losses, damages, suits, actions, fines, penalties, claims or demands of any kind and asserted by or on behalf of any person, arising out of or in any way connected with this Agreement and County shall not be liable to CMF on account of:

- a. any failure by CMF to perform any of the agreements, terms, covenants, or conditions of this Agreement required to be performed by CMF;
- b. any failure by CMF to comply with any statutes, ordinances, regulations or orders of any governmental authority; or
- c. any accident, death or personal injury or damage to or loss or theft of property which shall occur in or about the Museum Facility occasioned wholly or in

part by reason of any act or omission of CMF, its agents, contractors, invitees or employees wherever caused.

11. **COMPLIANCE WITH LAWS AND ORDINANCES.** CMF agrees that it shall, at its sole cost and expense, promptly fulfill and comply with all laws, ordinances, regulations and requirements of the County, County, State and Federal Governments and any and all governmental agencies thereof having jurisdiction over the Facility, and any other agency now or hereafter constituted having the power to affect CMF's occupancy of the Museum Facility or the operation of the Museum Facility thereon.

12. **NOTICE.** Wherever in this Agreement, it shall be required or permitted that notice or demand be given or served by either party to this Agreement to or on the other party, such notice or demand shall be deemed to have been duly given or served if in writing and either personally served or forwarded by Registered or Certified Mail, postage prepaid, or by facsimile transfer, with a certified receipt of transmission, and addressed as follows:

TO COUNTY:            Greenville County  
                              Attn: County Administrator  
                              301 University Ridge, Suite 2400  
                              Greenville, South Carolina 29601

TO CMF:                Carolina Music Foundation  
                              Attn: Steven Bichel  
                              6 Riva Ridge Way  
                              Greenville, SC 29615

Each such mailed notice shall be deemed to have been given to or served upon the party to which it is addressed on the date the same is deposited in the United States Registered or Certified Mail, postage prepaid and properly addressed in the manner above provided. Either party hereto may change its address to which said notice shall be delivered or mailed by giving written notice of such change to the other party hereto, as herein provided.

13. **WAIVER OF RIGHTS.** CMF agrees that no waiver of any conditions of this Agreement by County whether implied or in writing shall constitute any further



waiver by County of any other condition of this Agreement. The rights and remedies created by this Agreement are cumulative and the use of one remedy does not exclude or waive the right to the use of another.

14. **FORCE MAJURE**. The Parties shall be excused for the period of any delay in the performance of any obligations hereunder, when prevented from so doing by cause or causes beyond the Parties' control which shall include, without limitation, all labor disputes, inability to obtain any material or services, civil commotion, or acts of God.
15. **SOVEREIGN IMMUNITY**. County is a political subdivision of the State of South Carolina, and agrees to be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law while they are employed by County. Nothing herein is intended to serve as a waiver of sovereign immunity by County. Nothing herein shall be construed as consent by County to be sued by third Parties in any matter arising out of this Agreement.
16. **SUCCESSORS AND ASSIGNS**. The respective rights and obligations provided in this Agreement shall bind and inure to the benefit of the parties hereto, their legal representatives, heirs, successors and assigns, provided, however, that no rights shall inure to the benefit of any successors of CMF unless County's written consent for the transfer to such successor has first been obtained.
17. **GOVERNING LAW**. This Agreement shall be construed, governed and enforced in accordance with the laws of the State of South Carolina. Venue of any legal action of any kind relative to the terms, provisions and conditions of this Agreement shall be in Greenville County, South Carolina.
18. **SEVERABILITY**. If any provision of this Agreement shall be held to be invalid, void or unenforceable, the remaining provisions hereof shall in no way be affected or impaired and such remaining provisions shall remain in full force and effect.
19. **CAPTIONS**. Any headings preceding the text of the several paragraphs and subparagraphs hereof are inserted solely for conveniences of reference and shall

not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

20. **ENTIRE AGREEMENT.** This Agreement contains all the agreements, conditions, understandings, representations and warranties made between the parties hereto with respect to the subject matter hereof, and may not be modified orally in any manner other than by an agreement in writing signed by both parties hereto or their respective successors in interest.

21. **QUIET ENJOYMENT.** So long as CMF is not in violation of any of the provisions or obligations of this Agreement, County warrants that CMF shall have quiet enjoyment and peaceful possession during the term of this Agreement without interruption by County or any person lawfully claiming under County.

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

**LESSOR:**

**GREENVILLE COUNTY**

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Herman G. Kirven, Jr., Chairman  
Greenville County Council

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Joseph M. Kernell  
Greenville County Administrator

**LESSEE:**

**CAROLINA MUSIC FOUNDATION**

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By:  
Title: