

Introduced By: Mayor John Eberhart
Date: March 24, 2014

ORDINANCE NO. 5940

**AN ORDINANCE AUTHORIZING LEASE OF LAND KNOWN AS
GOLDEN HEART PLAZA FROM THE CITY TO FESTIVAL FAIRBANKS**

WHEREAS, the City of Fairbanks is the owner of Lots 3 and 4, Block 4, Fairbanks Townsite, also known as "Golden Heart Plaza," and the improvements thereon, as shown on attached "Exhibit A" Real Estate Lease, and;

WHEREAS, Festival Fairbanks, a not-for-profit community agency, has for many years promoted the public use, management, and maintenance of Golden Heart Plaza, all of which benefit the City of Fairbanks, its residents, and visitors; and

WHEREAS, management of the Property by Festival Fairbanks is deemed consistent with the provisions of Fairbanks General Code of Ordinances, Section 70 Article III "Golden Heart Plaza"; and

WHEREAS, lease of the Property to Festival Fairbanks will provide the basic rights necessary for them to effectively and legally manage the Plaza; and

WHEREAS, Festival Fairbanks has requested a lease for the management purposes stated above; and

WHEREAS, Fairbanks General Code of Ordinances Section 70-44 provides that the City may lease without public offering whenever the lessee is a not for profit organization; and,

WHEREAS, it is the sense of the City Council that lease of the Property described above is in the best interest of the community.

NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

SECTION 1. That a lease instrument substantially in the form shown on attached "Exhibit A" is hereby authorized by Council for the purposes herein stated, providing for an initial two-year lease term with a one-year extension at the discretion of the City Mayor.

SECTION 2. That the Mayor is hereby authorized and directed to execute the lease on behalf of the City, and the City Clerk is authorized to attest and affix the City Seal to the instrument, the execution of which shall take place not less than thirty (30) days after the effective date of

this ordinance, as prescribed by section 8.3 of the City Charter and Sec. 7-56 of the Fairbanks General Code.

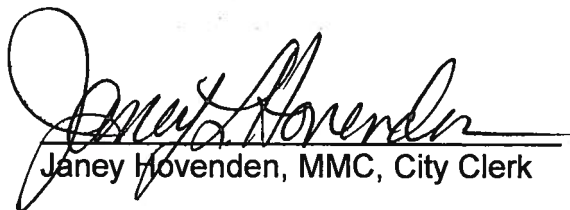
SECTION 3. That the effective date of this ordinance shall be the 12th day of April, 2014.



John Eberhart, Mayor

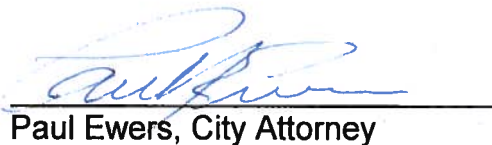
AYES: Gatewood, Anderson, Matherly, Staley, Hilling
NAYS: None
ABSENT: Walley
ADOPTED: April 07, 2014

ATTEST:



Janey Hovenden, MMC, City Clerk

APPROVED AS TO FORM:



Paul Ewers, City Attorney

EXHIBIT "A" to ORDINANCE No. 5940

REAL ESTATE LEASE

THIS LEASE, made and effective as of the 14th day of April 2014 by the City of Fairbanks, a municipal corporation of the State of Alaska, with address of 800 Cushman Street, Fairbanks, Alaska 99701, hereinafter called Lessor, and FESTIVAL FAIRBANKS, INC., with address of 514 Second Avenue, Fairbanks, Alaska 99701, hereinafter called Lessee.

WITNESSETH:

WHEREAS, the City of Fairbanks, as trustee for the public, and pursuant to Ordinance 5940, hereby authorizes lease of the property described below, and under the conditions stated.

NOW THEREFORE, Lessor, in consideration of the rent hereinafter specified and of the mutual covenants and agreements herein expressed has leased and by these presents does lease that certain real property as follows:

1. Lease of Property. The Lessor leases to Lessee, and Lessee leases from Lessor, the real property located at Fairbanks, Alaska, more particularly described as follows:

Lots 3 and 4, Block 4, Fairbanks Townsite, also known as "Golden Heart Plaza," and the improvements thereon, as shown on the attached "Lease Exhibit 1 of 1."

2. Term. The term of this Lease shall be for two years, beginning April 14, 2014, and ending April 13, 2016.

3. Option. This lease may be renewed for one additional year at the sole discretion of the Mayor.

4. Use. Lessee shall use the Property in compliance with Fairbanks General Code of Ordinances Sections 70-96 through 70-99, "Golden Heart Plaza."

5. Rent. As compensation for use of the Property during the life of this lease, Lessee shall pay the sum of One Dollar (\$1.00) per year, paid in advance. Payments shall be made at Lessor's Office of the City Clerk, physical address shown above.

6. Prohibited Uses. Lessee shall not use or permit the use of the Property or any part thereof in violation of any applicable law, ordinance, or regulation.

7. Maintenance and Expenses. Lessee shall perform routine cleaning associated with the leased Property proper, keeping the Property in a clean, safe condition, free of litter and debris. Lessee shall notify Lessor of hazards or safety concerns on or about the Property in a timely manner. Lessor shall provide repairs or alterations as it deems necessary, at its expense.

8. Termination. In the event the Lessor sells or redevelops the property, Lessee's rights hereunder shall terminate, and Lessee shall vacate within 60 days of notice delivered in writing.

9. Exculpation and Indemnity.

a. Exculpation of Lessor: Lessor shall not be liable to Lessee for any damage to Lessee or Lessee's property from any cause. Lessee shall bear all risk of loss as to all personal property of the Lessee, stored, or remaining on or near the Property, including without limitation, inventory, equipment, fixtures, and employees' personal effects.

b. **Indemnity:** Lessee shall defend and hold the Lessor harmless from all damages arising out of any damage or injury to any person or property occurring in, about, or on the Property.

c. **Public Liability and Damage Insurance:** Lessee at its sole cost shall at all times maintain public liability and damage insurance with a single combined liability limit of \$1,000,000 and insuring against all liability of Lessee and its authorized representatives arising out of and in connection with Lessee's use or occupancy of the Property.

All public liability insurance and property damage insurance shall insure performance by Lessee of the indemnity provisions provided herein. Lessor shall be named as an additional insured.

10. **Prevention of Waste and Nuisance.** Lessee shall not use the Property in any manner that will constitute waste, nuisance, or unreasonable annoyance to Lessor or the owners or occupants of adjacent properties. Violation or breach under this section shall be determined at the sole discretion of the City Mayor.

11. **Assignment and Sublease.** Lessee shall not assign or sublet its rights under this Lease without written consent of Lessor, which consent shall be at Lessor's sole discretion.

12. **Liens.** Lessee shall keep the Property free from any liens, including without limitation those liens arising out of any work performed, materials furnished, or obligations incurred by Lessee.

13. **Consultation with Attorney.** Lessee acknowledges that it has the right to review this Lease and all other documents relating to the Lease with its own attorney. Each party electing to have this Lease reviewed by an attorney shall bear the costs and expenses so incurred.

14. **Right of Entry.** Lessor, its agents and authorized employees, shall have the right to enter the Property to examine the same and to make repairs, alterations, improvements or additions as Lessor may deem necessary or desirable during Lessee's business hours. All such entry shall be preceded by 72 hour advance notice to Lessee, except that immediate entry shall be allowed in event of emergency, as determined by the City Engineer.

15. **Default.** Failure to occupy and operate the Property for two consecutive weekends or failure to perform any provision of this Lease shall constitute default by Lessee of this Lease. Upon Lessee's default, Lessor shall give Lessee 10 days notice to cure the default. No default notice shall be deemed a forfeiture or a termination of this Lease unless Lessor so elects in the notice.

16. **Notice.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first class mail, addressed to the other party at the address set forth in the introductory paragraph of this Lease. Either party may change its address by notifying the other party of the change of address.

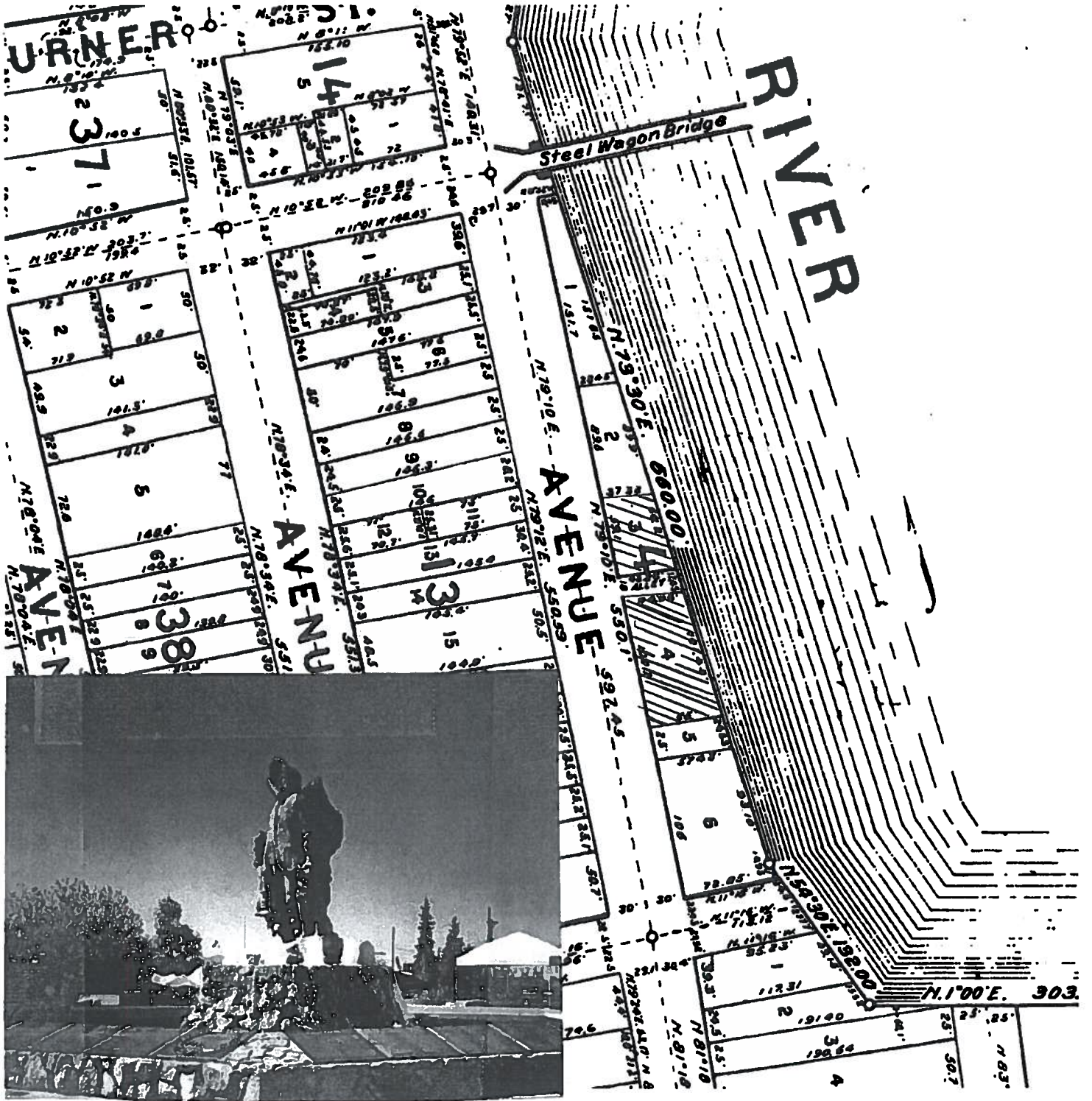
17. **Attorney's Fees.** If Lessor brings or maintains an action for enforcement of any of the covenants, terms, or conditions of this Lease, Lessee shall pay all costs incurred by Lessor for such action including attorney's fees in the event Lessee is found to be at fault.

18. **Time of Essence.** Time is of the essence of each provision of this Lease.

19. **Successors.** This Lease shall be binding on the parties and their successors.

20. **Captions.** The captions of this Lease shall have no interpretive effect.

21. **Singular and Plural.** When required by the context of this Lease, singular shall include the plural.



GOLDEN HEART PLAZA
LEASE EXHIBIT 1 OF 1