

Exhibit "D"**LEASE AGREEMENT**

1. **PARTIES:** This Lease is made between **CHRIS FILLIE**, hereinafter referred to as Lessee, and **THE CITY OF GAINESVILLE, FLORIDA**, hereinafter referred to as Lessor.
2. **PREMISES:** The Lessor hereby leases to the Lessee, and the Lessee leases from the Lessor, for the term and upon the terms and conditions hereinafter set forth, the following described leased Premises, as described in Exhibit "A" by reference and referred to as "the Premises."
3. **TERM:** The term of this Lease shall commence upon Lessor closing on the purchase of the Premises and shall continue to and including December 31, 2014, unless sooner terminated as provided herein or by mutual agreement of the Lessor and Lessee.
4. **USE AND CHARACTER OF OCCUPANCY:** Lessee shall be allowed to use the premises for the following purposes, provided the land use and zoning of the property allow such uses:

- all current uses for which the property is currently being used, including but not limited to:
 - storage containers
 - trash containers
 - art studios
 - event space
- future possible uses:
 - woodshop
 - fabrication studio
 - retail
 - storage
 - food trucks/commissary

Lessee shall comply with all rules, orders, ordinances, laws, and regulations of all governmental authorities or regulating boards having jurisdiction over the Premises, and the Premises shall be used and occupied in a careful, proper and legal manner.

5. **RENT:** Lessee agrees to pay to the Lessor rent of One and no/100 Dollar (\$1.00) per year during the term of the lease. In the event the Lessee becomes a holdover tenant or otherwise remains in possession of the lease Premises after December 31, 2014, Lessee agrees to pay Lessor the rent of \$500.00 per day for each and every day Lessee remains in possession after December 31, 2014.
6. **UTILITIES:** Lessee agrees to pay before delinquency any and all charges for gas, electricity, water, wastewater, stormwater, telephone, solid waste and recyclables collection, and all other utilities used by it. All utilities shall be accounts in the name of the Lessee, and the Lessor shall have no liability for the cost of such utilities.
7. **SUBLETTING AND ASSIGNMENT:** The Lessee shall not enter into any new agreements to sublet the Premises or any part thereof nor assign this lease or any interest therein,

without first obtaining the prior written consent of the Lessor, which shall not be unreasonably withheld. Lessee shall remit sales tax on any sublease rent directly to the State of Florida in accordance with applicable law. Lessee shall provide each sublessee with a full and complete copy of the Lease and any amendments. Each sublease shall incorporate all applicable terms and conditions of the Lease and any amendments, including, without limitation, a requirement that the sublessee shall indemnify and provide insurance naming the Lessor as an additional insured to the full extent required in Section 11 of the Lease and that the sublessee shall indemnify the Lessee with respect to Hazardous Substances and shall comply with Environmental Laws and all other requirements of Section 30 of the Lease. It shall be the sole responsibility of the Lessee to ensure that each sublessee complies with all applicable terms and conditions of the Lease and any amendments. Lessor is not and shall not be deemed or otherwise considered to be in privity of contract with any sublessee and shall owe no duty or obligation to any sublessee. Lessor shall continue to look to the Lessee for full performance of the Lease, notwithstanding the terms and conditions of any sublease entered into between the Lessee and a sublessee. Within 10 business days of entering into a sublease, Lessee shall provide Lessor with a true and complete executed copy of the sublease. In the event Lessee does not comply with the provisions of this section, Lessor may direct the Lessee to terminate the sublease (as it constitutes an ultra vires act by the Lessee) and may revoke the Lessee's right to sublease, by delivering written notice to the Lessee executed by the City Manager. Notwithstanding the right to sublease a portion of the Premises as granted herein, the Lessee shall not 1) grant any form of security interest in, or 2) otherwise assign, in whole or in part, its leasehold interest of the Premises.

8. LOSS OR DAMAGE TO LESSEE'S PROPERTY: All personal property of any kind or description whatsoever in or on the Premises, whether owned by Lessee or others, shall be at the Lessee's sole risk, and, in the absence of intentional conduct of Lessor, the Lessor shall not be liable for any damage done to or loss of such personal property, or otherwise be liable to Lessee because of any interruption of services or utilities. Lessee shall maintain, at Lessee's sole expense, its own insurance covering all of Lessee's personal property.

9. MAINTENANCE AND REPAIR: Lessee is familiar with the Premises and accepts same "as-is" with no warranties, guarantees, or representations from Lessor. Lessee shall be responsible for all maintenance and repair, whatsoever of the Premises. Lessor shall have no obligations concerning maintenance and repair. In the event Lessee determines that maintenance or repair are not financially feasible, the Lessee shall so notify the Lessor and this Lease shall terminate and Lessee shall vacate the Premises.

10. INTERPRETATION: The terms and provisions hereof shall be construed and interpreted without regard to which party may have drafted it. This lease shall be construed under the laws of the State of Florida.

11. INSURANCE: Lessee shall furnish Lessor proof of liability insurance in the form of a certificate or duplicate copy of the policy, such proof to be furnished annually and such policy to have minimum combined single limits of One Million Dollars (\$1,000,000.00) for death or injury to person and property damage. Such insurance shall be taken out and maintained in a reputable insurance company authorized to do business in the State of Florida, satisfactory to Lessor, and such policy shall name Lessor and its elected and appointed officers and employees as an additional insured and shall contain a ten (10) day notice requirement to Lessor before cancellation by the insurance company. Neither the Lessor, nor the Lessee shall be required to carry property insurance for the buildings located on the Premises.

12. **TAXES and ASSESSMENTS:** Lessor shall pay all real property taxes assessed against the Premises. Lessee shall pay any taxes assessed against any personal property owned by Lessee and located in the Premises.

13. **ENTRY:** Lessor shall have the right at all reasonable times to enter the Premises during business hours, upon reasonable prior notice to Lessee, for the purpose of examining or inspecting the same. Provided, however, Lessor shall have the right to enter the Premises at any time in emergency situations.

14. **BANKRUPTCY:** If, at any time during the term of this Lease, there shall be filed by or against Lessee in any court pursuant to any statute either of the United States or of any state a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Lessee's property, this Lease shall be deemed canceled and terminated prior to such filing. Lessee agrees to notify Lessor in writing of its intent to file for bankruptcy at least 30 days prior to such filing and Lessee shall vacate the Premises prior to such filing. In the event of bankruptcy by Lessee, neither Lessee nor any person claiming through or under Lessee by virtue of any statute or of any order of any court shall be entitled to take possession or remain in possession of the Premises, but shall vacate and surrender the Premises.

15. **DEFAULT:** In the event Lessee shall default in the performance of any of the terms or provisions of this Lease, Lessor shall notify Lessee by certified mail, return receipt requested, and within ten (10) days after receipt of such notice, if Lessee has failed to cure such default, or if the default is of such character as to require more than ten (10) days to cure, and Lessee shall fail to commence to do so within ten (10) days after receipt of such notice and thereafter diligently proceed to cure such default, then in either such event, Lessor may declare this lease terminated.

16. **LESSOR'S COVENANTS:** None. Lessee accepts the Premises "as-is".

17. **QUIET ENJOYMENT:** Lessee, upon paying the rent and performing the covenants and agreements of this lease, shall quietly have, hold, and enjoy the Premises and all rights granted Lessee in the lease during the term thereof.

18. **ATTORNEY'S FEES AND COSTS:** In any litigation arising out of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, expenses, and costs at the trial level and appellate levels of all courts of competent jurisdiction.

19. **NOTICES:** Any notices required or permitted hereunder shall be in writing and delivered either in person to the other party or the other party's authorized agent, or by United States certified mail, return receipt requested, postage fully prepaid, to the party's address or to such other address as either party may designate in writing and deliver as herein provided.

20. **WAIVERS:** No waiver of any condition or covenant of this lease by either party hereto shall be deemed to imply or constitute a further waiver by such party of any other condition or covenant to said lease.

21. **COMPLETE AGREEMENT:** This lease contains a complete expression of the agreement between the parties, and there are no promises, representations, or inducements except such as are herein provided.

22. **BINDING EFFECT:** This lease agreement shall inure to the benefit of and be binding upon the parties hereto and their permitted respective heirs, legal representatives, successors, and assigns. Each gender shall include all genders, and the singular the plural, and the plural the singular.

23. **NOTICES:**

AS TO CITY: Attention: City Manager
City of Gainesville
P.O. Box 490, MS 6
Gainesville, Florida 32627

COPY TO: Attention: City Attorney
City of Gainesville
P.O. Box 46
Gainesville, Florida 32627

AS TO LESSEE: Chris Fillie
514 Southwest 4th Street
Gainesville, Florida 32601

24. **MODIFICATIONS AND IMPROVEMENTS; CONDITION OF PREMISES:** Lessee shall make no modifications, alterations, or improvements to the Premises without first obtaining the written consent of the Lessor, which consent shall not be unreasonably withheld. Any improvements made by Lessee may be removed by Lessee if the same can be accomplished without material damage to the Premises. Any incidental damage caused by such removal shall be repaired at Lessee's expense.

At expiration or termination of this lease, the Lessee shall surrender the Premises in a clean and uncluttered condition, free of all trash and debris. All improvements located on the Premises at the inception of this Lease shall be delivered in the same condition as existed on the first date of the Lease term, reasonable wear and tear excepted, subject to the Lessee's option to salvage as set forth in Section 28 of this Lease.

25. **RIGHTS AND REMEDIES CUMULATIVE:** All rights and remedies of the parties hereto shall be cumulative and shall not be construed to exclude any other rights or remedies allowed by law consistent with the terms and conditions hereof.

26. **POSSIBILITY OF RADON GAS:** Pursuant to Florida law, you are hereby advised as follows:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional radon and radon testing may be obtained from your county public health unit. (Florida Statutes, Section 404.056(8)).

27. **DESTRUCTION OF PREMISES:** If at any time during the term of this Lease the Premises are destroyed or damaged in whole or in part by fire, or other casualty, the Lessor and

Lessee may terminate the lease upon mutual agreement and neither party shall then have any further obligation with respect to the other. The Lessor and Lessee agree that, in the event of casualty damage or destruction, Lessor has no obligation to repair or reconstruct the Premises, in whole or in part.

28. SALVAGE RIGHTS TO PRE-EXISTING STRUCTURES:

Lessor gives to Lessee the option, but not the obligation, of salvage rights for all pre-existing structures. Lessee shall be responsible for providing to Lessor all LEED documentation to ensure Lessor receives credit for salvaging the structures. In order to exercise its option, Lessee shall give the Lessor notice and shall enter into a separate agreement regarding the salvage work by September 1, 2014. The salvage work may only occur during the last 60 days of the Lease term and all salvage work must be completed by the end of the Lease term. LEED documentation must be submitted to the Lessor no later than 60 days after completion of the salvage work. .

29. INDEMNIFICATION: Lessee shall be liable and shall indemnify, defend and hold the Lessor, its officers, agents, and employees harmless from all claims, suits, judgments or damages of any nature, including court costs and attorney's fees, arising out of or in connection with the Lessee's occupancy and use of the Premises, including any sublease.

30. HAZARDOUS SUBSTANCES/ENVIRONMENTAL INDEMNITY

A. Prohibition The storage, use or disposal of Hazardous Substances on the Premises is prohibited.

B. Environmental Indemnity Without limiting Lessee's obligations under any other provision of this Lease, Lessee and its successors and assigns shall hereby indemnify, defend, protect, and hold Lessor, its officers, employees, elected officials, agents, lenders, consultants, independent contractors, and any successors to Lessor's interest ("Indemnified Parties") harmless from and against, and shall reimburse the Indemnified Parties for any and all losses, claims, liabilities, damages, costs, expenses, causes of action, judgments, damages, enforcement actions, taxes, remedial actions, the diminution in the value of the Premises, the Building, or any portion thereof, and injuries to persons, property or natural resources, arising out of Lessee's breach of any provision (or representation, warranty, or covenant) contained in this Section arising from, out of, in connection with, or as a consequence, directly or indirectly, of the Release or presence of any Hazardous Substances on, in, or beneath the Premises or that may have migrated from the Premises to any adjacent lands, air or water, which first occurs during the Term of this Lease, as the same may be extended by law or agreement of the parties, whether foreseeable or unforeseeable, and whether or not known to Lessee, it being understood and agreed that the foregoing indemnity includes, but is not limited to, all costs of removal, remediation of any kind, detoxification, clean up and disposal of such Hazardous Substances and the preparation of any closure or other required plans, all costs of determining whether the Premises is in compliance and causing the Premises to be in compliance with all applicable Environmental Laws, all costs and fees associated with claims for damages to persons, property, or natural resources, and Lessor's reasonable attorney's fees and consultant's fees and court costs in respect thereto, whether or not litigation or administrative proceedings shall occur, including all costs and expenses incurred or suffered by Lessor by reason of any violation of any applicable Environmental Law which first occurs, or has first occurred, upon the Premises during the Term of this Lease, as the same may be extended by law or agreement of the parties, or by reason of the imposition of fines or penalties, or any governmental lien for the recovery of environmental clean-up costs, expended by reason of

such violation, it being expressly understood and agreed that to the extent the Indemnified Parties or any of them are strictly liable under any Environmental Laws, this indemnity shall apply without regard to the strict liability with respect to the violation of law which results in such liability. Lessee shall comply with all Environmental Laws throughout the Term of this Lease, as the same may be extended by law or agreement of the parties. Lessee hereby covenants and agrees that all obligations of Lessee under this Section shall survive any termination of the Lease, it being further understood and agreed that the rights of Lessor under this Section shall be in addition to any other rights and remedies under this Lease, or otherwise available to Lessor at law or in equity.

C. Definitions

- i. The term "Environmental Laws" shall mean and include any and all federal, state or local laws (whether under common law, statute, rule, regulation, ordinance or otherwise), requirements under permits or other authorizations issued with respect thereto, and other orders, decrees, judgments, directives or other requirements of any governmental authority relating to or imposing liability or standards of conduct (including disclosure or notification) concerning the protection of human health or the environment, Hazardous Substances or any activity involving Hazardous Substances, including without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq. ("CERCLA"), as amended; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6921 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. Sections 651 et seq. ("OSHA"); the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136; the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 et seq.; the Federal Solid Waste Disposal Act, 42 U.S.C. Sections 6901 et seq.; the Clean Air Act, 42 U.S.C. Sections 7401 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Sections 11001 et seq.; Chapters 376 and 403, Florida Statutes; Chapter 62, Florida Administrative Code; and any regulation implementing the above.
- ii. The term "Hazardous Substances" shall have the meaning ascribed to it in CERCLA; provided, however, that the definition of the term "Hazardous Substances" shall also include (if not included within the definition contained in CERCLA) any hazardous or toxic chemical, waste, byproduct, pollutant, contaminant, compound, product or substance, including without limitation, asbestos, polychlorinated biphenyls, petroleum (including crude oil or any fraction or byproduct thereof), hydrocarbons, radon, urea, urea formaldehyde, and any material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of which is prohibited, controlled, limited or regulated in any manner under any Environmental Laws.
- iii. The term "Release" shall have the meaning ascribed to it in CERCLA and shall also include (if not included within the definition contained in CERCLA) any spill, leak, emission, discharge or disposal of Hazardous Substances into the environment.
- iv. The term "Notice" shall mean any summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from the Florida Department of Environmental Protection ("FDEP"), the United States Environmental Protection Agency ("USEPA"), the United States Occupational Safety and Health Administration ("OSHA") or other federal, state or local agency or authority, or any other entity or any individual, concerning any act or omission resulting or which may result in the Release of Hazardous Substances into the waters or onto the lands of the State of Florida, or into waters outside the jurisdiction of the State of Florida, or into the environment.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of this

_____ day of _____, 2013.

LESSOR:
CITY OF GAINESVILLE

Russ Blackburn, Manager

Witness Signature

Witness Signature

LESSEE:

Chris Fillie

Witness Signature

Witness Signature

City of Gainesville
Community Development

Exhibit "A"

Legend

- City Limits
- Lot Split
- Cluster Subdivisions
- Creeks

Aerial Image-2010

RGB

- Red: Band_1
- Green: Band_2
- Blue: Band_3

This is a high resolution aerial image only. It is not intended for use as a map. The City of Gainesville is not responsible for any errors or omissions in this image. The City of Gainesville is not responsible for any errors or omissions in this image.



City of Gainesville
Dept. of Planning
and Dev. Services

