

RESOLUTION NO. 2022-

**A RESOLUTION OF THE VILLAGE OF PINECREST,
FLORIDA, AUTHORIZING THE VILLAGE MANAGER
TO RENEW THE LEASE AGREEMENT WITH XAVIER
CORTADA, INC. FOR THE WHILDEN-COTTAGE;
PROVIDING FOR AN EFFECTIVE DATE.**

BE IT RESOLVED BY THE VILLAGE COUNCIL OF PINECREST, FLORIDA, AS FOLLOWS:

Section 1. That the Village Council hereby authorizes the Village Manager to renew the lease agreement with Xavier Cortada, Inc. for the Whilden-Carrier Cottage.

Section 2. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 13th day of December, 2022.

Joseph M. Corradino, Mayor

Attest:

Priscilla Torres, CMC
Village Clerk

Approved as to Form and Legal Sufficiency:

Mitchell Bierman
Village Attorney

Consent Agenda




Yocelyn Galiano, ICMA-CM
Village Manager
manager@pinecrest-fl.gov

MEMORANDUM
Office of the Village Manager

DATE: December 1, 2022

TO: The Honorable Mayor and Members of the Village Council

FROM: Yocelyn Galiano, ICMA-CM, Village Manager 

RE: Resolution Awarding Renewal of The Whilden-Carrier Cottage lease Agreement to Xavier Cortada, Inc.

The Village will like renew the current lease agreement with Xavier Cortada, Inc. for three (3) additional terms of twelve (12) months, the new lease end date will be May 31, 2025.

Xavier Cortada, Inc. will use The Whilden-Carrier Cottage as office space and art studio creation and educational programming designed to enhance the cultural profile of Pinecrest Gardens. The annual rental will be \$1.00 payable at the beginning of the lease term.

I hereby respectfully recommend the Village Council adopt the attached resolution awarding The Whilden-Carrier Cottage lease agreement renewal to Xavier Cortada, Inc.



LEASE AGREEMENT

This lease is entered into between the **Village of Pinecrest**, a Florida municipal corporation hereinafter referred to as "Grantor" and "Landlord", whose address is **12645 Pinecrest Parkway, Pinecrest, FL 33156** and **President and Artistic Director Of Xavier Cortada Inc.**, whose address is **14275 73rd Ave, Palmetto Bay, FL 33158**, hereinafter referred to as "Tenant", does this day lease unto Tenant the premises known as **The Whilden-Carrier Cottage**, located at **5825 SW 111 Street, Pinecrest, FL 33156**, hereinafter referred to as the "Premises."

WHEREAS, Grantor acquired the property on which the The Whilden-Carrier Cottage is situated with partial funding from the Florida Communities Trust (FCT), and that property is subject to certain limitations provided in the FCT Grant Award Agreement a/k/a the Declaration of Restrictive Covenants (as recorded in OR book 20893 Page 1908 in DADE County (the "Agreement,") and

WHEREAS, as part and condition of the FCT funding, the Village provided and FCT approved a Management Plan for the project site, and together with the Agreement, the terms of which are hereby incorporated herein by reference; and

WHEREAS, Grantor intends that the conservation and recreation values of the property be preserved and enhanced in accordance with the Management Plan, as it may be amended from time to time only after review and approval by FCT; and

WHEREAS, all activities by the Grantor and Grantee shall be consistent with the Agreement and Management Plan; and

WHEREAS, the Whilden-Carrier Cottage was placed on the property now known as Pinecrest Gardens due to its historical designation by Miami-Dade County; and

WHEREAS, Xavier Cortada, Inc. will be responsible for family oriented cultural and educational programming at Pinecrest Gardens including but not limited to exhibitions, temporary site-specific art installations, participatory art projects, and artist talks; and

WHEREAS, the Community Gardens Charitable Fund has chosen the enhancement of Pinecrest Gardens as its priority due to its existing botanical character and its historical significance; and

WHEREAS, Xavier Cortada, Inc. will use the Whilden-Carrier Cottage as office space and art studio for creation of art and educational programming designed to enhance the cultural profile of Pinecrest Gardens:

It is further agreed and covenanted by and between the parties hereto as follows:

1. Term and Rent. Landlord demises the above premises for a term of **5** years commencing June

- 1, 2017 and terminating May 31, 2022, or sooner as provided herein at the annual rental of one dollar (\$1) payable at the beginning of the lease term. All rental payments shall be made to Landlord, at the above specified address, in care of the Finance Director.
2. Use. Tenant shall have exclusive use of the Premises and shall use and occupy the Premises for office and studio purposes. The Premises shall be used for no other purpose. Landlord represents that the Premises may lawfully be used for such purpose.
3. Care and Maintenance of Premises. Tenant acknowledges that the Premises are in good order and repair, unless otherwise indicated herein. Tenant shall, at its own expense and at all times, maintain the Premises in good and safe condition, and shall surrender the same at termination hereof, in as good condition as received, normal wear and tear excepted. Village shall be responsible for all repairs and maintenance, the foundations, and the air conditioning system, and pest control. Additionally, the Village shall be responsible for the structural aspects of the Premises, which include the infrastructure, such as electrical, plumbing and all other systems. Tenant shall, at its own expense, be responsible for janitorial (cleaning) services if desired and shall deposit its trash and refuse in the dumpster south of the Library.
4. Alterations. Tenant shall not, without first obtaining the written consent of the Village Manager, make any alterations, additions, or improvements, in, to or about the Premises.
5. Ordinances and Statutes. Tenant shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, occasioned by or affecting the use thereof by Tenant. Tenant acknowledges and agrees that the Premises have been designate as "historic" pursuant to Miami-Dade County Ordinance Section 16A and that Tenant and Landlord must comply with its regulations for the protection, enhancement and perpetuation of historic properties.
6. Assignment and Subletting. Tenant shall not assign this lease or sublet any portion of the Premises. Any such assignment or subletting without consent shall be void and, at the option of the Landlord, may terminate this lease.
7. Utilities. All applications and connections for necessary electricity on the demised Premises shall be made in the name of Landlord, and Landlord shall be solely liable for electricity charges as they become due. Tenant shall be responsible for telephone services.
8. Signs. Exterior signs will be of the design and form of letter to be first approved by the Village Manager; the cost of creating, erecting, installing, and painting the signs are to be paid by Tenant. Tenant shall remove all signs at termination of this Lease Agreement and any damage or unsightly condition caused to building, because of or due to said signs, shall be satisfactorily corrected or repaired by Tenant.
9. No liability for Personal Property. All personal property placed or moved into or on the Premises above described shall be at the risk of Tenant or the owner thereof. Landlord shall not

Be liable to Tenant for any damage to said personal property unless caused by or due to negligence or willful misconduct of Landlord, Landlord's agents or employees.

10. Entry and Inspection. Tenant shall permit Landlord or Landlord's agents to enter upon the Premises at reasonable times and upon reasonable notice, for the purposes of inspecting the same.

11. Possession. If Landlord is unable to deliver possession of the Premises at the commencement hereof, Tenant shall not be liable for any rent until possession is delivered. Tenant may terminate this lease if possession is not delivered within sixty (60) days of the commencement of the term hereof.

12. Revenue. Any revenues generated from or by use of the Whilden-Carrier Cottage, including educational programs, special events, facility rentals, and festivals will be placed in a segregated account by the Landlord and will only be used for the upkeep and maintenance of the project site. All revenue, whether collected by the Recipient or a third party, such as vendors or non-profit organizations, will be reported to FCT in the annual stewardship report."

13. Indemnification of Landlord. Landlord shall not be liable for any damage or injury to Tenant, or any other person, or to any property, occurring on the demised Premises or any part thereof, and Tenant agrees to hold Landlord harmless from any claim for damages, no matter how caused.

14. Insurance. Tenant, at its expense, shall maintain plate glass and public liability insurance including bodily injury and property damage insuring Tenant and Landlord with minimum coverage as follows: \$100,000/\$300,000. Tenant shall provide Landlord with a Certificate of Insurance showing Landlord as an additional insured. The Certificate shall provide for a ten-day written notice to Lessor in the event of cancellation or material change of coverage. To the maximum extent permitted by insurance policies which may be owned by Landlord or Tenant, Tenant and Landlord, for the benefit of each other, waive any and all rights of subrogation which might otherwise exist. Any artwork kept on premise by the Tenant will be included as a rider on the Landlord's Insurance Policy

15. Destruction of Premises. In the event of a partial destruction of the Premises during the term hereof, from any cause, Landlord shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations. In the event that Landlord shall not elect to make such repairs within sixty (60) days, Landlord may terminate this lease. A total destruction of the building in which the premises may be situated shall terminate this lease.

16. Landlord's Remedies on Default. If Tenant defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Landlord may give Tenant notice of such default and if Tenant does not cure any such default within 30 days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Tenant does not commence such curing within such 45 days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Landlord may terminate this lease on not less than 30 days' notice to Tenant. On the date specified in such notice the term of this lease shall terminate, and Lessee shall then quit and surrender the Premises to Lessor, but Tenant shall remain liable as hereinafter provided. If this lease shall have been so terminated by Landlord, Landlord may at any time thereafter resume possession of the Premises by any lawful means and remove Tenant or other occupants and their

effects. No failure to enforce any term shall be deemed a waiver.

17. Attorney's Fees. In case suit should be brought for recovery of the Premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the Premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorney's fee.

18. Notices. Any notice which either party may, or is required to give, shall be given mailing same, postage prepaid, to Tenant at the Premises, or Landlord at its Village Hall address, or at such other places as may be designated in writing by the parties from time to time.

19. Option to renew. Provided that Tenant is not in default in the performance of this lease, Tenant shall have the option to renew the lease for three (3) additional terms of twelve (12) months commencing at the expiration of the initial lease term. All of the terms and conditions of the lease shall apply during the renewal term. The option shall be exercised by written notice given to Landlord not less than sixty (60) days prior to the expiration of the initial lease term. If notice is not given in the manner provided herein within the time specified, this option shall expire.

20. Cancellation. Either party shall have the right to cancel this Lease Agreement at any time by giving the other party at least ninety (90) days' written notice prior to its effective date.

21. Subordination. This lease is and shall be subordinated to all existing and future liens and encumbrances against the property.

22. Radon Disclosure, and OFAC Statement and Disclaimers. Radon: The following notification is required by Florida Law:

"Radon is a naturally occurring radioactive gas that, when it is accumulated in buildings 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 information regarding radon and radon testing may be obtained from your county health department." Landlord has not tested for Radon gas at the Property and therefore, makes no representation or warranty regarding the presence or absence of same. Tenant hereby waives any and all actions against Landlord related to the presence of such gas and Tenant confirms that it was given every reasonable opportunity prior to initially entering into possession of the Premises, to engage in any such testing as it determine was appropriate in Tenant's own business judgment and after securing any professional advice or guidance Tenant elected to engage in Tenant's sole discretion.

OFAC: Tenant hereby represents and warrants that neither Tenant, nor any persons or entities holding any legal or beneficial interest whatsoever in Tenant, are (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issue pursuant to such statutes; or (iii) named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons." If the foregoing representation is untrue at any time during the

Term, an Event of Default will be deemed to have occurred, without the necessity of notice to Tenant.

23. Holdover. If Tenant, with Landlord's consent, remains in possession of the Premises past the expiration of the term of the lease and if Landlord and Tenant have not executed an express written agreement as to such holding over, then such occupancy shall be a tenancy from month to month. In the event of such holding over, all of the terms of the Lease Agreement including the payment of all charges owing hereunder other than rent shall remain in force and effect on said month to month basis.

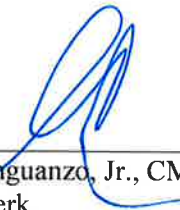
24. Entire Agreement. The foregoing constitutes the entire agreement between the parties and may be modified only in a writing signed by both parties. The following Exhibits, if any, have been made a part of this lease before the parties' execution hereof:
None.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease Agreement to be executed by their respective and duly authorized officers.


Signed this 1st day of June 2017.

ATTEST:

By: 
Yocelyn Galiano, ICMA-RC
Village Manager
Village of Pinecrest

By: 
Guido H Inguanzo, Jr., CMC
Village Clerk
Village of Pinecrest

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


Weiss Serota Helfman Cole & Bierman, PL
Village Attorney

REVIEWED AND APPROVED BY:


Florida Communities Trust

Xavier Cortada, INC.

By: 
Xavier Cortada
President, Artistic Director

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

I hereby certify that on this day, before me, an officer duly authorized to administer oaths and to take acknowledgments, personally appeared Xavier Cortada known to me to be the person described in, and who executed, the foregoing instrument; who acknowledged before me that he executed the same, and that I relied upon the following form(s) of identification of the above named person:

Witness my hand and official seal in the County and State last aforesaid this 23rd day of May, 2017.

