

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4654

1 AMENDED AND RESTATED LEASE

2 **34585**

3 THIS AMENDED AND RESTATED LEASE is made and entered, in
4 duplicate, as of March 1, 2017 pursuant to a minute order of the City Council of the City
5 of Long Beach made on March 7, 2017, by and between the CITY OF LONG BEACH,
6 whose address is 333 W. Ocean Blvd., 3rd Floor, Long Beach, CA 90802 (the "Landlord"),
7 and THE ART EXCHANGE VISUAL ART CENTER, INC., whose address is 340 E. 3rd
8 Street, Long Beach, CA 90802 (the "Tenant").

9 Landlord and Tenant, in consideration of the mutual terms, covenants, and
10 conditions herein, agree as follows:

11 1. Premises. Landlord hereby leases to Tenant and Tenant hereby
12 accepts and leases certain real property depicted on Exhibit "A" attached hereto (the
13 "Premises"), commonly known as 340-356 E. 3rd Street and 269 Elm Avenue. The
14 Premises include a parking lot and a building consisting of approximately 7,880 square
15 feet ("Building"). Tenant currently occupies a portion of the Building pursuant to Lease
16 (No. 32433) dated December 6, 2011 ("Original Lease") between Tenant and Landlord.
17 This Lease amends and replaces the Original Lease in its entirety.

18 2. Term. The term of this Lease shall commence on March 1, 2017,
19 and shall continue thereafter on a month-to-month basis, unless sooner terminated as
20 provided herein.

21 3. Termination Right. Either party may terminate this Lease with
22 respect to the Premises or any portion thereof at any time and for any reason during the
23 term, provided that such party provides at least thirty (30) days advance notice in writing
24 to the other party.

25 4. Rent. Tenant shall pay to Landlord a rental payment of One Dollar
26 (\$1.00) per month. As additional consideration for the Premises, Tenant shall provide
27 low- or no-cost art programs to (i) senior citizens, (ii) local disadvantaged and/or disabled
28 youth, and (iii) Long Beach City College, CSULB and LBUSD art students, each in a

1 manner reasonably acceptable to Landlord.

2 5. Use. Tenant shall use the Premises for art-related offices, storage,
3 workshops, studios and galleries. Tenant may also conduct occasional showings and
4 social events at the Premises for fundraising purposes. The Premises shall not be used
5 by Tenant for any other purpose without the express written consent of Landlord, which
6 may be withheld in its sole and absolute discretion. Tenant shall conduct its operations in
7 accordance with operating restrictions which may be reasonably imposed by Landlord.

8 6. Tenant Improvements. The Premises shall be leased in "as is"
9 condition, without any representations or warranties whatsoever by Landlord as to the
10 suitability for the intended use of the Premises. Tenant shall construct, at its own cost
11 and expense, any improvements necessary for its occupancy and intended use of the
12 Premises (collectively, the "Required Improvements"). The location and nature of the
13 Required Improvements shall be subject to the approval of Landlord. Notwithstanding
14 the foregoing, Landlord shall be solely responsible for ensuring that (i) the Premises meet
15 the minimum requirements for occupancy, and (ii) one restroom at the Premises complies
16 with the Americans with Disabilities Act to the extent required.

17 7. Maintenance Obligations. Tenant shall keep the Premises in a neat,
18 safe and sanitary condition. Landlord shall be responsible for all major capital repairs to
19 the Building; provided, however that Landlord may exercise the termination right in
20 Section 3 rather than undertake any necessary repairs. Tenant shall be responsible for
21 any and all other repairs associated with the Premises. Landlord shall have no day-to-
22 day maintenance obligations with respect to the Premises.

23 8. Utilities. Tenant shall be responsible for the provision of all utilities to
24 the Premises and shall be responsible for the payment of all utility expenses.

25 9. Taxes. Landlord shall be responsible for payment of all real property
26 taxes, and Tenant shall be responsible for the payment of all other taxes arising from its
27 use and occupancy of the Premises, including any possessory interest taxes.

28 10. Insurance.

1 A. During the entire term, Tenant shall at its sole cost and
2 expense procure and maintain:

3 (i) Commercial general liability insurance equivalent in
4 coverage scope to ISO CG 00 01 10 93 in an amount not less than One
5 Million Dollars (\$1,000,000) per occurrence and Two Million Dollars
6 (\$2,000,000) in aggregate covering bodily injury and property damage
7 liability combined arising from Tenant's obligations under or in connection
8 with this Lease. Such insurance shall name Landlord, and any other party it
9 so specifies in writing to Tenant, as an additional insured on an
10 endorsement equivalent in coverage scope to ISO CG 20 26 11 85.

11 (ii) The minimum limits of policies of insurance required of
12 Tenant under this Lease shall in no event limit the liability of Tenant under
13 this Lease. Such insurance shall (a) be issued by an insurance company
14 having a rating of not less than A-VIII in Best's Insurance Guide or which is
15 otherwise acceptable to Tenant and Landlord, (b) be primary insurance as
16 to all claims thereunder and provide that any insurance carried by Tenant or
17 Landlord is excess and is non-contributing with any insurance requirement
18 of Tenant, (c) provide that said insurance shall not be canceled or coverage
19 changed unless thirty (30) days' prior written notice shall have been given
20 to Landlord and any mortgagee or ground or underlying lessor of Landlord,
21 and (d) contain a cross-liability endorsement or severability of interest
22 clause acceptable to Landlord. Tenant shall deliver said policy or policies
23 or certificates thereof to Landlord on or before the effectiveness of this
24 Lease.

25 B. Notwithstanding the provisions of this Section 10, Tenant and
26 Landlord each hereby waive any and all rights of recovery against the other, or
27 against the officers, employees, agents and representatives of the other, for loss
28 of or damage to such waiving party or its property or the property of others under

1 its control but only to the extent that (a) such loss or damage is insured against or
2 is required to be insured against under the terms of this Lease, and (b) such
3 insurance policies permit and do provide for such waiver. In this regard, Landlord
4 and Tenant each agree to have their respective insurers issuing the insurance
5 described in this Section 10 waive any rights of subrogation that such companies
6 may have against the other party. Tenant shall provide, at its sole cost and
7 expense, such additional insurance or increased coverage amounts as may be
8 required by Landlord's Risk Manager acting in his or her sole discretion.

9 11. Hazardous Materials. No goods, merchandise, supplies, personal
10 property, materials, or items of any kind shall be kept, stored, or sold in or on the
11 Premises, which are in any way explosive or hazardous (except for cleaning supplies and
12 art supplies, including without limitation paint, that are used in the normal course of
13 Tenant's business). Tenant shall comply with California Health and Safety Code Section
14 25359.7 or its successor statute regarding notice to Landlord on discovery by Tenant of
15 the presence or suspected presence of any hazardous material on the Premises.
16 "Hazardous Materials" means any hazardous or toxic substance, material or waste which
17 is or becomes regulated by the City, the County of Los Angeles, the State of California or
18 the United States government.

19 12. Default. The occurrence of any of the following acts shall constitute
20 a default by Tenant:

- 21 A. Failure to pay rent when due after ten (10) days written notice;
22 B. Failure to perform any of the terms, covenants, or conditions
23 of this Lease if said failure is not cured within ten (10) days after written notice of
24 said failure; or
25 C. Any attempted assignment or transfer.

26 If Tenant does not comply with each provision of this Lease or if a default
27 occurs, then Landlord may terminate this Lease and Landlord may enter the Premises
28 and take possession thereof provided, however, that these remedies are not exclusive

1 but cumulative to other remedies provided by law in the event of Tenant's default, and the
2 exercise by Landlord of one or more rights and remedies shall not preclude Landlord's
3 exercise of additional or different remedies for the same or any other default by Tenant.

4 13. Right of Entry. Landlord shall have the right of access to the
5 Premises at all times.

6 14. Condemnation. If the whole or any part of the Premises shall be
7 taken by any public or quasi-public authority under the power of eminent domain, then
8 this Lease shall immediately terminate. All damages for such taking shall belong to
9 Landlord.

10 15. Nondiscrimination. Subject to applicable laws, rules and regulations,
11 Tenant shall not discriminate against any person or group on the basis of race, religion,
12 national origin, color, age, gender, sexual orientation, gender identity, AIDS, HIV status,
13 handicap or disability with respect to the use of the Premises or the performance of its
14 obligations under this Lease. Tenant shall take affirmative action to ensure that
15 applicants are employed and that employees are treated without regard to these bases.
16 Such action shall include but not be limited to employment, upgrading, demotion,
17 transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other
18 forms of compensation, and selection for training including apprenticeship. Tenant shall
19 post in conspicuous places notices stating this provision.

20 16. Indemnification.

21 A. Tenant shall indemnify, protect and hold harmless Landlord,
22 its Boards, Commissions, and their officials, employees and agents ("Indemnified
23 Parties"), from and against any and all liability, claims, demands, damage, loss,
24 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
25 costs and expenses, including attorneys' fees, court costs, expert and witness
26 fees, and other costs and fees of litigation, arising or alleged to have arisen, in
27 whole or in part, out of or in connection with (1) Tenant's breach or failure to
28 comply with any of its obligations contained in this Lease, or (2) negligent or willful

1 acts, errors, omissions or misrepresentations committed by Tenant, its officers,
2 employees, agents, subcontractors, or anyone under Tenant's control, in the use
3 of the Premises (collectively "Claims" or individually "Claim").

4 B. In addition to Tenant's duty to indemnify, Tenant shall have a
5 separate and wholly independent duty to defend Indemnified Parties at Tenant's
6 expense by legal counsel approved by Landlord, from and against all Claims, and
7 shall continue this defense until the Claims are resolved, whether by settlement,
8 judgment or otherwise. No finding or judgment of negligence, fault, breach, or the
9 like on the part of Tenant shall be required for the duty to defend to arise.
10 Landlord shall notify Tenant of any Claim, shall tender the defense of the Claim to
11 Tenant, and shall assist Tenant, as may be reasonably requested, in the defense.

12 C. If a court of competent jurisdiction determines that a Claim
13 was caused by the sole negligence or willful misconduct of Indemnified Parties,
14 Tenant's costs of defense and indemnity shall be (1) reimbursed in full if the court
15 determines sole negligence by the Indemnified Parties, or (2) reduced by the
16 percentage of willful misconduct attributed by the court to the Indemnified Parties.

17 D. The provisions of this Section shall survive the expiration or
18 termination of this Lease.

19 17. Relocation. Tenant agrees that nothing contained in this Lease shall
20 create any right in Tenant for any relocation assistance or payment under applicable
21 California law from Landlord on the expiration or termination of this Lease. Tenant
22 agrees that nothing contained in this Lease shall create any right for any reimbursement
23 of Tenant's moving expenses incurred prior to or during the term of this Lease.

24 18. Assignment. Tenant shall not assign or transfer this Lease or any
25 interest herein, nor sublease the Premises or any part thereof (collectively referred to as
26 "transfer").

27 19. Signs: Tenant may post signs on and about the Premises subject to
28 the approval of Landlord.

1 20. Access. Tenant shall have access to the Premises twenty-four (24)
2 hours per day, seven (7) days per week.

3 21. [Reserved].

4 22. Surrender of Premises. On the expiration or sooner termination of
5 this Lease, Landlord may require that Tenant remove all improvements on the Premises
6 and otherwise deliver to Landlord possession of the Premises in substantially the same
7 condition that existed immediately prior to the date of execution hereof.

8 23. Notice. Any notice required hereunder shall be in writing and
9 personally served or deposited in the U. S. Postal Service, first class, postage prepaid to
10 Landlord and Tenant at the respective addresses first stated above. Notice shall be
11 deemed effective on the date of mailing or on the date personal service is obtained,
12 whichever first occurs. Change of address shall be given as provided herein for notice.

13 24. Waiver of Rights. The failure or delay of Landlord to insist on strict
14 enforcement of any term, covenant, or condition herein shall not be deemed a waiver of
15 any right or remedy that Landlord may have and shall not be deemed a waiver of any
16 subsequent or other breach of any term, covenant, or condition herein. The receipt of
17 and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other
18 default but shall only constitute a waiver of timely payment of rent. Any waiver by
19 Landlord of any default or breach shall be in writing. Landlord's approval of any act by
20 Tenant requiring Landlord's approval shall not be deemed to waive Landlord's approval of
21 any subsequent act of Tenant.

22 25. Successors in Interest. This Lease shall be binding on and inure to
23 the benefit of the parties and their permitted successors, heirs, personal representatives,
24 transferees, and assignees, and all of the parties hereto shall be jointly and severally
25 liable hereunder.

26 26. Force Majeure. Except as to the payment of rent, in any case where
27 either party is required to do any act, the inability of that party to perform or delay in
28 performance of that act caused by or resulting from fire, flood, earthquake, explosion,

1 acts of God, war, strikes, lockouts, or any other cause whether similar or dissimilar to the
2 foregoing which is beyond the control of that party and not due to that party's fault or
3 neglect shall be excused and such failure to perform or such delay in performance shall
4 not be a default or breach hereunder. Financial inability to perform shall not be
5 considered cause beyond the reasonable control of the party.

6 27. Partial Invalidity. If any term, covenant, or condition of this Lease is
7 held by a court of competent jurisdiction to be invalid, void or unenforceable, the
8 remainder of the provisions hereof shall remain in full force and effect and shall in no way
9 be affected, impaired or invalidated thereby.

10 28. Time. Time is of the essence in this Lease, and every provision
11 hereof.

12 29. Governing Law. This Lease shall be governed by and construed in
13 accordance with the laws of the State of California.

14 30. Integration and Amendments. This Lease represents and constitutes
15 the entire understanding between the parties and supersedes all other agreements and
16 communications between the parties, oral or written, concerning the subject matter
17 herein. This Lease shall not be modified except in writing signed by the parties and
18 referring to this Lease.

19 31. Joint Effort. This Lease is created as a joint effort between the
20 parties and fully negotiated as to its terms and conditions and nothing contained herein
21 shall be construed against either party as the drafter.

22 32. No Recordation. This Lease shall not be recorded.

23 33. Attorney's Fees. In any action or proceeding relating to this Lease,
24 the prevailing party shall be entitled to its costs, including a reasonable attorney's fee.

25 34. Captions and Organization. The various headings and numbers
26 herein and the grouping of the provisions of this Lease into separate sections,
27 paragraphs and clauses are for convenience only and shall not be considered a part
28 hereof, and shall have no effect on the construction or interpretation of this Lease.

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 35. Relationship of Parties. The relationship of the parties hereto is that
2 of Landlord and Tenant, and the parties agree that nothing contained in this Lease shall
3 be deemed or construed as creating a partnership, joint venture, association, principal-
4 agent or employer-employee relationship between them or between Landlord or any third
5 person or entity.

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1 IN WITNESS WHEREOF, the parties have executed this Lease with all of
2 the formalities required by law as of the date first above written.

3 THE ART EXCHANGE VISUAL ART
4 CENTER, INC., a California nonprofit
5 corporation

6 03.31, 2017

By [Signature]
7 BOARD President CHAIR
8 STEVE PAKIZ

Type or Print Name

9 03.31, 2017

By [Signature]
10 EXECUTIVE Secretary DIRECTOR
11 JAY P. HORNE

Type or Print Name

"Tenant"

12 CITY OF LONG BEACH, a municipal
13 corporation

14 April 6, 2017

By [Signature]
15 Patrick H. West
16 City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

Assistant City Manager

"Landlord"

17 This Lease is hereby approved as to form on April 3

18 2017.

19 CHARLES PARKIN, City Attorney

By [Signature]
20 Deputy

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EXHIBIT "A"
DEPICTION OF PREMISES

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