

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

LEASE

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3 THIS LEASE is made and entered, in duplicate, as of December 1, 2011
4 pursuant to a minute order of the City Council of the City of Long Beach made on
5 December 6, 2011, by and between the CITY OF LONG BEACH, whose address is 333
6 W. Ocean Blvd., 3rd Floor, Long Beach, CA 90802 (the "Landlord"), and THE ART
7 EXCHANGE VISUAL ART CENTER, INC., whose address is 340 E. 3rd Street, Long
8 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 approximately 4,750 square feet of certain office space depicted on
13 Exhibit "A" attached hereto (the "Premises"), commonly known as 340, 352, and 356 E.
14 3rd Street. The Premises are part of a larger building consisting of approximately 7,880
15 square feet owned by Landlord ("Building"). Tenant currently occupies 340 E. 3rd Street
16 pursuant to a Rental Agreement (No. DT 648) dated March 10, 2010 ("Original Lease")
17 between Tenant and Landlord, as successor-in-interest to the Redevelopment Agency of
18 the City of Long Beach. This Lease amends and replaces the Original Lease in its
19 entirety.

20 2. Term. The term of this Lease shall commence on December 1, 2011
21 (the "Commencement Date"), and shall continue indefinitely thereafter on a month-to-
22 month basis, unless sooner terminated as provided herein.

23 3. Termination Right. Either party may terminate this Lease with
24 respect to the Premises or any portion thereof at any time and for any reason during the
25 term, provided that such party provides at least ten (10) days advance notice in writing to
26 the other party.

27 4. Rent. Tenant shall pay to Landlord a rental payment of One Dollar
28 (\$1.00) per month ("Base Rent"). As additional consideration for the Premises, Tenant

1 shall provide low or no-cost after-school and summer art programs to local
2 disadvantaged youth in a manner reasonably acceptable to Landlord.

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

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

18 7. Maintenance Obligations. Tenant shall keep the Premises in a neat,
19 safe and sanitary condition. Landlord shall be responsible for all major capital repairs to
20 the Building. Tenant shall be responsible for any and all other repairs associated with the
21 Premises. Landlord shall have no day-to-day maintenance obligations with respect to the
22 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.

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1 10. Insurance.

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

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

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

26 B. Notwithstanding the provisions of this Section 10, Tenant and
27 Landlord each hereby waive any and all rights of recovery against the other, or
28 against the officers, employees, agents and representatives of the other, for loss

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

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

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

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

27 If Tenant does not comply with each provision of this Lease or if a default
28 occurs, then Landlord may terminate this Lease and Landlord may enter the Premises

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

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

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

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

21 16. Indemnification.

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

1 comply with any of its obligations contained in this Lease, or (2) negligent or willful
2 acts, errors, omissions or misrepresentations committed by Tenant, its officers,
3 employees, agents, subcontractors, or anyone under Tenant's control, in the use
4 of the Premises (collectively "Claims" or individually "Claim").

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

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

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

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

25 18. Assignment. Tenant shall not assign or transfer this Lease or any
26 interest herein, nor sublease the Premises or any part thereof (collectively referred to as
27 "transfer").
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1 19. Signs. Tenant may post signs on and about the Premises subject to
2 the approval of Landlord.

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

5 21. Parking. Landlord shall provide Tenant, at no cost, with five (5)
6 parking spaces (including one handicapped stall) in a City-owned parking lot located
7 immediately to the south of the Building. Tenant shall have the non-exclusive right to use
8 the remainder of the metered spaces in the City-owned parking lot located immediately to
9 the south of the Building.

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

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

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

28 25. Successors in Interest. This Lease shall be binding on and inure to

1 the benefit of the parties and their permitted successors, heirs, personal representatives,
2 transferees, and assignees, and all of the parties hereto shall be jointly and severally
3 liable hereunder.

4 26. Force Majeure. Except as to the payment of rent, in any case where
5 either party is required to do any act, the inability of that party to perform or delay in
6 performance of that act caused by or resulting from fire, flood, earthquake, explosion,
7 acts of God, war, strikes, lockouts, or any other cause whether similar or dissimilar to the
8 foregoing which is beyond the control of that party and not due to that party's fault or
9 neglect shall be excused and such failure to perform or such delay in performance shall
10 not be a default or breach hereunder. Financial inability to perform shall not be
11 considered cause beyond the reasonable control of the party.

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

16 28. Time. Time is of the essence in this Lease, and every provision
17 hereof.

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

20 30. Integration and Amendments. This Lease represents and constitutes
21 the entire understanding between the parties and supersedes all other agreements and
22 communications between the parties, oral or written, concerning the subject matter
23 herein. This Lease shall not be modified except in writing signed by the parties and
24 referring to this Lease.

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

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

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

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

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

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

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

December 8th, 2011

By [Signature]
President Co-CHAIR
Stephen Ellicker
Type or Print Name

December 8th, 2011

By [Signature]
Secretary
Timothy Dunham
Type or Print Name

"Tenant"

CITY OF LONG BEACH, a municipal corporation

Dec 9, 2011

By [Signature]
Patrick H. West
City Manager
Assistant City Manager
"Landlord"

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

This Lease is hereby approved as to form on December 8, 2011.

ROBERT E. SHANNON, City Attorney
By [Signature]
Deputy

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EXHIBIT "A"
DEPICTION OF PREMISES



city of
longbeach CA

340, 352, and 356 East 3rd Street



Exhibit "A"