

## LICENSE AND FACILITY OVERSIGHT AGREEMENT

THIS LICENSE AND FACILITY OVERSIGHT AGREEMENT (Agreement) is entered into effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017 (Effective Date) by and between the CITY OF CHULA VISTA, a chartered municipal corporation (City), and FRANCISCO GARCIA-VELASQUEZ, DBA The Industry, a sole proprietorship (Licensee), with reference to the following facts:

### RECITALS

A. The City owns a vacant lot located at 224 Third Avenue, APN: 568-044-1900, (the "Lot") (Exhibit "A"), Chula Vista; and

B. The City and Licensee desire to repurpose the Lot as community cultural arts space (Arts Space); and

C. The Arts Space would fill an existing gap in arts and culture venue space in Chula Vista, and the South Bay region; and

D. The Arts Space programming would include music, art exhibitions, dance performances, lectures, film and art forums, and a variety of other arts happenings; and

E. The Arts Space would be available as a community arts space for a variety of artists and arts organizations and as a free to low cost arts space for Chula Vista residents and Chula Vista based arts organizations; and

F. In order to support this community benefit, the City is willing to license the Lot to Licensee, under the terms, covenants, conditions and provisions contained herein.

NOW THEREFORE, in consideration of the above Recitals for the public benefit of the City, its residents and visitors; for the mutual benefit of the City and Licensee; and for other good and valuable consideration, the parties hereto mutually agree as follows:

### SECTION 1: GRANT OF LICENSE AND LICENSEE DUTIES

**1.1 Premises.** Subject to the terms, covenants, conditions and provisions hereof, City hereby grants Licensee a license to access and use the Lot, for those uses specifically identified in section 1.2 below.

**1.2 Uses.** It is expressly agreed that the Lot shall be used by Licensee solely and exclusively for the purpose of cultural arts, and for such other related or incidental purposes as may be first approved in writing by the City's Cultural Arts Manager or the City's Real Property Manager, and for no other purpose whatsoever. The Lot will be made available to Chula Vista residents and Chula Vista based arts organizations, including schools for free to low cost. Said costs shall be subject to approval by the City's Cultural Arts Manager or designee. All activities on the Lot shall provide for a large range of artistic expression that is mindful of all segments of the community and appropriateness of the audience age group. Uses shall not cause offence, such as depictions of violence nor include defaming or obscene material as defined by the U.S. Supreme Court. Activities that may cause bodily injury (e.g. crowd surfing, stage diving, etc.

are prohibited). Licensee is authorized by the City to market The Industry but Licensee shall not have, and this Agreement does not convey to Licensee exclusive marketing or use rights to the Lot.

Licensee covenants and agrees to use the Premises only for the above specified purpose and to diligently pursue said purpose throughout the term hereof. In the event that Licensee fails to use the Lot on a regular basis or uses the Lot for purposes not expressly authorized herein, the Licensee shall be deemed in default under this Agreement.

**1.3 Reservation of Rights.** City shall not unreasonably or substantially interfere with Licensee use of the Lot while Licensee is using the Lot as provided herein. However, in addition to any and all other rights, title and interest in the Lot, the City specifically retains the following rights:

**a. Right to Enter.** City has the right, but not the obligation, to enter the Lot for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services.

**b. Events.** The City has the right to use for itself, and to make the Lot available for public and private use as it deems appropriate, excluding Licensee's personal property. The parties hereto agree to coordinate such activities to avoid conflicts.

**1.4 Licensee Responsibilities for Lot Oversight.** In consideration of City's grant to Licensee of the license rights described herein, Licensee agrees to provide facility oversight services to the Lot as more particularly described in Section 3 below.

## **SECTION 2: TERM**

**2.1 Term.** The term of this Agreement shall be one year commencing on the effective date of this Agreement.

**a. Options to Extend.** The City, at its sole discretion, may grant the Licensee up to two additional one-year terms. Unless otherwise mutually agreed by the parties in writing, the terms and conditions of this Agreement shall remain in effect during the extended term. If City for any reason cannot deliver possession of the Lot to Licensee at the commencement of the term, or if during the term of this Agreement Licensee is dispossessed for any reason whatsoever, City shall not be liable to Licensee for any loss or damage, including compensatory or punitive, resulting therefrom, and Licensee hereby waives and releases the City from and against any claims for loss or damage.

**2.2 Termination.** Notwithstanding any other remedies provided by this Agreement, City has the right, at its sole discretion, without cause, to terminate this Agreement and the license granted herein, upon ninety (90) days written notice to Licensee. Licensee shall also have the right to terminate this Agreement upon ninety (90) days written notice to City.

**a. Termination for Cause.** Notwithstanding the foregoing, in the event that Licensee has breached any material provision of this Agreement, and has not cured the same in accordance with Section 7.10 herein, in addition to any other remedies provided by law or equity, the City may terminate this Agreement upon ten (10) days written notice.

**2.3 Surrender of Premises.** At the expiration or earlier termination of this Agreement, Licensee shall surrender the Lot to City free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the Effective Date of this Agreement. The Lot, when surrendered by Licensee, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at the commencement of this Agreement, absent normal wear and tear.

### **SECTION 3: CONSIDERATION FOR LICENSE – FACILITY OVERSIGHT**

**3.1 Consideration.** In consideration of the use of the Lot Licensee shall provide cultural art space and services for the benefit of the community as set forth in the Cultural Arts Master Plan and pursuant to the City's Municipal Code.

**3.2 Facility Oversight.** Licensee shall be responsible for controlling access to and from the Lot and insuring that employees act in a professional manner that does not damage the image of or reflect negatively on the City. Licensee shall also be responsible for maintenance and upkeep of the Lot, all improvements, shipping containers, and any other associated appurtenances. All shall be kept attractive, good, neat, in working and orderly condition during the term of this Agreement as more particularly provided is Section 6.3 hereof.

### **SECTION 4: INSURANCE RISKS/SECURITY**

#### **4.1 Indemnity.**

- a. To the maximum extent allowed by law Licensee hereby agrees to defend, indemnify, and hold the City, its City Council, directors, officers, employees, agents and/or volunteers, harmless from and against any and all liability or claim of liability, loss or expense, including defense costs and legal fees and claims for damages of whatever character, nature and kind, whether directly or indirectly arising from or connected with, or related to this Agreement or an act or omission of Licensee, or any employee, agent, invitee, contractor of Licensee, or other person acting by or on behalf of Licensee on or about the Lot, including, but not limited to, liability, expense, and claims for bodily injury, death, personal injury, or property damage, and any related attorneys' fees or court costs. This indemnity provision does not include any claims, damages, liability, costs and expenses (including without limitations, attorneys fees) arising from the sole negligence or sole willful misconduct of the City, its officers, employees, or agents. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Licensee, its employees, agents or officers
- b. Costs of Defense and Award. Included in the obligations in Section a , above, is the Licensee's obligation to defend, at Licensee's own cost, expense and risk, any and all aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its City Council, directors, officials, officers, employees, agents and/or volunteers. Licensee shall pay and satisfy any judgment, award or decree that may be rendered against City or its City

Council, directors, officials, officers, employees, agents and/or volunteers, for any and all legal expense and cost incurred by each of them in connection therewith.

- c. Insurance Proceeds. Licensee's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its City Council, directors, officials, officers, employees, agents, and/or volunteers.
- d. Declarations. Licensee's obligations under Section 4 shall not be limited by any prior or subsequent declaration by the Licensee.
- e. Enforcement Costs. Licensee agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in Section 4.
- f. Survival. Licensee's obligations under Section 4 shall survive the termination of this Agreement.

#### **4.2 Insurance.**

Licensee, at his/her sole expense shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Licensee, his agents, representatives, employees or subcontractors.

#### **MINIMUM SCOPE AND LIMIT OF INSURANCE**

##### **a. Coverage shall be at least as broad as:**

- 1. Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 2. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Licensee has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- 3. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If the Licensee maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Licensee.

##### **b. Other Insurance Provisions:**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

## **1. Additional Insured Status**

The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Licensee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Licensee's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used). Specifically, endorsement must not exclude Products / Completed Operations.

## **2. Primary Coverage**

For any claims related to this Agreement, the Licensee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Licensee's insurance and shall not contribute with it.

## **3. Notice of Cancellation**

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

## **4. Waiver of Subrogation**

Licensee hereby grants to City a waiver of any right to subrogation which any insurer of said Licensee may acquire against the City by virtue of the payment of any loss under such insurance. Licensee agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

## **5. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Licensee to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

## **6. Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

## **7. Claims Made Policies**

If any of the required policies provide claims-made coverage:

- a. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Effective Date, the Licensee must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.

### **8. Verification of Coverage**

Licensee shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Licensee’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

### **9. Special Risks or Circumstances**

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**4.3 Accident Reports.** Licensee shall report to the City’s Cultural Arts Manager or designee within 24 hours any accident causing any property damage or any serious injury to persons on or about the Lot. This report shall contain the names and addresses of the parties involved a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

## **SECTION 5: TERMS AND CONDITIONS OF OCCUPANCY**

**5.1 Form of Agreement.** This Agreement is a limited License for the use of the Lot for those particular purposes identified in Section 1.2. Nothing in this Agreement shall be interpreted to grant any interest in the Lot other than that specified in this Agreement. At no time shall the Licensee’s limited interest in the Lot ripen into a leasehold, easement or fee interest with a claim or right to exclusive possession thereof.

**5.2 Right to Occupy.** Licensee’s right to occupy the Lot may be terminated by City at any time if Licensee fails to satisfactorily perform the improvement, maintenance, and upkeep duties or responsibilities of Licensee set forth hereunder. City reserves the right to terminate this Agreement as may be provided for elsewhere herein.

**5.3 Taxes.** Licensee shall pay, before delinquency, any taxes, assessments, and fees assessed or levied upon Licensee or the Lot, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Licensee or levied by reason of the business or other Licensee activities related to the Lot, including any licenses or permits. Licensee recognizes and agrees that this Agreement may create a possessory interest subject to property taxation, and that Licensee may be subject to the payment of taxes levied on such interest, and that Licensee shall pay all such possessory interest taxes prior to their delinquency.

**5.4 Hours of Operation.** The hours of operation shall conform to Chula Vista Municipal Code 19.68.030. Licensee or Licensee's staff will conduct business and be present when the Lot is open and during all events. Licensee shall provide access control to the Lot in a manner approved by City to prevent unauthorized access to the Lot during Licensee's hours of operation.

**5.5 Utilities.** Licensee agrees that utilities are available under this License and the cost thereof shall be borne by the Licensee. Use of said utilities shall be only as needed to carry on the operations permitted under this License.

**5.6 Business License.** Licensee shall maintain a valid City of Chula Vista Business License at all times during operations covered by this License.

## **SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS**

**6.1 Acceptance of Lot.** The Lot is being offered to Licensee in an As-Is and Where-Is condition without any warranty, expressed or implied. Licensee represents and warrants that it has independently inspected the Lot and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Lot and all improvement appurtenant thereto. Licensee acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Agreement. Licensee further acknowledges that the Lot is in the condition called for by this Agreement, and that Licensee does not hold City responsible for any defects, whether latent or patent, in the Lot.

**6.2 Waste, Damage, or Destruction.** Licensee shall give notice to the City's Cultural Arts Manager or designee of any fire or other damage that occurs on the Lot within twenty four (24) hours of such fire or damage. Licensee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Lot, adjoining sidewalks, and other public areas, clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to City. If the Lot shall be damaged by any cause which puts the Lot into a condition which is not decent, safe, healthy and sanitary, Licensee agrees to make or cause to be made full repair of said damage and to restore the Lot to the condition which existed prior to said damage; or, at City's option, and upon receipt of written demand thereof, Licensee agrees to clear and remove from the Lot all debris resulting from said damage and repair the Lot in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the improvements which existed prior to such damage. Licensee shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the Lot.

Licensee shall not cause or permit any hazardous material to be used, stored, transported, generated, or disposed in or about the Lot by Licensee, Licensee's agents, employees, contractors, or invitees. "Hazardous Material" means any hazardous, toxic, or infectious substance, material, or waste, which is or becomes regulated by any local governmental entity, the State of California, or the United States government under any law, regulation or ordinance.

**6.3 Maintenance.** Licensee agrees to provide periodic maintenance of the Lot, improvements, shipping containers, and any other associated appurtenances throughout the term of this Agreement. Licensee shall also be responsible for maintenance of the Lot as follows: periodic cleaning and sweeping/mopping as necessary. Licensee shall make

customary and usual maintenance necessary to maintain and preserve the Lot. Licensee shall remove and lawfully and properly dispose of all garbage, litter, trash, debris, rubbish, and graffiti from or about the Lot, adjoining sidewalks, and other public areas, on a daily basis. All maintenance and other Licensee duties set forth herein shall, during the term hereof, be done at Licensee sole cost and expense and City shall not be called upon for any outlay or expense related thereto. Major maintenance and/or repair issues must be referred to the City's Cultural Arts Manager or designee for evaluation prior to any work being performed or cost therefore incurred. City at its sole discretion shall determine what work shall be performed and inform Licensee thereof so that Licensee can complete said work. City at its sole discretion may undertake and complete major maintenance and/or repairs that are not a direct result of Licensee's actions.

If at any time during the term of this Agreement, City reasonably determines that the Lot is not in a decent, safe, healthy, and sanitary condition, City may, at its sole discretion and option, terminate this Agreement upon written notice to Licensee and regain possession of the Lot from Licensee. If the condition is proximately caused by Licensee's use of the Lot, City may upon written notice to Licensee, have any necessary maintenance work done in order to place the Lot back to a decent, safe, healthy, and sanitary condition at the expense of Licensee. In such event, City shall provide Licensee written notice and itemized billing showing the work performed and Licensee shall make payment to City no later than thirty (30) days after receipt of said notice and billing. The rights reserved in this Section 6.3 shall not create any obligations on City or increase obligations elsewhere in this Agreement imposed on City. The provisions of this Section 6.3 shall survive the expiration or earlier termination of this Agreement.

**6.4 Improvements/Alterations.** No improvements, structures, or installations shall be constructed on the Lot, and the Lot may not be altered by Licensee without prior written approval by the City. This provision shall not relieve Licensee of any obligation under this Agreement to maintain the Lot in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. City shall not be called upon to, or be obligated by this Agreement to make or assume any expense for any existing improvements or alterations.

**6.5 Liens.** Licensee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to all or any portion of the Lot without the prior written consent of the City's Property Manager. Licensee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the Lot for which Licensee does not have the prior written consent of the City's Property Manager.

**6.6 Signs.** Licensee will be allowed one banner advertising the business and indicating Licensee's hours of operation. Licensee shall not erect or display any other banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising on or about the Lot without the prior written consent of City. If any such unauthorized item is found on the Lot, Licensee shall remove the item at its expense within twenty-four (24) hours of written notice thereof by City, or City may thereupon remove the item at Licensee's cost.

**6.7 Ownership of Improvements.** Any and all improvements, structures, and installations or additions to the Lot now existing or constructed on the Lot by Licensee shall at Agreement expiration or termination be deemed to be part of the Lot and shall become, at City's



option, City's property, free of all liens and claims except as otherwise provided in this Agreement. If the City chooses not to accept improvements made by Licensee, during the term of this License, and prefers to have such improvements removed, Licensee shall do so at its sole cost and expense. If Licensee does not remove said improvements at request of City, City may upon written notice to Licensee, have any improvements not accepted by City removed at the expense of Licensee. In such event, City shall provide Licensee written notice and itemized billing showing the work performed and Licensee shall make payment to City no later than thirty (30) days after receipt of said notice and billing. The rights reserved in this Section 6.7 shall not create any obligations on City or increase obligations elsewhere in this Agreement imposed on City. The provisions of this Section 6.7 shall survive the expiration or earlier termination of this Agreement

**6.8 Breach by Licensee.** Licensee's refusal or failure to meet its obligations under this Section 6 shall be deemed a breach of this Agreement, and in such event, City may, in addition to any other remedies it may have at law or equity, terminate this Agreement pursuant to the provision of Section 7.10 or elsewhere herein.

## **SECTION 7: GENERAL PROVISIONS**

**7.1 Notices.** All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed, postage prepaid, to the respective party as follows:

To City:  
Rick Ryals  
Real Property Manager  
City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910

To Licensee:  
Francisco Garcia-Velasquez  
157 Twin Oaks Circle  
Chula Vista, CA 91910  
Phone: 619-708-0561

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of: (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above; or (ii) three working days following the deposit in the United States Mail of certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above, or (iii) actual receipt if made by recognized reliable courier service who maintains a receipt of delivery.

**7.2 City Approval.** The City's Property Manager or the City's Cultural Arts Manager or designee (as so indicated herein) shall be the City's authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement.

**7.3 Nondiscrimination.** Licensee agrees not to discriminate in any manner against or segregation of any person or persons, on account of race, color, religion, sex, familiar status, national origin, ancestry, age, disability or sexual orientation in the use, occupancy, tenure or enjoyment of the Lot, nor shall Licensee itself, or any person claiming under or through it,

establish or permit such practice or practices of discrimination or segregation with reference to the use or occupancy of the Lot.

**7.4 Equal Opportunity.** Licensee shall assure applicants are employed and that employees are treated during employment without regard to race, familial status, color, religion, sex or national origin. Licensee hereby certifies to City that Licensee shall comply throughout the term of this Agreement with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State and Local law, regulation and policy (including without limitation those adopted by City) related to equal employment and opportunity including any such law, regulation, and policy hereinafter enacted.

**a.** Compliance and performance by Licensee of the equal employment and opportunity provision of this Agreement is an express condition hereof and any failure by Licensee to so comply and perform shall be a default of this Agreement and City may exercise any right as provided herein and as otherwise provided by law.

**7.5 Entire Agreement.** This Agreement comprises the entire integrated understanding between City and Licensee concerning the use and occupation of the Lot and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the Lot, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself.

**7.6 Interpretation of the Agreement.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to City.

**a.** Licensee shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

**b.** Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

**c.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**7.7 Agreement Modification.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

**7.8 Attorney's Fees.** In the event a suit is commenced by City against Licensee to enforce payment of amounts due, or to enforce any of the terms and conditions hereof, or in case City shall commence summary action under the laws of the State of California relating to the unlawful detention of Lot, for forfeit of this Agreement, and the possession of the Lot, provided City effects a recovery, Licensee shall pay City all reasonable costs expended in any action, together with a reasonable attorney's fee to be fixed by the court. Venue for any such suit or action shall be California Superior Court, San Diego County.

**7.9 Assignment and Subletting-No Encumbrance.** This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the Licensee's

duties be delegated, without the express written consent of the City's Property Manager or the City's Cultural Arts Manager or designee in their sole discretion. Any attempt to assign or delegate this Agreement without the express written consent of the City's Property Manager or the City's Cultural Arts Manager or designee shall be void and of no force or effect. A consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, sublease, or delegation.

**7.10 Defaults and Termination.** If City has a good faith belief that Licensee is not complying with the terms of this Agreement, City shall give written notice of the default (with reasonable specificity) to Licensee and demand the default to be cured within ten (10) days of the notice. If Licensee is actually in default of this Agreement and fails to cure the default within ten (10) days of the notice, or, if more than ten (10) days are reasonably required to cure the default and Licensee fails to give adequate assurance of due performance within ten (10) days of the notice, City may terminate this Agreement upon written notice to Licensee.

City may also terminate this Agreement upon written notice to Licensee in the event that:

a. Licensee has previously been notified by City of Licensee's default under this Agreement and Licensee, after beginning to cure the default, fails to diligently pursue the cure of the default to completion; or

b. Licensee shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or

c. Licensee shall be adjudicated a bankruptcy; or

d. Licensee shall make a general assignment for the benefit of creditors.

Upon termination, City may immediately enter and take possession of the Lot.

**7.11 No Waiver.** The failure to require the remedy of a breach or enforce the terms and conditions of this Agreement in one instance or several instances shall not be interpreted to be a waiver of the right to enforce the terms and conditions of this Agreement for any subsequent breach.

**7.12 Other Regulations.** All use of the Lot by Licensee under this Agreement shall be in accordance with the laws of the United States of America, the State of California, the County of San Diego, and in accordance with all applicable rules and regulations and ordinances of the City of Chula Vista now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by Local, State or Federal law.

**7.13 Time is of Essence; Provisions Binding on Successors.** Time is of the essence of all of the terms, covenants and conditions of this Agreement and, except as otherwise provided herein, all of the terms, covenants and conditions of this Agreement shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.

**7.14 Section Headings.** The Section headings contained herein are for convenience only and are not intended to define or limit the scope of any provision thereof.

**7.15 Gender/Singular/Plural.** The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

**7.16 Non-liability of Officials.** No member, official or employee of the City shall be personally liable to Licensee, its assigns or successors in interest, in the event of any default or breach by the City, for any amount which may become due to Licensee its assigns or successors, or in any obligations under the terms of this Agreement.

**7.17 Relationship between City and Licensee.** It is hereby acknowledged that the relationship between City and Licensee is that of landowner and tenant at will and not that of a partnership or joint venture and that City and Licensee shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein, the City shall have no duties or obligations with respect to the improvement, maintenance or upkeep of the Lot.

**7.18 Administrative Claims Requirements and Procedures.** No suit or arbitration shall be brought arising out of this agreement, against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by the City in the implementation of same. Upon request by City, Consultant shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

**7.19 Signatories.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Licensee and the City.

[NEXT PAGE IS SIGNATURE PAGE]

**SIGNATURE PAGE TO LICENSE AND FACILITY OVERSIGHT AGREEMENT**

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Agreement to be executed as of, but not necessarily on, the Effective Date by setting hereunto their signatures herein below.

**CITY:**  
City of Chula Vista

By: \_\_\_\_\_  
Richard A. Ryals,  
Real Property Manager

**LICENSEE:**  
Francisco Garcia-Velasquez; The Industry

By: \_\_\_\_\_

EXHIBIT "A"

LOT

APN: 5680441900  
224 Third Avenue

