

**TEMPORARY USE AGREEMENT  
FROM THE URBAN RENEWAL AGENCY of the CITY OF AUSTIN  
TO  
DiverseArts**

This Temporary Use Agreement ("Agreement") is made and entered into between the Urban Renewal Agency of the City of Austin ("Agency"), with offices located at 1000 East 11<sup>th</sup> Street, Ste 200, Austin, Travis County, Texas 78702, and DiverseArts Culture Works with offices located at 1601 East 5<sup>th</sup> Street, Ste 106 • Austin, TX 78702 ("Lessee") on 1 October 2010.

IN CONSIDERATION OF the duties, obligations and covenants of each party to the other, and other good and valuable consideration, Agency and Lessee agree as follows:

1. **PREMISES:** Subject to the terms of this Agreement, Agency grants to Lessee a license to use of the property located at that certain real property more particularly described in **Exhibit "A"** (the "Premises") for the Uses described in 3.below.

Lessee has inspected the Premises and accepts the same AS IS, WITH ALL FAULTS, IN ITS THEN EXISTING CONDITION AND STATE. THE AGENCY EXPRESSLY DISCLAIMS ANY WARRANTY, EXPRESSED OR IMPLIED, CONCERNING THE CONDITION OF THE PREMISES, OR ITS FITNESS FOR USE FOR LESSEE'S PURPOSES.

2. **TERM:** The license granted commences upon 1 October 2010 at 12:01am and ends on 30 September 2011 at 11:59pm (the "Term") **LESSEE IS HEREBY ADVISED THAT IF AGENCY HAS DETERMINED A FUTURE NEED FOR THE PREMISES, AND AT ANY DATE MAY TERMINATE THIS AGREEMENT IN ACCORDANCE WITH THE TERMS HEREIN.**

3. **USE:** Community events, performances and civic gatherings such as: music performances, dramatic presentations, community organization membership functions and temporary installation of stage flats and enclosure fencing.

4. **FEES:** No fees are due in connection with this License Agreement. If any form of taxes or fees are assessed or charged to the Agency as a result of this Temporary Use Agreement, however, Lessee must pay such taxes or fees (prior to the past due date).

5. **RESPONSIBILITIES - LESSEE**

- A. Clean Premises - Lessee must maintain and use the Premises, including but not limited to the removal of nuisances, trash, litter, debris and overgrown vegetation at all times and adhering to any health requirements, noise requirements, and alcohol consumption requirements, all in compliance with the Austin City Code, the Texas Health and Safety Code, and other applicable State, Federal, and City laws, ordinances, rules, and regulations.

- B. Improvements – Lessee shall obtain Agency's prior written approval before any modifications, alterations, or other changes ("Changes") to the Premises are undertaken, even if temporary in nature. Such approval may be granted, denied, or conditioned, at the Agency's sole discretion. Any approved Improvements to the Premises will be at Lessee's expense. Upon termination of this License, Lessee shall, at its sole expense, dismantle and remove any Improvements to facilitate and restore the Premises to its original condition, subject, however, to Agency's prior approval.
- C. Right Of Access – The Agency shall have the right of access to the Premises at all reasonable times. Lessee will provide any keys needed to facilitate access to the Premises.
- D. Compliance with Law – In its use of the Premises, Lessee shall comply with all applicable State, Federal, and City laws, ordinances, rules, and regulations regarding its work, and OSHA Regulations. Lessee shall timely pay all fines or penalties imposed for violations of such laws, ordinances, rules and regulations by Lessee, or its agents, employees, or contractors, whether levied against Agency or Lessee. **Lessee must provide evidence of all required permits to Agency 72 hours prior to any event and must provide evidence of renewed use permit within 48 hours of its expiration.**
- E. Hazardous Materials - No hazardous materials or toxic substances shall be kept, stored, used or discharged on Premises. **Lessee shall comply strictly with all applicable Federal, State, and local laws, ordinances, rules and regulations regarding hazardous materials or toxic substances, and shall indemnify and hold the Agency harmless from and against any and all liability arising from Lessee's use, storage, or discharge of hazardous materials or toxic substances on the Premises.**
- F. Security – Lessee shall provide security for the premises during scheduled events. Lessee shall be solely responsible for the security of its personnel and equipment. Lessee shall be allowed to install security systems as deemed necessary to properly secure the Premises, so long as Licensor approves the security system in advance, however such approval shall not be unreasonably withheld. Agency personnel shall have the authority to prohibit any activity when necessary to protect Agency property and equipment or the public health and safety.
- G. Contact Names - Lessee shall provide a list of contact persons responsible for the Premises, which shall to be given to the Agency. The list must include numbers that can be called during any 24-hour period.
- H. Drugs, Firearms - Lessee shall not permit the use or possession of firearms, illegal drugs, or controlled substances on the Premises.

## 6. RESPONSIBILITIES - AGENCY

- A. Agency shall provide Lessee access to the Premises for the purposes set out in this Agreement.

**7. TERMINATION:**

A. Termination by Lessee - This Agreement may be terminated by Lessee at any time and for any reason upon twenty-four (24) hours prior written notice to Agency.

B. Termination by Agency - This Agreement may be terminated by Agency at any time and for any reason upon a fourteen (14) calendar days prior written notice to Lessee.

- 8. RE-DELIVERY OF PREMISES:** Lessee shall, upon termination of this License, quit and deliver the Premises to Agency peaceably, quietly and in a condition that is compliant with all applicable State, Federal, and local laws, ordinances, rules, and regulations. Lessee, at Lessee's expense, shall repair any damage to the Premises caused by or that was the result of Lessee's use of the Premises.
- 9. PERSONAL PROPERTY:** Upon termination of this Agreement, Lessee shall remove all of its personal property from Premises. If Lessee fails to remove its personal property from the Premises within five days of the termination of the Term, the Agency shall have the right (but not the obligation) to store such property, either on the Premises or remove the property and store it off-premises, and charge Lessee the greater of **THREE HUNDRED DOLLARS (\$300.00)** per day or Agency's actual expense, plus a 15% administrative charge. Lessee shall assume all risk of damage to or loss of its property arising out of storage of Lessee's property by the Agency.
- 10. INSURANCE REQUIREMENTS:** Lessee shall carry insurance in the types and amounts shown on **Exhibit "B"**, attached hereto and incorporated herein, for the duration of this Agreement, and furnish certificates of insurance as evidence thereof.
- 11. INDEMNIFICATION:** Lessee, its partners, agents, licensees and lessees (collectively called "Lessees") hereby fully indemnify, save, and hold harmless the City of Austin and the Agency, their officers, employees, agents, other licensees, and invitees (collectively called "Indemnitees") against any and all liability, damage, loss, claims, demands, and actions of any nature whatsoever, on account of personal injury (including without limitation, Workers' Compensation and death claims), or property loss or damage of any kind whatsoever, which arises, or is claimed to arise, out of or is, or is claimed to be, in any manner connected with, construction, installation, existence, operation, use, maintenance, repair, restoration, or removal of the Improvements defined in section 5.B., above, on the Premises and/or which arises, or is claimed to arise out of or is, or is claimed to be, in any manner connected with the operation, use, maintenance, repair, or restoration of the Premises pursuant to this License, including any injury, loss, or damage caused by the sole or contributory negligence of the Indemnitees, or any of them. Lessee must, at their own expense, investigate all those claims and demands, attend to their settlement or other disposition, defend all actions based thereon using Counsel satisfactory to

Indemnitees' Agency Attorney, and pay all attorneys' fees and all other cost and expenses of any kind arising from any aforesaid liability, damage, loss, claims, demands, or actions.

This indemnification provision does not apply to any claims, suits, damage, costs, losses, or expenses (i) for which the Agency has been compensated by insurance provided under **Section 10** of this Agreement, or (ii) arising solely from the willful acts of the Agency; provided that for the purposes of the foregoing, the Agency's act of entering into this License cannot be deemed to be a "willful act".

12. **ASSIGNMENT:** Lessee will not sublet, or assign any rights under this Agreement or any portion of the Premises without the express written consent of Agency.
13. **NOTICES:** All notices under this Agreement shall be by certified mail, overnight mail, or by personal delivery, and shall be effective upon receipt or constructive receipt. Notice shall be sent to the address for the receiving party set forth below or to such other address as a party may designate for notice purposes in writing.

IF TO AGENCY:

Urban Renewal Agency of the City of Austin  
Attention: Sandra Harkins, Planner II  
1000 East 11<sup>th</sup> Street, Suite 200  
Austin, Texas 78702

IF TO LESSEE:

Harold McMillan, Founder/Director  
DiverseArts Culture Works  
1601 East 5<sup>th</sup> Street, Ste 106  
Austin, TX 78702

14. **JURISDICTION AND VENUE:** This Agreement is made under the laws of the State of Texas, and any disputes that arise under or concern this Agreement must be governed by the laws of the State of Texas, without regard to conflicts of laws principles. Venue for any suit at law or in equity involving this Agreement is proper and lies exclusively in the State District Court of Travis County, Texas.
15. **NON-DISCRIMINATION, AFFIRMATIVE ACTION, AMERICANS WITH DISABILITIES ACT:** Lessee, for itself, its successors and assigns, as part of the consideration herefor, agrees that no person, on the grounds of race, color, national origin, age, sex, or handicap, will be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination, in the use of the Premises. Lessee will comply fully with all provisions of Public Law 101-336, Americans with Disabilities Act of 1990 to the extent applicable.

16. **NO LIENS:** Lessee shall pay for all labor or materials furnished in the maintenance, repair, improvement of the Premises by Lessee, and shall keep same and Lessee's interest therein free and clear of any mechanic's or materialmen's lien or encumbrance of any kind whatsoever created by Lessee's act or omission.
17. **NON-WAIVER OF RIGHTS:** Continued performance by either party hereto of the terms of this Agreement following a default must not be deemed a waiver of any right to cancel this Agreement for any subsequent default and no waiver of such default will be construed or act as a waiver of any subsequent default.
18. **INVALIDITY OF CLAUSES:** In the event that any covenant, condition, or clause, herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or clause, in no way affects any other covenants, conditions or clauses.
19. **FORCE MAJEURE:** Neither Agency nor Lessee are deemed to be in default of this Agreement by reason of either party's failure to perform any of its obligations hereunder if, while, and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible, and which are not within its control.
20. **ATTORNEY'S FEES:** In any action brought by either party for the enforcement of the obligations of Lessee, either party shall be entitled to recover reasonable attorney's fees and court costs and other expenses of litigation.
21. **HEADINGS:** The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.
22. **LEGAL RELATIONSHIPS:** It is understood and hereby agreed by the Parties that Lessee is an independent contractor hereunder and shall control all ways, means, and details incident to the performance of its work, for itself, and its agents and employees.
23. **ENTIRE AGREEMENT:** It is understood and agreed that this instrument (including the Exhibits described below) contains the entire agreement between the parties hereto with respect to the subject matter of this Agreement, and may not be amended or modified except in writing signed by both parties.

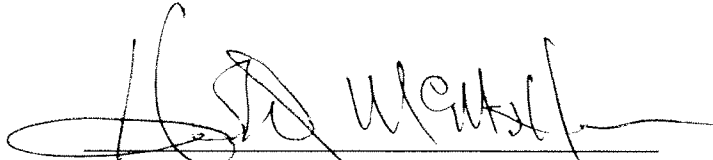
Exhibit A - Premises

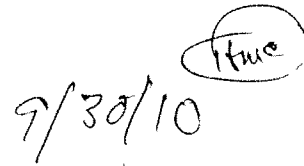
Exhibit B – Insurance requirements

**IN WITNESS WHEREOF,** this Agreement is hereby executed as of the date set forth above.

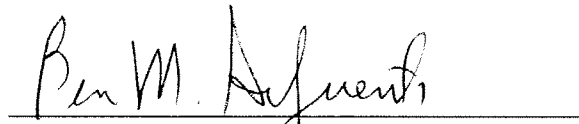
IN WITNESS WHEREOF, this Agreement is hereby executed as of the date set forth above.

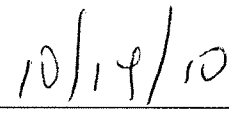
**Lessee: DiverseArts Cultural Works**

  
Harold McMillan, Founder/Director

  
~~10/30/10~~  
Date

**Agency: Urban Renewal Agency of the City of Austin**

  
Ben M. Sifuentes, Board Chair

  
Date

**EXHIBIT A**  
**"The Premises"**

**Parcel #1                    0208061809**  
**1106 East 11<sup>th</sup> Street**  
**South 104.5' of East 56' of Lot 61, George L. Robertson's subdivision, of Outlot**  
**55, Division B, City of Austin, Travis County, Texas.**

**Parcel #2            0208061808**  
**1112 East 11<sup>th</sup> Street**  
**The South 104.5', of Lot 50, George L. Robertson's subdivision, of Outlot 55, Division**  
**B, City of Austin, Travis County, Texas.**

**Parcel #3            0208061807**  
**1114 East 11<sup>th</sup> Street**  
**The South 105.27' AV of West 44.88' AV, Lot 59, George L. Robertson's subdivision,**  
**of Outlot 55, Division B, City of Austin, Travis County, Texas.**

## **EXHIBIT B INSURANCE REQUIREMENTS**

### **ARTICLE 1 Lessee's Insurance Requirements**

**1.1. General Requirements:** Lessee shall carry insurance in the types and amounts indicated below for the term of the Lease.

Within five (5) days of the execution of this Lease, Lessee shall obtain the required insurance and provide the Agency a Certificate of Insurance as proof of coverage. If coverage period ends during the term of the Lease, Lessee must, prior to the end of the coverage period, forward a new Certificate of Insurance to Agency as verification of continuing coverage for the duration of this Lease.

Approval of insurance by the Agency and the required minimums does not relieve or decrease the liability or responsibility of the Lessee hereunder and will not be construed to be a limitation of liability on the part of the Lessee.

Insurance coverage must: (a) be written by companies licensed to do business in the State of Texas at the time the policy is issued, and (b) with an A.M. Best rating of B+VII or better.

All endorsements naming the Agency as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate:

Urban Renewal Agency of the City of Austin  
Attention: Sandra Harkins, Project Coordinator  
1000 East 11<sup>th</sup> Street, Suite 200  
Austin, Texas 78702

The "Other" insurance clause does not apply to the Agency where the Agency is an additional insured shown on any policy. It is intended that policies required in this Lease, covering both the Agency and Lessee, will be considered primary coverage as applicable.

If insurance policies are not written for amounts specified below, Lessee shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it must follow the form of the primary coverage.

Agency shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

Agency reserves the right to review the insurance requirements set forth during the effective period of this Lease and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by Agency based upon changes in statutory law, court decision, the claims history of the history of the industry or financial condition of the insurance company as well as the Lessee.

Lessee shall not cause or permit any insurance to lapse or to be canceled during the term of this Lease.

Lessee shall be responsible for premiums, deductibles and self-insured retention's, if any, stated in policies. All deductibles or self-insured retention's will be disclosed on the Certificate of insurance.

## **1.2 Specific Coverages:**

Commercial General Liability Insurance:

The Policy must contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Temporary Use Agreement and all contracts relative to this Temporary Use Agreement
- b) Independent Contractors coverage
- c) Agency listed as an additional insured, endorsement CG 2010
- d) Thirty (30) Day Notice of Cancellation in favor of Agency, endorsement CG 0205
- e) Waiver of Transfer of Recovery Against Others in favor of Agency, endorsement CG 2404

Provide coverage's A & B with minimum limits as follows:

A combined bodily injury and property damage limit of \$1,000,000 per occurrence.

## **ARTICLE 2 Requirements for Contractors performing work on the Premises**

### **2.1 General Requirements:**

Contractor's insurance coverage must be written by companies: (a) licensed to do business in the State of Texas at the time the policies are issued, and (b) with an A.M. Best rating of B+VII or better.

All endorsements such as additional insured, waivers, and notices of cancellation endorsements as well as the attached certificate shall indicate naming the Agency as follows:

Urban Renewal Agency of the City of Austin  
Attention: Sandra Harkins, Project Coordinator  
1000 East 11<sup>th</sup> Street, Suite 200

Austin, Texas 78702

The "other" insurance clause does not apply to the Agency where the Agency is an additional insured shown on any policy. It is intended that policies required in the Contract, covering the Agency and the Contractor, will be considered primary coverage as applicable.

If insurance policies are not written for amounts specified above, Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it must follow the form of the primary coverage.

The Agency shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

The Agency reserves the right to review the insurance requirements set forth during the effective period of this Temporary Use Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the Agency based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

The Contractor shall be responsible for premiums, deductibles and self-insured retention's, if any, stated in policies. All deductibles or self-insured retention's will be disclosed on the certificate of insurance attached.

The insurance coverages required under this contract are required minimums and are not intended to limit the responsibility or liability of the Contractor.

**2.2 Specific Coverages:** Insurance Requirements for any agreements containing provisions for contractors cleaning, maintaining, repairing or working on Premises:

Contractor shall carry insurance in the types and amounts indicated below for the duration of the Contract, which includes items owned by the Agency in the care, custody and control of the Contractor prior to and during the period during which services are provided.

(1) Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401) and minimum policy limits for employers liability of \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The Agency will accept workers' compensation coverage written by the Texas Workers Compensation Insurance Fund.

The Contractor's policy must apply to the State of Texas and include these endorsements in favor of the Agency:

- (a) Waiver of Subrogation, form WC 420304
  - (b) 30 day Notice of Cancellation, form WC 420601
- (2) Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$1,000,000 for coverages A & B. The policy must contain the following provisions:
- (a) Blanket contractual liability coverage for liability assumed under this contract and all contracts relative to this Temporary Use Agreement.
  - (b) Completed Operations/Products Liability for the duration of the Warranty period
  - (c) Explosion, Collapse, and Underground (X, C, & U) coverage.
  - (d) Independent Contractors coverage.
  - (e) Agency shown as an additional insured, endorsement CG 2010.
  - (f) 30 day notice of cancellation in favor of the Agency; endorsement CG 0205.
  - (g) Waiver of Transfer Right of Recovery Against Others in favor of the Agency, endorsement CG 2404.
- (3) Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of the Agency
- (a) Waiver of Subrogation endorsement TE 2046A
  - (b) 30 day Notice of Cancellation endorsement TE 0202A
  - (c) Additional Insured endorsement TE 9901B

## Harkins, Sandra

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**From:** Charles Zech [charles.zech@rampage-sa.com]  
**Sent:** Thursday, September 30, 2010 9:43 AM  
**To:** Harkins, Sandra  
**Subject:** RE: Urban Renewal Board - Draft Temporary Use Agreement with Diverse Arts

The license is acceptable to me.

**Charles E. Zech, J.D., MPA**  
**Denton, Navarro, Rocha & Bernal, P.C.**  
2517 N. Main Avenue  
San Antonio, Texas 78212  
[www.rampagelaw.com](http://www.rampagelaw.com)

Fax (210) 225-4481  
Office (210) 227-3243  
[charles.zech@rampage-sa.com](mailto:charles.zech@rampage-sa.com)

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**From:** Harkins, Sandra [mailto:Sandra.Harkins@ci.austin.tx.us]  
**Sent:** Thursday, September 30, 2010 8:39 AM  
**To:** Miller, Gregory; Charles Zech  
**Cc:** Pamela Crowley  
**Subject:** Urban Renewal Board - Draft Temporary Use Agreement with Diverse Arts  
**Importance:** High

With everything else going on, I let this fall through the cracks. The current agreement with Diverse Arts expires tonight and I need to get this new agreement executed as soon as possible. Please review the attached document and either provide comments or approval for the Chair to execute.

This agreement was approved for renewal at the URB's Sept 20 meeting. Let me know if you have any questions.

Thanks

## *Sandra Harkins*

*Project Coordinator, Real Estate & Finance Development*  
*Neighborhood Housing & Community Development*  
*Street-Jones Building*  
*1000 E. 11th Street, Ste 200, 78702*  
*Tel: 974-3128*  
*Fax: 974-1048*

"If you're not worried about your own success, and you're worried about the success of the team, you go a lot further."

10/12/2010