LICENSING AGREEMENT
BETWEEN THE URBAN RENEWAL AGENCY of the CITY OF AUSTIN
TO
DiverseArts

This Licensing Agreement ("Agreement") is made and entered into between the Urban Renewal Agency of the City of Austin ("Agency"), with offices located at 1000 East 11th Street, Ste 200, Austin, Travis County, Texas 78702, and DiverseArts Culture Works with offices located at 1601 East 5th Street, Ste 106 • Austin, TX 78702 ("Licensee") (collectively referred to herein as "Parties" and individually as a "Party") on 1 February 2012.

IN CONSIDERATION OF the duties, obligations and covenants of the Parties, and other good and valuable consideration, Agency and Licensee agree as follows:

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

   Licensee 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 FITNESS FOR USE FOR LICENSEE'S PURPOSES.

2. **TERM:** The Agreement commences upon 1 February 2012 at 12:01am and ends on 30 September 2012 at 11:59pm (the "Term") **LICENSEE UNDERTANDS AND AGREES THAT AGENCY MAY ON ANY DATE AND AT ANY TIME TERMINATE THIS LICENESS AGREEMENT IN ACCORDANCE WITH THE TERMS HEREIN.**

3. **USE:** The Uses authorized by this license are limited to only those Uses which are in accordance with the zoning, permitted uses identified in the East 11th and 12th Streets Urban Renewal Plan, as amended and the East 11th Street Neighborhood Conservation Combining District, as amended. When these two plans overlap, the more restrictive permitted use applies. **LICENSEE UNDERSTANDS AND AGREES THAT AGENCY MAY ON ANY DATE AND AT ANY TIME REVOKE ANY LICENSE GRANTED UNDER THIS AGREEMENT IN ACCORDANCE WITH THE TERMS HEREIN.**

4. **FEES:** No fees are due in connection with this Agreement. If any form of taxes or fees are assessed or charged to the Agency as a result of this Agreement, Licensee shall pay said amounts to Agency, within five (5) business days of a written demand by Agency. Failure of Licensee to pay the amount due within the specified time herein shall result in an automatic revocation of the License and termination of the Agreement.

5. **RESPONSIBILITIES - LICENSEE**

A. Clean Premises – At the expense of the Licensee, premises shall be maintained including but not limited to the removal of nuisances, trash, litter, debris and overgrown vegetation at all times. Licensee shall, upon written demand by Agency, remedy any maintenance issues. Failure of Licensee to remedy the maintenance issues within five (5) business days of receipt of the written notification from Agency shall result in an automatic termination and revocation of the License granted under this Agreement.

B. Permitting Premises - All required licenses, permits, or other authorizations required by any applicable regulatory authority for a Use are required to be procured by Licensee and provided to Agency no later than 72 hours prior to such Use. Evidence of a renewed permit must be provided to Agency within 48 hours of the expiration of the permit. Failure of Licensee to timely provide the appropriate licenses, permits or other authorization shall result in a revocation of the License granted under this Agreement until such time as the documentation is provided to Agency. Agency shall NOT be responsible for any fees associated with required licenses, permits or other authorizations required.

C. Improvements – Licensee 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 Changes to the Premises will be at Licensee's expense. Upon termination of this Agreement, Licensee shall, at its sole expense, dismantle and remove any Changes and restore the Premises to its original condition, unless otherwise approved by Agency in writing.

D. Income; Reporting - Licensee understands and agrees that the Premises is subject to federal regulations associated with the Agencies use of Community Development Block Grant funds and as such Licensee shall obtain from the Agency a prior determination as to whether or not income arising directly or indirectly from the use of the Premises is program income as that term is defined by 24 CFR Section 570.500 and herein ("Program Income"). Agency has final authority to make a determination as to whether any income earned by Licensee in connection with a Use is Program Income. Licensee is responsible to Agency for the payment of any and all amounts determined by Agency to be Program Income, except as provided for herein.

For purposes of this Agreement, Program Income includes, but is not limited to, earnings Licensee realizes from activities undertaken under this Agreement such earnings include, but are not limited to, gross income from the use or rental of real or personal property less costs incidental to generation of the income and any other amounts defined at 24 CFR §570.500(a).

Subject to applicable federal law, Licensee shall be entitled to all Program Income generated under this Agreement, unless Licensee fails to abide by any of the Agreement provisions. Upon a written demand by Agency detailing

Licensee's failure to abide by the Agreement Licensee shall, within five (5) business days, pay to Agency the amount of Program Income determined by Agency to be associated with Licensee's failure to abide by the Agreement.

Licensee shall only spend Program Income on Premises Uses pursuant to this Agreement and 24 CFR §570.504 and any such expenditures shall be approved in writing by Agency prior to the funds actually being expended. Upon a written demand by Agency detailing any unauthorized expenditure Licensee shall, within five (5) business days, pay to Agency the amount of Program Income determined by Agency to be expended in violation of this Agreement.

Records of the receipt and disposition of Program Income must be maintained by Licensee and reported to Agency in the format prescribed by Agency on a monthly basis with first report due on February 15, 2012.

E. Right Of Access – The Agency shall have the right of access to the Premises at all times. Licensee will provide any keys or lock combinations needed to facilitate access to the Premises.

F. Compliance with Law – In its use of the Premises, Licensee shall comply with all applicable State, Federal, and City laws, ordinances, rules, and regulations regarding its work, and OSHA Regulations. Licensee shall timely pay all fines or penalties imposed for violations of such laws, ordinances, rules and regulations by Licensee, or its agents, employees, or contractors, whether levied against Agency or Licensee.

G. Hazardous Materials - No hazardous materials or toxic substances shall be kept, stored, used or discharged on Premises. **Licensee 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 Licensee's use, storage, or discharge of hazardous materials or toxic substances on the Premises in violation of this Section.**

H. Security – Licensee shall provide security for the premises for any Use which the Agency determines security is necessary. Licensee shall be solely responsible for the security of its personnel and equipment. Upon approval by Agency, Licensee shall be allowed to install security systems as deemed necessary to properly secure the Premises, such approval to 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.

I. Contact Names - Licensee 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.

J. Drugs, Firearms - Licensee shall not permit the use or possession of firearms, illegal drugs, or controlled substances on the Premises.

6. RESPONSIBILITIES - AGENCY

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

7. TERMINATION:

A. Termination by Licensee – The License granted under this Agreement may be terminated by Licensee at any time and for any reason upon twenty-four (24) hours prior written notice to Agency.

B. Termination by Agency –

1. The License granted under this Agreement may be terminated by Agency at any time and for any reason upon a fourteen (14) calendar days prior written notice to Licensee.

2. The License granted under this Agreement may be automatically revoked as provided for within this Agreement.

3. The License granted under this Agreement may be revoked upon twelve (12) hours written notice for Licensee's failure to comply with any requirement under this Agreement.

8. **RE-DELIVERY OF PREMISES:** Licensee shall, upon termination of this Agreement, 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. Licensee, at Licensee's expense, shall repair any damage to the Premises caused by or that was the result of Licensee's use of the Premises.

9. **PERSONAL PROPERTY:** Upon termination of this Agreement, Licensee shall remove all of its personal property from Premises. If Licensee fails to remove its personal property from the Premises within five days of any revocation, termination or the end of any applicable 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 Licensee the greater of **THREE HUNDRED DOLLARS ($300.00)** per day or Agency's actual expense, plus a 15% administrative charge. Licensee shall assume all risk of damage to or loss of its property arising out of storage of Licensee's property by the Agency.

10. **INSURANCE REQUIREMENTS:** Licensee 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:** LICENSEE, ITS PARTNERS, AGENTS, LICENSEES AND LICENSEES (COLLECTIVELY CALLED "LICENSEES") 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. LICENSEE 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:** Licensee 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, Project Coordinator
1000 East 11th Street, Suite 200
Austin, Texas 78702

IF TO LICENSEE:

Harold McMillan, Founder/Director
DiverseArts Culture Works
1601 East 5th 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:** Licensee, 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. Licensee will comply fully with all provisions of Public Law 101-336, Americans with Disabilities Act of 1990 to the extent applicable.

16. **NO LIENS:** Licensee shall pay for all labor or materials furnished in the maintenance, repair, improvement of the Premises by Licensee, and shall keep same and Licensee's interest therein free and clear of any mechanic's or materialmen's lien or encumbrance of any kind whatsoever created by Licensee'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 Licensee 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 Licensee, 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 Licensee 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.

Licensee: DiverseArts Culture Works

Harold McMillan, Founder/Director

1/25/12
Date

Agency: Urban Renewal Agency of the City of Austin

Andrew Bucknall, Board Chair

01/26/2012
Date

EXHIBIT A
"The Premises"

Parcel #1 0208061809
1106 East 11th 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 11th 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 11th 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 Licensee's Insurance Requirements

1.1. General Requirements: Licensee 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, Licensee 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, Licensee 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 Licensee hereunder and will not be construed to be a limitation of liability on the part of the Licensee.

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 11th 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 Licensee, will be considered primary coverage as applicable.

If insurance policies are not written for amounts specified below, Licensee 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 were 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 Licensee.

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

Licensee 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 am 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 11th 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