

**LEASE AGREEMENT  
BETWEEN  
LESSOR OF FULLERTON  
AND THE  
MUCKENTHALER CULTURAL CENTER FOUNDATION**

THIS LEASE AGREEMENT ("Agreement" or "Lease") is entered into on this 1st day of August, 2025 ("Effective Date"), by and between the CITY OF FULLERTON, a municipal corporation ("Lessor") and the MUCKENTHALER CULTURAL CENTER FOUNDATION, a California nonprofit public benefit corporation ("Lessee" or "Foundation").

**R E C I T A L S**

A. Pursuant to the Muckenthaler Grant Deed, Lessor is the owner of that certain parcel of real property located at 1201 W. Malvern Avenue, Fullerton, CA 92835, commonly known as the Muckenthaler Cultural Center, as more specifically depicted in Exhibit A, attached hereto and incorporated herein (the "Property"); and

B. The Property includes the grounds, parking lot, and facilities that are more specifically depicted in Exhibit A.

C. The Property is subject to a deed restriction which requires the Lessor use the Property for the "promotion and development of a public cultural center for the preservation, display and edification in the arts for the purposes of encouraging aesthetic appreciation and creative expression, with particular emphasis to be given in the fields of fine arts (drawing, painting, sculpturing and ceramics), music and dance as an art form, literature, drama, local history, landscaping and botanical gardening as an art form (the "Permitted Uses");" and

D. The specific and primary purposes of the Lessee are "the promotion and development of a public cultural center or centers for the preservation, display and edification in the arts for the purposes of encouraging aesthetic appreciation and creative expression, with particular emphasis to be given in the fields of fine arts (drawing, painting, sculpturing, ceramics, and pottery), music and dance as an art form, literature, drama, local history, landscaping and botanical gardening as an art form"; and

E. The Parties desires to enter into this Agreement to enable Lessee to use the Property for the purposes described above, subject to all of the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises and the respective and mutual Agreements contained herein, said parties hereby agree as follows:

**1.0 LEASE**

Lessor hereby leases to Lessee the Property. Lessee acknowledges that Lessee has inspected and accepts the Property in its present condition, as is, and as suitable for, the Permitted Use defined in Recital C of this Agreement, and for Lessee's intended operations on the Property. Lessee agrees that the Property and existing improvements are in good and satisfactory condition as of the Effective Date. Lessee further acknowledges that no representations as to the condition or repair of the Property nor promises to alter, remodel or improve the Property have been made by Lessor or any agents,

## 2.0 USE OF PROPERTY

- A. Permitted Use. Lessee is authorized to use the Property for the Permitted Uses more particularly defined in Recital C and ancillary uses in connection therewith. Lessee shall not use the Property for any other purpose without Lessor's prior written consent. Authorized ancillary uses include licensing of the Property to third parties for meetings and events.
- B. Lessee shall not use the Property or any portion thereof for any illegal or unlawful purposes and will not cause or permit a nuisance to be created or maintained therein
- C. Conditions of Use. For and during the term of this Lease, and any extension thereof, Lessee's use of the Property shall be subject to, and Lessee shall comply with and cause Lessee's employees, agents, invitees and guests to comply with, the following conditions, covenants and restrictions. Each person entering the Property shall be considered at all times to be acting as an agent of Lessee.
  - 1. Except as otherwise provided in this Lease, the Property shall be used only for the purposes specified in Section 2.0(A), above, and the Property shall not be used for any other use or purpose whatsoever, without the prior written consent of Lessor.
  - 2. Other than limited quantities of consumer-based chemicals and substances used in connection with Lessee's operations, Lessee shall not cause, permit or suffer any "hazardous material," "hazardous waste" or "hazardous chemicals", as those terms are used in CERCLA (42 U.S.C. § 9601(14)) or SARA (42 U.S.C. § 110211(e)) or any similar Federal, State, or local law, statute, ordinance, regulation or order, or otherwise determined by Lessor, to be brought upon, left, used or abandoned on the Property.
  - 3. Except when licensing the Property to third parties for private events or meetings, Lessee shall not use the Property for any religious activities, including, but not limited to, religious services, religious programs or promoting any institution of religion.

4. Lessee shall not maintain, commit or permit the maintenance or commission of any waste or any nuisance (as defined in California Civil Code § 3479) on the Property.
5. Lessee shall not erect, install or maintain any sign or display upon or in front of the Property \without prior written approval from Lessor, which approval shall not be unreasonably withheld. All signage shall comply with all applicable laws and zoning and site plan requirements.
6. Lessee shall operate the Property in a manner consistent with the guidelines of the American Association of Museums.
7. Lessor and Lessee shall meet in accordance with Paragraph 4 of this Agreement.
8. Lessee shall require any third party which utilizes the Property to comply with any applicable Policies of Lessor and all applicable federal, state, or local laws and regulations.

### 3.0 CONSIDERATION

- A. Rent. In consideration of Lessee's use of the Property for the Permitted Uses, Lessee shall pay Lessor rent in the amount of One Dollar (\$1.00) per year ("Rent"). Payment of Rent is due upon execution of this Agreement and on each anniversary of the Lease Commencement Date while this Agreement remains in effect. Lessor and Lessee agree Lessee may make a payment of Five Dollars (\$5.00) upon the execution of this Agreement to pay for all Rent during the Initial Term, as defined herein, or upon the commencement of any Extension Term, as defined herein, to pay for all Rent during such Extension Term.
- B. Reimbursement for Improvements. In consideration of the permit fees incurred by Lessee for the New Art Studio construction completed in 2024, Lessor shall disburse to Lessee a one-time payment of \$10,000 as reimbursement.
- C. No Further Funding Obligation. Lessee is solely responsible for all operations at the Property. Lessee understands and agrees that except as expressly set forth in this Agreement, Lessor has no outstanding financial obligation to Lessee and no obligation for future funding.

### 4.0 BIENNIAL MEETINGS AND REPRESENTATION

- A. Biannual Meeting. Lessor and Lessee shall meet at least two (2) times per year, by March 15 and July 15 of each year, to discuss and evaluate Lessee's programs, fees, attendance, schedules, community relations and compliance with this Agreement.
- B. City Representation on Lessee's Board of Directors. The Lessor's designated representative shall be a liaison to the Lessee's Board of Directors and shall participate in the discussions of the Board to the same extent as any member of the Board. Lessee shall give the Deputy Director of Parks and Recreation advance notice of all meetings of the Board, which notice shall include all relevant materials and agendas. Nothing herein shall be construed to provide the Deputy Director of Parks and Recreation with any authority to make, second, or vote on motions, or to cause him to be counted for purposes of determining whether a quorum exists, at meetings of the Board.
- C. City Residents on the Board. Lessee shall use best efforts to ensure a majority of the Lessee's Board are residents of the city of Fullerton. If the number of Fullerton resident members of the Board become less than a majority, the next member appointed to the Board shall be a Fullerton resident.

#### 5.0 TERM; OPTION TO EXTEND TERM

- A. Term. The term of this Lease shall be for an initial period of five (5) years, commencing on August 1, 2025 ("Lease Commencement Date") and ending on July 31, 2030 ("Initial Term").
- B. Option to Extend Term. Upon mutual written agreement of Lessor and Lessee, this Lease may be extended for two (2) five (5) year periods (each an "Extension Term"). The Deputy Director of Parks and Recreation is expressly authorized to extend the term of this Lease on behalf of the Lessor, provided that each such extension is in writing and is signed by the Deputy Director of Parks and Recreation and the Lessee. This Lease and the Lessee's rights hereunder may not be extended beyond the Initial Term unless such extension is set forth in writing and signed by both Lessor and the Lessee.

#### 6.0 TERMINATION OF LEASE; ABANDONMENT

- A. Grounds for Termination. This Lease may be terminated as follows:
  - 1. By Lessor, with or without cause, or for any reason, including, but not limited to, if and when Lessor determines that the public interest,

health, safety or welfare require such termination, at any time, by giving Lessee one hundred eighty (180) days written notice of termination.

2. By Lessee, at any time by giving written notice to the Lessor at least one hundred eighty (180) days prior to said termination date.
3. By Lessor due to Lessee's default in accordance with the provisions of Section 31.0 hereof.
4. By Lessor, upon sixty (60) days prior written notice to Lessee, if Lessee makes any assignment for the benefit of creditors or files any petition under the Bankruptcy Code of the United States or any state, or has any such petition filed against it.

B. Abandonment. If Lessee at any time abandons the use of the Property, or any part thereof, or fails at any time for a continuous period of sixty (60) days to use the same for the purposes contemplated herein, then this Agreement shall terminate, and in addition to any other rights or remedies, Lessor shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this Agreement. Lessor, at its option, may remove any improvements remaining on the abandoned property, at Lessee's expense. Notwithstanding the foregoing, Lessor and Lessee acknowledge that any government-mandated closure of the Property will not be considered abandonment for purposes of this Section.

C. Lessor's Liability on Termination. Lessee hereby waives all damages or claims for damage that may be caused by any action of Lessor in terminating this Lease (either with or without cause), or taking possession of the Property as provided in this Lease or at law, and Lessee waives and releases any and all claims, demands, causes of action, whether known or unknown, fixed or contingent, against the Lessor, its respective officers, employees, representatives, successors and assigns based upon, arising from, or relating to the termination of this Lease. By waiving and forever releasing claims both known and unknown, Lessee expressly waives any rights under California Civil Code § 1542, which provides:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”**

## 7.0 UTILITIES

Lessee shall be responsible for and pay, prior to the delinquency date, all utility charges excluding water. Lessor shall be responsible for and pay all charges for water to the Property.

## 8.0 MAINTENANCE, JANITORIAL SERVICES, AND CAPITAL REPAIRS

### A. Lessee's Responsibilities.

- (1) Lessee shall appoint an on-site representative to oversee the general order of the Property, including but not limited to the day-to-day operation and performance of the Property, its maintenance, custodial care, and landscape maintenance. At least one time per year, Lessee and Lessor (through its Public Works department) will meet regarding long-term planning. Foundation shall inform Lessor in writing of any need for facility maintenance or repairs within one day of detection.
- (2) Lessee shall operate, maintain, and manage the Property in a competent and efficient manner comparable to other well-managed and well-maintained operations of a similar nature. Lessee shall maintain the Property in a safe, clean, attractive, and sanitary condition and shall provide, at its own cost and expense, except as otherwise provided in this Lease or as otherwise directed by Lessor: (1) all janitorial supplies and services to the Property, including the supplying of restroom expendables and replacement of light bulbs and Light Emitting Diode (LED) lamps; (2) any and all necessary general repair and general maintenance to the Property, grounds, facilities, trade fixtures, and personal property including walls, floors, doors, windows, plumbing and fixtures, lighting including stage lighting, sound including stage sound and the Heating, Ventilation, Air Conditioning ("HVAC") system; (3) any and all necessary repair, maintenance and replacement of all equipment and personal property within the Property; (4) preventative maintenance of the Property, grounds, facilities in a safe, clean, and sanitary condition and free of trash and debris, to the complete satisfaction of Lessor and in compliance with all applicable laws; (5) the cleaning and refinishing of interior surfaces; (6) repair of all damage caused by Lessee's or its agents', employees', or invitees' use and/or misuse of the Property excepting normal wear and tear; and (7) landscape maintenance services including programming and materials of the irrigation system.

B. Lessor's Responsibilities.

- (1) Lessor shall provide, at its sole cost and expense, except as otherwise provided in this Lease: (1) capital maintenance and repairs for the Property, including, but not limited to, the replacement of the structural components of the Property and all property systems including the roof, electrical system (excluding fixtures), main water lines, dry rot, fungus, and termite damage, gas lines, sidewalks, plumbing system (excluding fixtures), main electrical lines (excluding fixtures), and parking lot; (2) maintenance of the irrigation backflow and irrigation repairs excluding the programming and materials of the irrigation system; and (3) tree trimming and fallen tree removal. Lessor may, at its sole discretion, conduct quarterly inspections of the Property and will consider and perform necessary capital maintenance repairs in accordance with City approved procedures for handling capital items and/or emergency situations.
- (2) If Lessee fails to maintain or make repairs or replacements as required herein, Lessor may notify Lessee in writing of said failure. Should Foundation fail to correct the situation within a reasonable time thereafter as required to maintain public health and safety, Lessor may make, or cause to be made, the necessary corrections and the cost thereof, including the cost of labor, materials, and equipment and a 15% charge for administration and overhead, shall be paid by Lessee to Lessor within 10 days of receipt of a statement of said cost from the Deputy Director of Parks and Recreation.

9.0 ALTERATIONS AND IMPROVEMENTS

- A. Prior Consent for Improvements. Lessee shall not make any alteration or improvement to the Property without the prior written approval of Lessor. In the event that Lessee desires to make any alteration, improvement, addition or utility installation in or about the Property, Lessee shall present such request in writing to Lessor, together with detailed plans of the proposed alteration or improvement; and Lessee shall not commence such alteration or improvement unless and until Lessor has granted approval thereto in writing, which approval shall not be unreasonably withheld, conditioned or delayed. Lessee shall ensure that its contractors work closely with the Lessor in constructing any improvements to the Property. Notwithstanding the foregoing, Lessee may install fixtures, partitions, counters, shelving, and equipment as deemed necessary or appropriate by Lessee. Any such fixtures, partitions, counters, shelving, or equipment attached to or placed upon the Property by Lessee shall be considered as

personal property of Lessee, which shall have the right and obligation to remove same upon the expiration or termination of this Lease.

- B. License, Approvals and Permits. In the event that Lessor grants written approval to any requested alteration of or improvement to the Property, such approval shall be deemed conditioned upon Lessee acquiring all governmental licenses, approvals and permits required therefor, and such alteration or improvement shall be constructed in strict conformance with the plans approved therefor by Lessor. Once approved by Lessor, no changes or alterations shall be made to the plans without the prior written approval by Lessor.
- C. Improvements at Lessee's Sole Cost and Expense. In the event that Lessor grants written approval to any requested alteration of or improvement to the Property, Lessee shall construct such alteration or improvement at Lessee's sole cost and expense.
- D. Conditions of Lessor's Approval. Lessor may impose any conditions it deems necessary or appropriate, in its reasonable discretion, in connection with the approval of any alterations or improvements requested by Lessee. Lessor may also impose reasonable rules and regulations for contractors and subcontractors performing any approved alterations or improvements. Lessee shall cause all improvements to be accomplished in a first-class, good and workmanlike manner by qualified and licensed contractors and subcontractors.
- E. Compliance with Applicable Laws. Lessee shall comply with all applicable laws in connection with any alteration or improvement approved by Lessor, including, but not limited to, California labor laws, including, but not limited to, prevailing wage laws.
- F. Contractor Indemnification and Insurance. Lessee shall require that its contractors and any subcontractors that perform work at the Property on Lessee's behalf maintain the same level of general liability, automobile liability, and workers' compensation insurance policies as Lessee is required to maintain pursuant to this Lease. Lessee shall require that such contractors and subcontractors name the Lessor of Fullerton and its officials, officers, employees, agents and volunteers as additional insureds on their general liability policies.
- G. Ownership of Improvements. All alterations and improvements constructed or placed within the Property by Lessee following execution of this Agreement shall, upon the completion of construction, installation or placement within the Property, be free and clear of all liens, claims and liability for payment for labor and material. Unless otherwise agreed to in writing by the parties, such subsequently constructed alterations and



improvements shall be removed from the Property by Lessee at the expiration or termination of this Lease and Lessee shall restore the applicable portion of the Property to the condition that existed prior to the alterations or improvements being constructed at Lessee's sole cost and expense.

#### 10.0 LESSEE PROPERTY

All trade fixtures, inventory, telecommunications equipment, and all personal property placed in or about the Property by, at the direction of or with the consent (express or implied) of the Lessor, its employees, agents, licensees or invitees, shall be at the sole risk of the Lessee, and Lessor shall not be liable for any loss of or damage to said property resulting from any cause whatsoever unless such loss or damage is the result of Lessor's negligence or willful misconduct.

#### 11.0 QUARTERLY INSPECTIONS

Lessor may conduct quarterly inspections of the Property and perform any maintenance or repairs deemed appropriate or necessary following such inspections (which Lessor shall endeavor to conduct and perform upon reasonable notice and at a date and time reasonably amenable to Lessee) or may direct Lessee to perform any interior or exterior maintenance or repairs following such inspections if Lessor determines, in its sole discretion, that such work is necessary to protect the Property or to provide a clean, attractive and well-maintained Property. Lessee shall perform such maintenance and/or repairs within thirty (30) calendar days of receipt of notification from Lessor of same; provided Lessee shall have such extended period as may be required beyond the thirty (30) days if the maintenance and/or repairs require more than thirty (30) days to complete and Lessee commences the maintenance/repairs within the thirty (30) day period and thereafter continuously and diligently pursues the maintenance and/or repairs to completion.

#### 12.0 LESSOR'S RIGHT OF ENTRY AND ACCESS TO THE PROPERTY

Lessor shall have the right to enter the Property at any time upon reasonable notice prior to such entry. Lessor and Lessee shall each have full access to the entire Property. Notwithstanding the foregoing, Lessor may enter the Property without notice to Lessee in the event of an emergency.

#### 13.0 SECURITY MEASURES

Lessee acknowledges that Lessor makes no representation or warranty, express or implied, regarding the security of the Property or the need for or propriety of any security measures at the Property. Lessee further acknowledges that Lessor shall have no obligation whatsoever to provide guard service or any other security

measures. Lessee expressly assumes all responsibility for the protection and security of the Property, Lessee, Lessee's officers, employees, agents and invitees, and Lessee's property and any property hosted or held within or upon the Property at invitation or with the permission of the Lessee from any and all acts of any third party.

#### 14.0 INSURANCE

Lessee shall procure and maintain throughout the duration of this Agreement, insurance against claims for injuries to persons or damages to the Property which may arise from or in connection with the Lessee's operations, occupancy of and use of the Property. Lessee shall provide current evidence of the required insurance in a form acceptable to the Lessor and shall provide replacement evidence for any required insurance which expires prior to the completion, expiration or termination of this Agreement.

Nothing in this Section shall be construed as limiting in any way, the indemnification obligations set forth in this Agreement or the extent to which Lessee may be held responsible for payments of damages to persons or Property.

##### A. Minimum Scope and Limits of Insurance.

1. Commercial General Liability Insurance. Lessee shall maintain commercial general liability insurance coverage in a form at least as broad as ISO Form #CG 00 01 on an "occurrence basis", including products and completed operations, property damage, bodily injury and personal advertising injury with a limit of not less than \$2,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or shall be twice the required occurrence limit.
2. Business Automobile Liability Insurance. Lessee shall maintain business automobile liability insurance coverage in a form at least as broad as ISO Form # CA 00 01, with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.
3. Workers' Compensation and Employers' Liability Insurance. Lessee shall maintain workers' compensation insurance as required by the State of California and employers' liability insurance with limits of not less than \$1,000,000 each accident.

B. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the Lessor.

C. Other Insurance Provisions. The required insurance policies shall contain or be endorsed to contain the following provisions:

1. Commercial General Liability, Business Automobile Liability

The Lessor, its elected or appointed officials, officers, employees and volunteers are to be covered as insureds with respect to liability arising out of Lessee's operation or the ownership, occupancy, maintenance or use of the leased property; or with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Lessee. The coverage shall contain no special limitations on the scope of its protection afforded to the Lessor, its officials, officers, employees and volunteers.

2. Commercial General Liability, Business Automobile Liability

This insurance shall be primary insurance as respects the Lessor, its officers, employees and volunteers and shall apply separately to each insured against whom a suit is brought or a claim is made. Any insurance or self-insurance maintained by the Lessor, its officers, employees and volunteers shall be excess of this insurance and shall not contribute with it.

3. Workers' Compensation and Employers' Liability Insurance.

Insurer shall waive their right of subrogation against Lessor, its officers, employees and volunteers for work done on behalf of the Lessor.

4. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice has been given to the Lessor.

D. Acceptability of Insurers. All required insurance shall be placed with insurers acceptable to the Lessor with current Best's ratings of no less than A, Class VII. Workers' compensation insurance may be placed with the California State Compensation Insurance Fund. All insurers shall be licensed by or hold admitted status in the State of California. At the sole discretion of the Lessor, insurance provided by non-admitted or

surplus carriers with a minimum Best's rating of no less than A- Class X may be accepted if Lessee evidences the requisite need to the sole satisfaction of the Lessor.

E. Verification of Coverage. Lessee shall furnish the Lessor with certificates of insurance which bear original signatures of authorized agents and which reflect insurers names and addresses, policy numbers, coverage, limits, deductibles and self-insured retentions. Additionally, Lessee shall furnish certified copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by Lessor before Lessee occupies property. The Lessor reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

F. Lessor's Right to Review Insurance Requirements. Lessee acknowledges and agrees that Lessor may review the insurance requirements set forth herein every three (3) years while this Agreement is in the effect and may increase such requirements based on Lessor's then-current requirements.

## 15.0 INDEMNIFICATION

Lessee shall indemnify, defend, and hold harmless the Lessor, and its elected and appointed officials, officers, employees, and agents ("Lessor Indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable attorneys' fees and costs of litigation ("claims"), arising out of Lessee's occupancy and/or use of the Property and/or performance under this Agreement, except for such loss or damage arising out of the sole active negligence or willful misconduct of the Lessor. In the event the Lessor Indemnitees are made a party to an action, lawsuit, or other adversarial proceeding arising from Lessee's occupation and/or use of the Property, Lessee shall provide a defense to the Lessor Indemnitees or, at the Lessor's option, reimburse the Lessor Indemnitees for their costs of defense, including reasonable attorneys' fees, incurred in defense of such claims.

The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by Lessee, its officers, employees, agents, volunteers or subcontractors, but shall be required whenever any claim, demand, suit, action or proceeding of any kind or nature asserts liability against the Lessor Indemnitees, related to Lessee's occupancy and/or use of the Property and/or performance of this Agreement, whether or not Lessee, its officers, employees, agents, volunteers or subcontractors are specifically named or otherwise asserted to be liable.

## 16.0 HAZARDOUS MATERIALS

As used herein the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or shall become regulated by any

governmental entity, including without limitation, Lessor acting in its governmental capacity, the State of California or the United States Government.

- A. Lessee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Property, except as may be brought upon the Property for the purposes set forth in Section 8.0(A) or otherwise permitted in this Lease or specifically authorized by Lessor in writing. Any such authorization by Lessor shall not alter or reduce Lessee's obligations under this Section, including but not limited to its duty to indemnify and defend Lessor, for any contaminations which may occur as a result of Lessee's use of the authorized material.
- B. If Lessee breaches the obligations stated herein, or if contamination of the Property by Hazardous Materials otherwise occurs for which Lessee is legally liable to Lessor for damage resulting therefrom, then Lessee shall indemnify, defend and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including without limitation, diminution in value of the Property, damages for the loss or restriction on use of rentable or usable space or any amenity of the Property, damages arising from any adverse impact on marketing of space in the Property or portion of any building of which the Property is a part, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert witness fees) which arise during or after the term as a result of such contamination.

This indemnification includes without limitation, costs incurred by Lessor in connection with any investigation of site conditions or any cleanup, remediation, removal or restoration work required by any federal, state or local governmental entity because of Hazardous Material being present in the soil or ground water or under the Property. If contamination of the Property by Hazardous Materials occurs for which Lessee is liable to Lessor for damage resulting therefrom under this Lease, Lessee shall promptly take all actions at its sole cost and expense as are necessary to clean, remove and restore the Property to its condition prior to the introduction of such Hazardous Material by Lessee, provided Lessee shall first have obtained Lessor's approval and the approval of any necessary governmental entities.

- C. Pre-Existing Contamination or Contamination Caused by the Lessor

Lessor hereby agrees to indemnify, defend and hold Lessee harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, known or unknown, arising from any pre-existing soil contamination or other pre-existence of any Hazardous Material on the Property prior to the date Lessee originally began to occupy the Property or any Hazardous Materials brought upon the Property by the Lessor or any officials, officers,

employees, and agents of the Lessor at any time, including but not limited to any sums paid in settlement of claims, attorneys' fees, consultant fees and expert witness fees which arise during or after the Agreement term and arising solely from such pre-existing contamination, if any.

#### 17.0 ASSIGNMENT AND SUBLETTING

Lessee shall not assign this Lease or sublet the Property or any portion thereof, or permit any other organization, entity or person to operate programming at the Property, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. Any attempted assignment or subletting without the Lessor's prior written consent shall be null and void and confer no right, title, or interest in or to this Agreement, and shall be cause for immediate termination of this Agreement. For the avoidance of doubt, the Lessor acknowledges and agrees that (i) Lessee may license the Property to third parties for private events or meetings, as set forth in the Permitted Uses attached hereto as Exhibit B, (ii) such use shall not constitute an assignment or subletting of this Lease, and (iii) notwithstanding anything to the contrary in this Section or otherwise in this Lease, such use shall not require prior written consent of the Lessor.

#### 18.0 SURRENDER OF PROPERTY

At the expiration or early termination of this Lease, Lessee shall surrender and deliver the Property to Lessor broom clean and in at least the same condition as when the same was delivered to Lessee, ordinary wear and tear excepted. Unless otherwise agreed to between Lessor and Lessee, Lessee shall remove all personal property owned or installed by Lessee, including those temporarily attached to the realty, provided all damage to the Property resulting from the removal of such items is properly repaired. If said removal results in injury to or defacement of the Property, Lessee shall promptly repair the Property at its expense. In addition, Lessee shall deliver possession of all personal property loaned to Lessee by Lessor and all assets donated to Lessee to the Lessor to be held in trust for the donor to be used solely for the donors intended purpose. If upon expiration or earlier termination of this Lease, or following demand by Lessor for possession of the Property, Lessee has not fulfilled its obligation with respect to repairs and cleanup of the Property or any other Lessee obligations as set forth in this Lease, then Lessor shall promptly notify Lessee of same and shall have the right to perform any such obligations as it deems necessary at Lessee's sole cost and expense, and any time required by Lessor to complete such obligations shall be considered a period of holding over and the terms of this Section shall apply. The provisions of this Section shall survive any expiration or earlier termination of this Lease.

#### 19.0 HOLDING OVER

In the event Lessee shall continue in possession of the Property after the expiration or earlier termination of this Lease, such possession shall not be considered a renewal of this Lease but a tenancy from month to month and shall be governed by the conditions and covenants contained in this Lease. Lessee shall also indemnify, defend, and hold Lessor harmless from any loss, liability or cost, including consequential and incidental damages and reasonable attorneys' fees, incurred by Lessor resulting from delay by Lessee in surrendering the Property, including, without limitation, any claims made by the succeeding tenant founded on such delay. Acceptance of rent by Lessor following expiration or earlier termination of this Lease, or following demand by Lessor for possession of the Property, shall not constitute a renewal of this Lease, and nothing contained in this Section shall waive Lessor's right of reentry or any other right.

## 20.0 DISPOSITION OF ABANDONED PROPERTY

If Lessee abandons or quits the Property or is dispossessed thereof by process of law or otherwise, title to any personal property or fixtures left on the Property for fifteen (15) or more days after such event shall at Lessor's option, be deemed to have been abandoned and transferred to Lessor. Lessor shall have the right to remove and dispose of any and all such property or fixtures without liability therefor to Lessee or Lessee's employees, agents, or invitees, and Lessor shall have no duty to account for such property. Lessee agrees to reimburse Lessor for any and all costs associated with Lessor transferring or disposing of Lessee's personal property pursuant to this Section.

## 21.0 TAXES

Lessee shall pay all taxes which may be levied or assessed as a result of this Lease or Lessee's use of the Property. Lessee understands that a possessory interest may be created and vested in Lessee as a result of this Lease and that such interest may be subject to property taxation. Lessee understands that Lessee may be subject to the payment of property taxes levied on such possessory interest. If property taxes are levied due to a possessory interest, Lessee shall pay such taxes.

## 22.0 LIENS

Lessee shall maintain the Property free from and clear of any claims, obligations, liabilities, liens, encumbrances and charges, including but not limited to any claims, liens or charges arising out of or in connection with the furnishing of materials or the performance of labor on the Property. Lessee shall further defend, indemnify and hold harmless the Lessor and its elected and appointed officials, officers, employees, and agents from and against any and all such claims, obligations, liabilities, liens, encumbrances and charges.

## 23.0 DESTRUCTION OR DAMAGE TO PROPERTY

### A. Definitions.

1. "Partial Destruction" of the Property shall mean damage or destruction to the Property, for which the repair cost is less than twenty-five percent (25%) of the then replacement cost of the Property, excluding the value of the land.
2. "Total Destruction" of the Property shall mean damage or destruction to the Property, for which the repair cost is twenty-five percent (25%) or more of the then replacement cost of the Property, excluding the value of the land.



- B. Partial Destruction. In the event of a Partial Destruction of the Property, Lessor shall immediately pursue completion of all repairs necessary to restore the Property to the condition which existed immediately prior to said Partial Destruction. Said restoration work (including any demolition required) shall be completed by Lessor, at Lessor's sole cost, within ninety (90) days of the occurrence of said Partial Destruction or within an extended time frame as may be mutually agreed. Lessee shall reimburse Lessor for costs to repair the Property for damage or destruction caused by Lessee or Lessee's employees, agents or invitees. The Partial Destruction of the Property shall in no way render this Lease null and void.
- C. Total Destruction. In the event of Total Destruction of the Property or the Property being legally declared unsafe or unfit for occupancy, this Lease shall terminate and be rendered null and void. Lessee shall reimburse Lessor for costs to repair the Property for damage or destruction caused by Lessee or Lessee's employees, agents or invitees.
- D. Alterations and Improvements; Lessee's Personal Property. In the event of any damage or destruction of the Property, under no circumstances shall Lessor be required to rebuild, repair or replace any part of any alterations or improvements which may have been placed on or about the Property or paid for by Lessee, or to repair any injury or damage to, or make any repairs to or replacements of, Lessee's personal property.

#### 24.0 SUBORDINATION; DISCLAIMER OF INTERESTS

- A. Subordination. This Lease shall be and is hereby declared to be subject and subordinate at all times to: (a) all deed restrictions or ground leases or underlying leases which may now exist or hereafter be executed affecting the Property and/or the land upon which the Property is situated, or both; and (b) any mortgage or deed of trust which may now exist or be placed upon the Property and/or the land upon which the Property is situated, or said ground leases or underlying leases, or Lessor's interest or estate in any of said items which is specified as security. Notwithstanding the foregoing, Lessor shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases or any such liens to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Lessee shall, notwithstanding any subordination, attorn to and become the Lessee of the successor in interest to Lessor provided that Lessee shall not be disturbed in its possession under this Lease by such successor in interest so long as Lessee is not in default under this Lease. Within ten (10) days after request by Lessor, Lessee shall execute and deliver any additional documents evidencing Lessee's attornment or the subordination of this Lease with respect to any such ground leases or underlying leases or any such

mortgage or deed of trust, in the form requested by Lessor or by any ground landlord, mortgagee, or beneficiary under a deed of trust, subject to such nondisturbance requirement. If requested in writing by Lessee, Lessor shall use commercially reasonable efforts to obtain a subordination, nondisturbance and attornment agreement for the benefit of Lessee reflecting the foregoing from any ground landlord, mortgagee or beneficiary, at Lessee's expense, subject to such other terms and conditions as the ground landlord, mortgagee or beneficiary may require.

- B. Disclaimer of Interests. Lessee shall execute and deliver an Acknowledgment and Disclaimer of Interests in substantially the form attached as Exhibit E hereto and in such final form as directed by Lessor.

## 25.0 CONDEMNATION

If the Property or any portion thereof is taken for any public or quasi-public purpose by any lawful government power or authority, or by exercise of the right of appropriation, condemnation or eminent domain, or is sold to prevent such taking, then this Lease shall terminate as of the date when possession is taken by the condemning authority and all rent shall be paid to Lessor as of said date.

Lessee shall have the right at its sole cost and expense to assert a separate claim or join in Lessor's claim in any condemnation proceedings for its personal property, its improvements, loss of value in its leasehold estate, moving expenses or any other claims it may have. Lessee shall be entitled to and shall receive that portion of any award or payment made which is attributable solely to its claim, and Lessor shall be entitled to and shall receive that portion of any award of payment made which is attributable solely to the land and improvements erected thereon.

## 26.0 COMPLIANCE WITH ALL LAWS

Lessee shall keep itself fully informed of all existing and future state and federal laws and all county and Lessor ordinances and regulations which in any manner affect the Permitted Use under this Lease, or the possession or use of the Property by Lessee, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Lessee shall at all times observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees, and shall defend and indemnify Lessor, and its respective officials, officers, employees and agents against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree by Lessee or its employees, agents or designees except to the extent the Property were in violation of any such law, ordinance, regulation, order or decree prior to the Lease Commencement Date; it being agreed upon by the parties that Lessee shall have no obligation to correct any deficiencies or noncompliance that existed prior to the Lease Commencement Date.

## 27.0 NONDISCRIMINATION

Lessee shall not deny benefits to, harass, discriminate, or allow harassment or discrimination of, any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall Lessee discriminate unlawfully, harass, or allow harassment or discrimination against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

## 28.0 DEFAULT AND REMEDIES

In the event there is a default by Lessee with respect to any of the provisions of this Agreement or any obligations under it, Lessor may give Lessee written notice of such default. After receipt of such written notice, Lessee shall have thirty (30) days in which to cure such default, provided Lessee shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and Lessee commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion.

If Lessee does not provide evidence to Lessor of the complete cure of the default within the applicable cure period, Lessor may immediately terminate this Agreement, or, at Lessor's sole option, Lessor may correct any such default by performance of any act, including payment of money, and invoice Lessee for the actual cost thereof, which will include Lessor staff time required to cure the default. If Lessor elects such option, Lessee shall pay the invoice for such costs within thirty (30) days. In addition to the foregoing, Lessor may pursue any other remedies available at law or in equity.

## 29.0 DISPUTE RESOLUTION AND ATTORNEYS' FEES

In the event a dispute arises between the parties, the parties agree to participate in good faith in mediation. Each party shall equally share in the cost of the mediation. If mediation between the parties does not result in a mutually satisfying settlement within ninety (90) days after submission to mediation, then each party will have the right to enforce the obligations of this Agreement. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California. Each party shall bear its own costs, expenses, and attorneys' fees in any legal action relating to this Agreement.

## 30.0 PUBLIC RECORDS

Any and all written information submitted to and/or obtained by Lessor from Lessee or any other person or entity having to do with or related to this Agreement and/or the Property, either pursuant to this Agreement or otherwise, may be subject to disclosure

pursuant to the California Public Records Act (Government Code § 6250 et seq.) as now in force or hereafter amended, or any act in substitution thereof, or otherwise made available to the public. Lessee hereby waives, for itself, its agents, employees, subcontractors and any person claiming by, through or under Lessee, any right or claim that such information is not a public record or that the same is a trade secret, or confidential, or not subject to inspection by the public, including without limitation reasonable attorneys' fees and costs.

### 31.0 RELATIONSHIP OF THE PARTIES

The relationship of the parties hereto is and shall at all times remain that of Lessor and Lessee. It is expressly understood and agreed that by executing this Agreement and allowing Lessee to take possession of the Property, Lessor does not in any way or for any purpose become a partner of Lessee, or otherwise establish a joint venture between Lessor and Lessee.

### 32.0 NOTICES

All written notices pursuant to this Agreement shall be addressed as set forth below or as either party may hereafter designate by written notice and shall be deemed received upon actual delivery by via overnight United States mail and one (1) business day after the email is sent if such communication is sent by email, provided that no delivery failure notification has been received.

If to Lessor: Deputy Director of Parks and Recreation  
City of Fullerton  
303 W. Commonwealth Ave.  
Fullerton, CA 92832  
Email: daisy.perez@cityoffullerton.com

With a Copy to: City Clerk  
City of Fullerton  
303 W. Commonwealth Ave.  
Fullerton, CA 92832

If to Lessee: Muckenthaler Cultural Center Foundation  
Center Director  
1201 West Malvern Avenue  
Fullerton, California 92833

### 33.0 GOVERNING LAW

This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws.

### 34.0 WAIVER

The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

### 35.0 SEVERABILITY

If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

### 36.0 CONSTRUCTION

The various headings in this Lease, the numbers thereof, and the organization of the Lease into separate sections and paragraphs are for purposes of convenience only and shall not be considered otherwise.

### 37.0 DRAFTING

Each party acknowledges that it has had an adequate opportunity to review each and every provision in this Agreement and to submit the same to legal counsel and any other consultants for review and comment and that the parties jointly drafted this Agreement. No provision of this Agreement shall be construed more strictly against one party than the other party by reason that one or the other party proposed, drafted or modified such provision or any other existing or proposed provision.

### 38.0 SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto.

### 39.0 LESSOR APPROVALS AND ACTIONS THROUGH THE DEPUTY DIRECTOR OF PARKS AND RECREATION

The Deputy Director of Parks and Recreation, or his/her designee, shall represent the Lessor in all matters pertaining to this Agreement. Whenever a reference is made herein to an action or approval to be undertaken by the Lessor, the Deputy Director of Parks and Recreation, or his/her designee, is authorized to act, unless this Agreement specifically provides otherwise or the context should otherwise require. The Deputy Director of Parks and Recreation shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of Lessor so long as such actions do not materially or substantively change the uses of the Property permitted under this Agreement or cause the Lessor to incur costs. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the Lessor Council or the Lessor Manager.

#### 40.0 ENTIRE AGREEMENT; AMENDMENTS

This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification.

#### 41.0 COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

#### 42.0 AUTHORITY OF LESSEE

Each individual executing this Agreement on behalf of Lessee represents and warrants that the individual is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with the by-laws of said corporation, and that this Agreement is binding upon said corporation.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

CITY OF FULLERTON  
A Municipal Corporation

MUCKENTHALER CULTURAL CENTER  
FOUNDATION  
A Nonprofit Corporation

\_\_\_\_\_  
Eric Levitt  
City Manager

\_\_\_\_\_  
Farrell Hirsch  
CEO

ATTEST

\_\_\_\_\_  
Lucinda Williams, City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
Richard D. Jones, City Attorney

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**



