

**CITY CLERK
ORIGINAL**

**C-8573
08/30/2013**

Gallery Program Exhibition Agreement



City of Glendale
Public Art Program
5850 W. Glendale Avenue
Glendale, AZ 85301
www.glendaleaz.com/arts

Exhibitioner: Arbitrary Arts Inc.

Contact Person: Mary Beth Bannon

**Address: 702 East 2nd Street
Mesa, Arizona 85203**

Phone: 480-620-3692 Cell: 480-620-3692

E-mail: mary@arbitraryarts.com

Exhibition Period: September 2, 2013 to September 30, 2013

**Exhibition Location: Westgate Gallery Glendale at Westgate
Address 9380 W. Westgate Blvd. - Suite D-109
Glendale, AZ 85305**

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1. **General.** The Arbitrary Arts Inc ("Exhibitioner") agrees to lend to the City of Glendale ("City") certain artwork ("Artwork") for exhibit at the Westgate Entertainment District located in Glendale, Arizona more further identified in Exhibit A ("Exhibit Location"). Exhibitioner shall not terminate the loan during the exhibition period stated above. Exhibitioner and the City may extend the exhibition period under the same terms and conditions of this Gallery Program Exhibition Agreement ("Agreement") and any extension shall be in writing
 2. **Location.** Exhibitioner understands that the Artwork loaned will be displayed in a public place and not a fully secured or environmentally controlled facility. Exhibitioner warrants that it inspected the Exhibition Location and that the Exhibit Location is suitable for display of all Artwork
 3. **Insurance Requirements.** Exhibitioner shall maintain, at its sole expense, the following types of insurance coverage or programs of self-insurance coverage as required by statute and attached as Exhibit B:
 - 3.1 Workers' Compensation Insurance as required by law
 - 3.2 Commercial General liability Insurance or statutory self-insurance as authorized for Arizona municipalities against any and all damages and liability, including attorneys' fees on account of or arising out of injuries to or the death of any person or damages to the property, however occasioned in, on or about the Exhibit Location (with the Exhibitioner's insurance to cover the Exhibit Location) with at least a single combined liability, liquor liability, and property damage limit of One Million and No/100 Dollars (\$1,000,000 00), which policy maintained by Exhibitioner shall name the City of Glendale as an additional insured
 - 3.3 Each policy shall (a) be issued by insurance companies licensed to do business in the State of Arizona, and acceptable to the City, (b) name the parties listed below and their respective

affiliates, officers, directors, employees, agents and assigns as additional insured's, (c) be primary and noncontributing with respect to any coverage that the Exhibitioner may carry and the Certificate of Insurance must contain the following statement (by attachment, if necessary): 'This insurance shall be primary and non-contributing with respect to any coverage that Exhibitioner may carry for losses arising out of the Named Insured's operations ', (d) provide that it shall not be canceled or materially changed without thirty (30) days prior written notice to the other party, and (e) be endorsed to provide that the City's and Exhibitioner's underwriters and insurance companies shall not have any right of subrogation against the other party. An original copy of the insurance certificate shall be given to the City prior to the commencement of the exhibition. The obligations contained herein are separate and distinct from all other obligations set forth in this Agreement, and are in no way intended to merely support the Exhibitioner's duty to indemnify set forth in this Agreement.

4. **Inventory of Artwork.** An inventory that lists each Artwork to be exhibited ("Inventory") shall be provided to the City at the beginning of the exhibition period and shall be attached to this Agreement as Exhibit C. This Inventory shall include for each piece the full appraised or owner's/Exhibitioner's estimated value for purposes of insurance, the name of the legal owner ("Owner") of the piece, the year the piece was created, the medium of the piece and the piece's dimensions (from furthest point to furthest point)

5. **Exhibitioner Responsibilities.**

- 5.1 Exhibitioner must have the legal authority to permit the display of the Artwork listed in the Inventory.
- 5.2 Exhibitioner must have a City-approved contractor install the Artwork. In the alternative, Exhibitioner can request that the City install the Artwork for a cost of \$200. Exhibitioner may display the Artwork on a pedestal upon receiving prior approval by the City.
- 5.3 Exhibitioner must hang an identification tag next to the Artwork describing the title, artist and creation date. A depiction of an acceptable identification tag is attached as Exhibit D.
- 5.4 Prior to the installation of the Artwork, Exhibitioner must provide proof of property coverage on a replacement cost basis including coverage for fine arts to cover property damage. "Fine arts" is defined as paintings, etchings, pictures, tapestries, art glass windows and other bona fide works of rarity, historical value or artistic merit. The City is not responsible for any loss, injury or damage to Exhibitioner's or Owner's Artwork, whether it is insured or not, personal property (including fine arts) or equipment. The Exhibitioner agrees to waive all rights of subrogation against the City and all of its officers, officials, agents and employees.
- 5.5 Exhibitioner may sell pieces of Artwork from the Exhibition Location, but will be required to pay the City 30% of the final sales price. In addition, Exhibitioner recognizes that as required by a Temporary License Agreement between the City and The New Westgate, LLC, Exhibitioner is required to pay 30% of the final sales price to The New Westgate, LLC. The fee and a receipt for the sale must be submitted the last day of the exhibition. Exhibiter is responsible for acquiring the necessary business license(s) authorizing the sale. Exhibitioner will provide an accounting of sales generated from the sale of Artwork at the end of the Exhibition.
- 5.6 Exhibitioner is required to keep the Exhibition Location open from 6:00 to 9:00 p.m. on Fridays and Saturdays throughout the exhibition period. Exhibitioner may keep the Exhibit Location open beyond those hours, but must provide the proper staff.
- 5.7 Exhibitioner is required to keep a daily count of attendees to the Exhibition. The City will collect this information on a weekly basis.
- 5.8 Exhibitioner is required to obtain the appropriate wine/beer permit in the event that wine or beer is served during the exhibition period.
- 5.9 Exhibitioner may not display any Artwork beyond the indoor boundaries of the Event Location.

- 5 10 The City may hold workshops or art classes at the Event Location and Exhibitor must provide adequate space within the Event Location for the workshops or classes. The City will provide Exhibitor with the list of classes or workshops at the Event Location (7) business days prior to the beginning of Exhibition.
- 5 11 Exhibitor or its authorized agent must be present to retrieve the Artwork at 5:00 p.m. upon the final day of the exhibition. Exhibitor must return the walls of the Exhibition Location to the condition they were prior to installing the Artwork or Exhibitor will be fined \$200. A City-employee will determine whether the condition of the walls is acceptable. In the alternative, Exhibitor can request that the City patch the walls for a cost up to \$200.
- 5.12 If Exhibitor fails to pick up the Artwork from the Exhibit Location pursuant to Section 5 11, City shall have the right to place the Artwork in storage. Exhibitor shall bear the risk of loss or damage while the Artwork is in storage. City shall charge Exhibitor reasonable storage fees and costs. Furthermore, City may seek any and all legal remedies at its disposal to collect the reasonable storage fees and costs. Any Artwork not reclaimed within seven (7) years after the expiration of the exhibition period shall be deemed an irrevocable gift to the City in consideration for all unpaid fees and costs under A.R.S. § 44-351 *et seq* as may be amended.
- 5 13 Exhibitor shall notify the City of any change of address during the loan period.

6. City Responsibility.

- 6 1 The City will provide Exhibitor three (3) keys and a security system passcode to the Exhibition Location. Exhibitor is prohibited from providing a key or disclosing the security system passcode to any individuals not associated with Exhibitor.
- 6 2 The City will provide cleaning services at no cost to the Exhibitor one time per week. Exhibitor must maintain the Exhibit Location in a clean and orderly condition. A City-employee will determine whether the Exhibit Location is maintained in a clean and orderly condition. Exhibitor will be fined \$200 for a failure to keep the Exhibition Location in a clean and orderly condition. More than one (1) infraction may result in the termination of this Agreement.
- 6 3 The City reserves the right to remove Artwork at its discretion and the right to limit the number of pieces on exhibit.
7. **Indemnity.** Exhibitor agrees to hold harmless, indemnify, and defend the City and all of its officers, agents and employees from and against all claims, damages, losses, and expenses asserted against or suffered by the City in connection or arising out of the installation and display of the Artwork.
8. **Miscellaneous.** This Agreement shall be interpreted in accordance with the laws of the State of Arizona. Should any dispute arise, the parties shall submit to the jurisdiction of the Maricopa County Superior Court. The party prevailing in any litigation based upon this Agreement shall be entitled to costs. All parties shall, however, bear their own attorney's fees regardless of the outcome of any dispute. This Agreement shall be binding upon and shall inure to the benefit of Exhibitor's heirs, successors, and assigns.

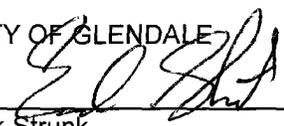
"Exhibitor".

ARBITRARY ARTS INC.

 8-28-13
Mary Beth Bannon
Founder and CEO

"City"

CITY OF GLENDALE


8.29.13
Erik Strunk
Executive Director
Parks, Recreation and Library Services

ATTEST

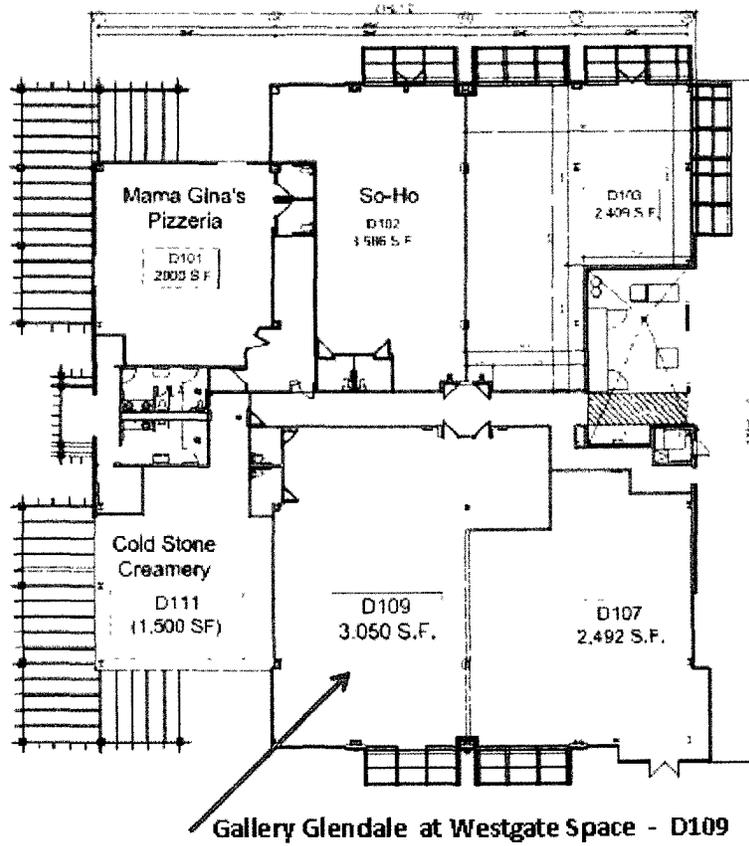

City Clerk (SEAL)

APPROVED AS TO FORM:


City Attorney

EXHIBIT A

Site Plan of Gallery License Area



BUILDING D

LEASE PLAN (1/1/25)
"PROPOSED DEVELOPMENT PLANS - SUBJECT TO CHANGE"

SCALE: N.T.S.



EXHIBIT B

Insurance Certificate

See Attached



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/26/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT. If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Ambassador Group Inc. 7010 E Chauncey Ln Ste 230 Phoenix AZ 85054	CONTACT NAME Laurie Scola
	PHONE (A/C, No, Ext) (480) 776-6950 FAX (A/C, No) (480) 776-6951
	E-MAIL ADDRESS lscola@ambassadorins.com
	INSURER(S) AFFORDING COVERAGE NAIC #
	INSURER A Capitol Indemnity Corporation 10328
	INSURER B
	INSURER C
	INSURER D
	INSURER E
	INSURER F

COVERAGES CERTIFICATE NUMBER: 13-14 Master REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY					EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	<input checked="" type="checkbox"/>	CP02280213	9/2/2013	9/2/2014	MED EXP (Any one person) \$ 10,000
						PERSONAL & ADV INJURY \$ 1,000,000
						GENERAL AGGREGATE \$ 2,000,000
						PRODUCTS - COMP/OP AGG \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER					
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident) \$
						\$
	UMBRELLA LIAB	<input type="checkbox"/> OCCUR				EACH OCCURRENCE \$
	EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$
						\$
	DED	RETENTION \$				
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					WC STATUTORY LIMITS OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y/N	N/A			E L EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below					E L DISEASE - EA EMPLOYEE \$
						E L DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Coverage subject to policy forms, terms and conditions. City of Glendale and Westgate Entertainment District are listed as additional insured on the General Liability as required by written contract.

RE: Arts & Crafts classes hosted by insured from 9-2-13 thru 9-30-13

CERTIFICATE HOLDER City of Glendale c/o Mojgan Vahabzadeh Glendale Public Art Program 5959 W. Brown St. Glendale, AZ 85302	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS
	AUTHORIZED REPRESENTATIVE Dave Delorenzo/KRE

EXHIBIT C

Inventory of Artwork

See Attached

EXHIBIT D

Art Identification Tag

Sample: 3 x 5 artwork tag/sign

Jane Smith

Favorite Spot in the Park

2011 • Pastel • 24 x 32

\$200.00