

LEASE AGREEMENT

This Lease Agreement ("Lease"), dated **February 7, 2019** is entered into by and between the **CITY OF COALINGA, a California entity**, hereinafter referred to as the "City" or "Lessor", and **IMAGINARIUM: Institute of Fine Arts, a non-profit organization**, hereinafter referred to as "Lessee".

WHEREAS, Lessor is the owner of the real property ("Premises") located at 180 Pierce Street, Coalinga, California; and

WHEREAS, it is the mutual intent and desire of Lessor and Lessee to enter into a Lease of a City-owned premises in accordance with the terms and conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of the mutual covenants, terms, provisions and conditions hereinafter set forth, the parties hereto agree as follows:

1. DESCRIPTION OF LEASED PREMISES

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, on the terms and conditions hereinafter set forth, those certain premises situated in the City of Coalinga located at **180 Pierce Street, Coalinga, California.**

2. TERM

The term of this Lease shall be for a one-year period commencing from **February 7, 2019** and terminating on **February 6, 2020** ("expiration date"), or until such time as either Lessor or Lessee gives thirty (30) days advance written notice of termination, subject to any other provisions for termination provided for herein.

3. RENT /LEASE PAYMENTS

A yearly rent of **One and No/100 Dollars** (\$1.00), shall be paid by Lessee to Lessor commencing February 7, 2019.

Lease payments are due and payable in advance on the first (1st) day of each calendar year at the office of Lessor, 155 W. Durian Avenue, Coalinga, California 93210. Payments received after the fifteenth (15th) of each month shall be subject to a delinquency fee of Twenty Five and No/100 Dollar (\$25.00) per month.

4. IMPROVEMENTS TO BE PROVIDED BY LESSEE

Lessor must approve all leasehold improvement plans prepared by Lessee prior to commencement of work on said improvements. Lessee shall obtain and pay for all necessary license, permits and inspection fees relating to all leasehold improvements.

5. LESSEE ACCEPTANCE OF PREMISES

The occupancy of the premises by Lessee shall constitute an acknowledgement by Lessee that the premises are then in the condition called for by this lease, that Lessor has performed all its work with respect to the premises, and that Lessee waives all patent defects in the premises.

6. USE

The premises are leased to Lessee for the purpose of running a community garden. Lessee shall not use, or permit said premises or any part thereof to be used for a purpose(s) other than which the said premises are leased, or for purpose agreed to by Lessor.

7. WASTE: QUIET CONDUCT

Lessee shall not commit, or suffer to be committed, any waste upon the said premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of any other property owner in the area.

8. ALTERATIONS: MECHANICS LIENS

- a) Lessee shall not make, or suffer to be made, any alteration of the premises, or any part thereof, without the prior written consent of Lessor. If alterations, improvements, or additions, have been made, Lessee shall remove any of these improvements before termination of the lease and leave the premises in the same condition it was found. If Lessor feels any improvements are beneficial to future tenants it is the option of the Lessor to waive the removal. In that event, the improvement shall become the property of the Lessor upon surrender or abandonment of the premises or termination of this Lease. Lessee will repair any damage to the premises caused by removal.
- b) Lessee shall pay, when due, all sums of money that may become due or purportedly due for any labor, services, materials, supplies or equipment alleged to have been furnished or to be furnished to or for Lessee in, at, upon or about the premises and which may be secured by any mechanics, material man's or other lien against the premises or Lessee's interest in the premises, and Lessee shall cause each such lien to be fully discharged and released at the time performance of the obligation secured matures or becomes due. Lessor shall have the right to post and maintain on the premises such notices of non-responsibility as are provided for under the mechanics lien law of California.

9. UTILITIES

Lessee shall pay all water and sewage utility services provided for the premises. Lessee shall pay for electric and gas services based on separate meters, and for garbage/refuse services provided to the premise. Lessee shall also pay for any street sweeping or other municipal services provided to the premises. Lessee shall be responsible for notifying the City utility department upon execution of the lease in order to register for utilities and paying any required fees and or deposits as required.

10. ABANDONMENT OF PREMISES; TRADE FIXTURES

Lessee shall not vacate or abandon the premises at any time during the term, and if Lessee shall abandon, vacate or surrender said premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the premises shall be deemed to be abandoned at the option of Lessor.

11. CARE AND MAINTENANCE OF THE PREMISES

Lessee shall maintain the premises in the same order and condition as when received, wear and tear in the usual and ordinary operation accepted.

12. NONDISCRIMINATION

The Lessee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, disability, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall Lessee itself or any person claiming under or through Lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub lessees, subtenants or vendees on the land herein leased.

13. COMPLIANCE WITH THE LAW

Lessee shall, at its sole cost and expense comply with all of the requirements of all municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the said premises, and shall faithfully observe in the use of the premises all municipal ordinances and regulations now in force or which may hereafter be in force.

The judgment of any court of competent jurisdiction, or the admission of Lessee in any action or proceeding against Lessee, whether Lessor is a party thereto or not, that Lessee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between Lessor and Lessee.

14. NON-LIABILITY FOR DAMAGE

Lessee agrees to and shall defend and indemnify Lessor against all claims, damages, causes of action, suits, or damages (including costs and expenses and attorneys' fees incurred in connection therewith) for death or injury to persons or for loss of or damage to property arising out of or in connection with the use or occupancy of the premises by Lessee.

In the event of any claims made or suits filed Lessor shall give Lessee notice thereof and Lessee shall have the right to defend or settle the same to the extent of its interest hereunder.

15. INSURANCE REQUIREMENTS

Throughout the term, Lessee shall at its own cost and expense maintain insurance as set forth below.

General Liability

- Commercial General Liability Insurance no less than ISO form CG 00 01.
- Coverage must be on a standard occurrence form.
- Minimum Limits: \$1,000,000 per Occurrence, \$2,000,000 General Aggregate; the General Aggregate shall apply separately to each location
- Prior written consent is required if the insurance has a deductible or self-insured retention excess of \$25,000
- City of Coalinga, its officials, officers and employees must be an additional insured for liability arising out of the ownership, maintenance or use of that part of the premises leased to the Tenant/ Lessee/Concessionaire (ISO form GC 2011 or equivalent).
- The insurance provided to City of Coalinga, its officials, officers and employees as an additional insured must apply on a primary and non-contributory basis with respect to any insurance or self-insurance program maintained by City of Coalinga, its officials, officers and employees.
- The policy must cover inter-insured suits and include a “separation of Insured’s or “severability” clause which treats each insured separately.
- Required Evidence of Coverage:
 - Copy of the additional insured endorsement or policy language granting additional insured status;
 - Copy of endorsement or policy language indicating that coverage applicable to City of Coalinga, its officials, officers and employees is primary and non-contributory; and
 - Properly completed Certificate of Insurance

Standards for Insurance Companies

- Insurance policies must be issued by an insured with an A.M. Best’s rating of at least A: VII.

Documentation

- The name and address for Additional Insured Endorsements and Certificates of Insurance is City of Coalinga Attn: Senior Administrative Analyst 155 W. Durian Avenue Coalinga, CA 93210.
- Current Evidence of Coverage must be provided for the entire term of this agreement.
- Upon written request certified copies of required insurance policies must be provided within thirty (30) days.

Said policy (ies) shall provide thirty days prior notice of change or cancellation to the City Manager of the City of Coalinga, 155 W. Durian Avenue Coalinga, CA 93210.

A Certificate of Insurance is to be completed as part of this lease and certified copies of all policies required by this section shall be furnished to the Lessor within fifteen (15) days of commencement of the lease.

It is understood and agreed that approval of said policy (ies) shall in no way affect the terms and conditions of the hold harmless clause in this case which remain in full force and effect.

16. SIGNS

Lessee shall not place or permit to be placed any sign, decoration, marquee or awning on the exterior of the said premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld; and Lessee upon request of Lessor, shall immediately remove any sign, decoration, marquee or awning which Lessee has placed or permitted to be placed in, on or about the exterior of the premises without the prior written consent of Lessor and which, in the opinion of Lessor, is objectionable or offensive, and if Lessee fails immediately to do so, Lessor may enter upon said premises and remove any such sign, decoration, marquee or awning and Lessee shall pay the cost of such removal to Lessor upon demand.

17. ENTRY BY OWNER

Lessee shall permit Lessor and its agents to enter into said premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining the premises. Lessee shall permit Lessor, at any time within sixty (60) days prior to the expiration of this lease, to place upon said premises any usual or ordinary "to let" or "to lease" signs.

18. ASSIGNMENT OR SUBLETTING

Lessee shall not encumber, assign or sublease any rights, duties, or obligations under this lease without the prior written consent of Lessor, which consent shall not be withheld unreasonably. Any change in ownership (voluntary, involuntary, by operation of law, or otherwise) of the controlling interest of Lessee from the signer(s) of this lease, shall be deemed an assignment subject to this paragraph. Consent of Lessor to any one assignment or sublease shall not be construed as consent to any future or other assignment or sublease by Lessee or any person claiming under Lessee.

19. INSOLVENCY; RECEIVER

Either: (a) the appointment of a receiver to take possession of all or substantially all of the assets of Lessee, or (b) a general assignment by Lessee for the benefit of creditors, or (c) any action taken or suffered by Lessee under any insolvency or bankruptcy act shall constitute a breach of this lease by Lessee.

20. REMEDIES OF LESSOR

The following rights and remedies shall be available to Lessor in the event Lessee commits any acts of default during the term. These rights and remedies shall not be exclusive, but

shall be cumulative and in addition to any and all rights and remedies now or hereafter allowed by law.

- a) Even though Lessee breaches this lease, or abandons the leased premises, this lease shall continue in full force and effect for so long as Lessor does not terminate Lessee's right to possession of the leased premises; and Lessor shall be entitled to enforce all its rights and remedies under the lease, including the right to collect rent as it becomes due. Lessor shall not be deemed to have terminated this Lease or Lessee's right to possession until Lessor gives written notice of such termination.
- b) Lessor may elect, by written notice to Lessee, to terminate Lessee's right to possession of the leased premises at any time after the occurrence of any acts of default by Lessee, and in such event may, at Lessor's option, declare this lease and Lessee's right to possession terminated. In the event Lessor elects to terminate this lease and Lessee's right to possession as aforesaid, Lessor may recover as damages from Lessee the following:
 - 1) The worth at the time of award of the unpaid rental which has been earned at the time of termination of the lease; and
 - 2) The worth at the time of award of the amount by which the unpaid rental which would have been earned after the date of termination of this lease until the time of award exceeds the amount of such loss of rental that Lessee proves Lessor could have reasonably avoided; and
 - 3) The worth at the time of the award of the amount by which the unpaid rental for the balance of the term after the time of award exceeds the amount of the loss of such rental that Lessee proves Lessor could have reasonably avoided; and
 - 4) Any other amount necessary to compensate Lessor for all detriment proximately caused by Lessee's act or default or which in the ordinary course of things would be likely to result there from.

The phrase "the worth at the time of the award" as referred to in subparagraph (b) 1 and 2 is to be computed by allowing interest at the rate of ten percent (10%) per annum. The phrase "the worth at the time of the award" as referred to in subparagraph (b) 3 shall be computed by discounting such an amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

- c) Efforts by Lessor to mitigate the damages caused by Lessee's breach of this Lease shall not waive Lessor's right to recover damages under the foregoing provisions.
- d) Nothing in the foregoing subparagraphs shall affect the right of Lessor to indemnification against liability arising prior to the termination of this Lease for personal injuries or premise damage, or against mechanics' liens or other liens, claims or expenses.

21. SURRENDER AT END OF TERM

Lessee agrees on the last day of said term, or sooner termination of this Lease, to surrender unto Lessor all and singular premises with said appearances in the same condition as when received, reasonable use and wear thereof and damage by act of God or by the elements excepted, and to remove all of Lessee's signs from said premises. The voluntary or other surrender of this lease by Lessee, or mutual cancellation thereof, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subleases or sub tenancies, or may, at the option of Lessor, operate as an assignment to it of any of all such subleases or sub tenancies.

22. ATTORNEYS FEES ON DEFAULT

In case suit shall be brought for an unlawful detainer of the said premises, for the recovery of any rent due under the provisions of this lease, or because of the breach of any other covenant herein contained on the part of Lessee to be kept or performed, Lessee shall pay to Lessor reasonable attorneys' fees which shall be fixed by court.

23. WAIVER OF DEFAULT

No waiver of any default shall be effective unless in writing and signed by an authorized representative of Lessor, and no such waiver shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel, or otherwise. The subsequent acceptance of rent pursuant to this lease shall not constitute a waiver of any preceding default by Lessee other than a default in the payment of the particular rental payment.

24. CONDEMNATION

If any part of the premises shall be taken or condemned for a public or quasi-public use, and a part thereof remains which is susceptible of occupation hereunder, this lease shall, as to the part so taken, terminate as of the date title shall vest in the condemner, and the rent Lessee shall be required to pay for the remainder of the term shall be only such portion of the rent specified herein as applies to the value of the part of the premises remaining in possession of Lessee after the condemnation; but in such event, Lessee shall have the option to terminate this Lease as of the date when title to the part so condemned vests in the condemner. If all of the demised premises, or such part thereof, be taken or condemned so that there does not remain a portion susceptible for occupation hereunder, this lease shall thereupon terminate. Except as provided below, if a part or all of the demised premises be taken or condemned, all compensation awarded upon such condemnation or taking shall go to Lessor and Lessee shall have no claim thereto, and Lessee hereby irrevocably assigns and transfers to Lessor any right to such compensation or damages, except that to which Lessee shall be entitled under the next paragraph.

Lessee in no event shall have any claim whatsoever against Lessor for loss or diminution in value of the leasehold or for the value of any unexpired term of this lease, Lessee hereby expressly waiving any such right or claim; provided, however, that Lessee shall be entitled

to receive from the condemning authority any award or portion thereof made for loss or diminution in value of the leasehold, for the value of any unexpired term of this lease, for the taking of any of Lessee's property under the power of eminent domain, for the damages thereto caused thereby, and for any cost to which Lessee might be put in removing Lessee's premises.

25. BINDING ON SUCCESSORS

The covenant and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto, and all of the parties hereto shall be jointly and severally liable hereunder.

26. CHANGE IN FORM OF OWNERSHIP

If Lessee be a partnership, a withdrawal or change, voluntary, involuntary, by operation of law, or otherwise of any of the partners thereof, or if Lessee be composed of more than one (1) person, a purported assignment of transfer, voluntary or involuntary, by operation of law, or otherwise, from one (1) thereof unto another or other thereof, or if Lessee be a corporation, a change in the ownership of thirty three and one third percent (33-1/3%) or more of its capital stock as owned as of the date of execution hereof during the term and any renewal of this lease, shall be deemed as an assignment prohibited hereby unless the written consent of Lessor be obtained hereto.

27. SERVICE AREAS

Lessee agrees that all receiving and delivery of goods and merchandise and removal of garbage and refuse shall be made only by way of the designated loading areas, or such portion of the parking areas operated by Lessor as Lessor may designate from time to time for such use by Lessee, and at such hours as may be designated by Lessor from time to time.

28. EXCUSABLE DELAYS

Any prevention, delay or stoppage due to causes beyond the reasonable control of the party obligated to perform shall excuse performance by such party for a period equal to any such prevention, delay or stoppage, except the obligations imposed by Section 3.

29. RULES AND REGULATIONS

Lessor shall have the right from time to time to promulgate reasonable rules and regulations and amendments thereto for the safety, care and cleanliness of the premises.

30. NOTICES

As used in this lease, notice includes but is not limited to the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, and appointment. No notice of the exercise of any option or election is required unless the provision giving

the election or option expressly requires notice. Unless the provisions of this lease on rent direct otherwise, rent shall be sent in the manner provided for giving notice. All notices must be in writing, provided that no writing other than a check or other instruments representing the rent payment itself need accompany the payment of rent. Notice is considered given when (a) when delivered in person to the recipients named below, or (b) on the date shown on the return receipt after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage and postal charges prepaid, addressed by name and address to the party or persons intended as follows:

Notice to Lessor: City of Coalinga
 City Manager
 155 W. Durian Avenue
 Coalinga, CA 93210

Notice to Lessee Imaginarium: Institute of Fine Arts
 c/o Mary B. Jones, CEO
 P O Box 968
 Coalinga, CA 93210

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first hereinabove written.

LESSEE:

Imaginarium Institute of Fine Arts, a non-profit organization

By: _____
Mary Jones

LESSOR:

CITY OF COALINGA

By: _____
Marissa Trejo, City Manager