

40 WEST STUDIOS

PERFORMANCE USE LICENSE AGREEMENT

THIS PERFORMANCE USE AGREEMENT (“Agreement”) dated as of _____ 20____, between the **Lakewood-W. Colfax BID** and its assigns, with its 40 West Studios location address at 1615 Reed Street, Lakewood, CO, 80214 (“Licensor”) and the party named herein and hereafter referred to as “Licensee” agree to the following:

LICENSEE:

1. Studio Number	
2. Company Name: (if applicable)	
3. Individual Name: Any other authorized parties:	
4. Address	
5. Telephone	
6. Email	

7. Commencement Date	
8. Monthly License Fee (rent) Prorated amount for 1 st month if move in is not at beginning of month	
9. Security Deposit	
10. Certificate of Insurance	I have general liability insurance YES NO (If yes, attached Certificate of Insurance; if no, add \$10 per month – see Section 7a herein.)
11. Term of License	12 consecutive months from Commencement Date
12. Keys Issued On One (1) Premise Key & One (1) Studio First set issued free of charge; \$10 per key thereafter	

GRANT OF LICENSE: Licensor hereby grants to Licensee an exclusive license, revocable at the licensor’s sole discretion, to use the Studio noted above commencing on the Commencement Date with all of the provisions, terms and conditions stated herein, which are hereby agreed to by Licensor and Licensee.

USE OF STUDIOS: The studios shall be used for any permitted, intended use, outlined in Building and House Rules (Exhibit A) or approved in writing by the Licensor.

TERM: (a) The TERM of this Agreement is 12 months from the date hereof (the Commencement Date). Licensee shall be permitted to use the Studio(s) during the Term period, hereto, and any additional time as may be indicated herein. Notwithstanding anything to the contrary contained herein, in the event that Licensor shall be unable to give Licensee possession of the Studio on or before the date set forth herein as the Commencement Date for any reason whatsoever, Licensor shall not be subject to any liability for failure to give possession on such date and the validity of this Agreement shall not be impaired under such circumstances, nor shall the same be construed to extend the Term, but the Commencement Date shall be delayed until the date on which Licensor delivers possession of the Studio to Licensee.

(b) (i) Licensor may terminate the Term and this License by giving written notice (the "Termination Notice") to the Licensee of its election to do so, stating a date (the "License Termination Date") upon which the Term and the License shall terminate, unless terminated sooner as provided in this Agreement.

(ii) In the case where Licensor is terminating this License, the License Termination Date shall be a date at least ninety (90) days following the date on which Licensor gives Licensee the Termination notice.

(c) Subject to the provisions of this subsection (c), Licensee shall have the right to extend the term of this Agreement for an additional one-year term commencing at the end of the Initial Term provided that:

(i) Licensee shall give Licensor notice of its election to extend the term of this Agreement on or before 120 days prior to the end of the then current term, time being of the essence, and

(ii) Licensee has, as determined by the sole discretion of the Licensor, abided by the Building and House Rules (EXHIBIT A) and is not in default under the Agreement as of the time of the giving of the extension notice, and

(iii) Licensee participates no less than quarterly in scheduled events and programs set by Licensor for the Studio(s).

(d) Licensee hereby agrees that time shall be of the essence with respect to Licensee's obligation to vacate and surrender possession of the Studios upon the expiration of the Term, and Licensee shall vacate and surrender possession of the Studios at such time, broom clean, in the original condition as existed prior to the commencement of the License Period, reasonable wear and tear excepted, and shall remove all of its personal property therefrom. Licensee's obligation to observe and perform this covenant shall survive the expiration or other termination of this Agreement.

FEES: Licensee shall pay to Licensor, at the address set forth on Page 1 hereof, as and for a fixed License Fee with respect to the Studio (the "Fee") twelve (12) monthly installments of License Fee (Item 8 above).

Together with the execution of this Agreement, Licensee shall pay one (1) monthly installment of the Fee allocable to the first month of the Term plus a security deposit equal to one (1) monthly installment of the License Fee. The security deposit shall not be applied to the last monthly installment of the Fee but shall be used for any repairs or cleaning needed to return the Studio to its original state at the end of the Term. Required repairs are at the sole discretion of the Licensor. Any unused portion of the security deposit shall be returned to the Licensee within 30 days of the end of the Term.

As indicated above, the License Fee installment is due on the first (1st) day of the month. If Licensee fails to pay any installment of the Fee by 5 p.m. of the fourth (4th) day of the month or any additional sums due, in addition to any other right or remedy of Licensor, Licensee hereby agrees to pay to Licensor a **\$75 late charge** in addition to the Fee and any other sums due. Failure to pay the License Fee or any other sums due constitutes a default.

MIXED-USE BUILDING: The Building is a mixed-use facility known as 40 West Studios, including 16 units of creative work spaces and common areas for artists and creative enterprises. Licensee acknowledges the mixed use of the building and agrees to work cooperatively with Licensor to mitigate negative impacts on other Licensees.

REQUIREMENT FOR ALL LICENSEES: All Licensees must be members of 40 West Arts at all times during their occupancy at 40 West Studios. All Licensees are required to participate in the 3-4 themed Art Walks produced by the district (typically March, June, August, and November) by opening their studio from 5-8pm for the Art Walks.

TERMS AND CONDITIONS

1. Licensee shall take the Studio(s) on an "AS IS" basis, with the understanding that there shall be no obligation on the part of Licensor to perform any work, supply any materials or incur any expense whatsoever in connection with the preparation of the Studio(s) for Licensee's occupancy. Licensee shall return the Studio(s) to Licensor upon the Expiration Date in the same condition as received by Licensee. Licensee shall not make or allow to be made any alterations, additions or improvements to

the Studio(s) without obtaining the prior written approval of Licensor (which approval Licensor may withhold in its sole discretion). Licensee hereby agrees that the Studio(s) shall be vacated in its entirety, and all trash and debris shall be removed from the Studio(s) by Licensee, no later than the Expiration Date. If Licensee fails to so return the Studio(s), Licensee shall be liable to Licensor for any cleaning, repairs and/or damages suffered by Licensor resulting from such failure to comply.

2. Licensee agrees to indemnify, protect, defend and save harmless Licensor and the partners, officers, directors, contractors, agents, employees, and assigns of Licensor from and against any and all liability (statutory or otherwise), claims, suits, demands, damages, judgments, costs, fines, penalties, interest and expenses (including, without limitation, reasonable counsel and other professional fees and disbursements incurred in connection therewith) to which Licensor and/or any such partner, officer, director, contractor, agent, employee, or assigns may be subject or suffer arising from, or in connection with: (i) any liability or claim for any injury to, or death of, any person or persons, or damage to property (including any loss of use thereof), occurring in or about the Studio(s), (ii) the use and occupancy of the Studio(s), or from any work, installation or thing whatsoever done or omitted (other than by Licensor or its agent or employees) in or about the Studio(s) by Licensee, or its agents, employees, contractors or visitors during the Term, (iii) any default by Licensee in the performance of any of Licensee's obligations under this Agreement, and/or (iv) any negligence or misconduct of Licensee or Licensee's agents, employees, contractors or visitors.

3. This License is and shall be subject and subordinate (i) to all underlying leases which may now or hereafter affect the Studio(s) and all modifications, extensions and replacements of such lease, agreement or other instrument, and (ii) to all mortgages which may now or hereafter affect the Studio(s), and to all renewals, refinancing, modifications, replacements and extensions thereof (hereinafter called "Superior Instruments"). In addition, this License is and shall be subject to the use covenants entered into by Licensor with respect to treatment of the Studio(s) as community space.

4. Licensor agrees, subject to this Section 4, to provide to Licensee the following standard services: HVAC, water, and electric for lighting and power as generally expected in a standard business office environment. Licensor will also provide standard Internet access via a wireless cloud (wifi) suitable for FTP, email transmission, and web surfing. Transmission speeds are not guaranteed. Licensor shall have the right to discontinue any services being provided to the Studio(s) as a result of any strike, casualty, damage, repair or alteration or other cause beyond Licensor's reasonable control.

5. Licensee shall be solely responsible for the security, repairs and replacement of all its own property and of personal property under its custody and control in the Studio(s), and Licensor shall have no responsibility therefor. Licensor shall not be liable under any circumstances for injury or damage to, or interference with, Licensee's business, loss of profits, loss of revenues, loss of business opportunity, loss of good will or loss of use, in each case however occurring. Licensee shall, throughout the Term, take good care of the Studio(s) and the fixtures and appurtenances therein, and, at Licensee's sole cost and expense, make all non-structural repairs thereto as and when needed to preserve them in good working order and condition, reasonable wear and tear, fire or other casualty, excepted. Notwithstanding the foregoing, all damage or injury to the Studio(s) or to any other part of the Building, or to its fixtures, equipment and appurtenances, whether requiring structural or non-structural repairs, caused by or resulting from carelessness, omission, neglect or improper conduct of Licensee, or Licensee's agents, employees, contractors or visitors, shall be repaired promptly by Licensee at its sole cost and expense, to the satisfaction of Licensor. Licensee shall also repair all damage to the Building and the Studio(s) caused by the moving of its fixtures, furniture or equipment. All of the aforesaid repairs shall be of quality or class equal to the original work or construction.

6. Licensor encourages Licensee to display samples of work on the exterior walls of their assigned Studios. Due to the public nature of this space, any display, signs, placards, pictures, advertisements or notices attached to, printed or fixed on the exterior shall not be vulgar, profane, discriminatory, or violent. Licensor reserves the right to have any display removed at its sole discretion. Licensor requests that Licensee change the art display on a rotating basis at least four (4) times per year or once per quarter. All displays or signs shall be removed by Licensee no later than the License Expiration Date, and Licensee shall repair, at Licensee's expense, any damage to the walls caused by such removal.

7. (a) Licensee shall, at Licensee's expense, maintain at all times during the Term and at all times when Licensee is in possession of the Studio (i) standard general business liability insurance in respect of the Studio(s), on an occurrence basis, with a combined single limit (annually and per occurrence and location) of not less than \$2,000,000 (which may consist of primary coverage of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate and umbrella coverage), with at least \$100,000 fire damage liability, naming as additional insureds the Licensor, the Building Owner (Moon Lake Properties, LLC) and any other person designated by Licensor, (ii) worker's compensation insurance, if applicable, covering all persons to be employed by Licensee and (iii) such other insurance as Licensor may reasonably require. If Licensee does not have the general business liability insurance required by Licensor, Licensee agrees to pay an Insurance Certificate Fee to support the Licensor's business liability coverage for these premises only. Licensee acknowledges that this Fee applies only to liability coverage on the premises and does not provide insurance for studio contents.

(b) Licensee shall deliver to Licensor and each additional insured (i) certificates in form reasonably acceptable to Licensor evidencing the insurance required by this Agreement to be maintained by Licensee before the Commencement Date and throughout the Term of this Agreement, and at least 15 days before the expiration of any such insurance, and (ii) upon request, a copy of each insurance policy. All required insurance shall be issued by companies reasonably satisfactory to Licensor.

(c) Licensee shall not do or permit to be done any act which shall invalidate or be in conflict with the insurance policies of Licensor or increase the rates of insurance applicable to the Building.

(d) Licensor and Licensee shall, to the extent obtainable, each procure a clause in, or endorsement on, any property insurance carried by it, pursuant to which the insurance company waives its right of subrogation against the other party to this Agreement and its agents and employees or consents to a waiver of the right of recovery against the other party to this Agreement and its agents and employees. If an additional premium is required for the waiver or consent, the other party shall be advised of that amount and may, but is not obligated to, pay the same. If that party elects not to pay the additional premium, the waiver or consent shall not be required in favor of that party. Provided its right of full recovery under its insurance policy is not adversely affected, Licensor and Licensee each hereby releases the other (and its agents and employees) with respect to any claim (including a claim for negligence) it may have against the other for damage or loss covered by its property insurance (including business interruption and loss of rent).

8. The Licensee shall not allow any other person or entity to occupy or use the Studio(s) under this License Agreement. Licensee shall have absolutely no right to assign or transfer any of its rights contained herein to any other person or entity without the prior written consent of Licensor, which may be granted or withheld in its sole discretion.

9. All notices and demands which may be required to be given by either party to the other shall be in writing (unless otherwise specified herein) and shall be effective upon receipt. All notices and demands shall be personally delivered or sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed to Licensee at the Studio(s) and to Licensor at the address set forth on Page 1 hereof.

10. In the event a dispute arises out of or in connection with this Agreement, the parties will attempt to resolve the dispute through friendly consultation. If the dispute is not resolved within a reasonable period (45 days), this Agreement and its terms and provisions shall be governed by, and construed in accordance with, the laws of the State of Colorado, without regard to the conflicts of laws provisions, if any, of such state. Licensee hereby expressly and irrevocably submits to the jurisdiction of the state courts of the State of Colorado and to the jurisdiction of the United States District Court in Denver, Colorado, for the purposes of each and every suit, action or other proceeding arising out of or based upon this Agreement or the subject matter hereof brought by Licensor, it being expressly understood and agreed that this consent to jurisdiction shall be self-operative and no further instrument or action, other than service of process as permitted by applicable law, shall be necessary in order to confer jurisdiction upon Licensee in any such court. **THE PARTIES HERETO WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

11. The use of the Studio(s) by Licensee shall not in any manner impede or interfere with the use of the other portions of the Building occupied by Licensor, other Licensees, customers, agents, invitees, or other building occupants. Licensee shall comply with all Building and House Rules, now and in the future, all applicable laws, codes and statutes, including specifically but not limited to the provisions with respect to the treatment of the premises as community space. Any violation of the preceding shall constitute default of this Agreement.

12. This Agreement is a non-exclusive license only, revocable as set forth herein, and is personal to Licensee, and shall not be deemed or construed to be a lease, or coupled with an interest, or as conveying any interest in the Studio(s) or Building. In the event of a termination of this Agreement by Licensor, and provided that Licensee is not in default hereunder, Licensee's sole and exclusive remedy shall be to receive a refund of any prepaid Fee relating to the unexpired period of the Term of this Agreement that Licensee did not use or occupy the Studio(s).

13. If the Studio(s) is damaged by fire or other casualty or cause, Licensor may terminate the permission granted herein upon twelve-hour notice. Licensee acknowledges and agrees that Licensor is not responsible for loss or damage of the contents of Licensee's Studio.

14. If Licensee shall default in any of its obligations under this agreement, Licensor may terminate the permission contained herein upon 24-hours' notice and Licensee shall be liable for any reasonable fees or expenses (including attorney's fees) which Licensor may incur as a result of or in connection with Licensee's default hereunder. If Licensee shall default in the performance of any of its obligations under this Agreement, Licensor may, without waiving such default, perform same at any time, without notice to Licensee, and all costs and expenses incurred by Licensor in connection with curing such default (including, without limitation, attorney's fees and disbursements), together with interest at the maximum rate permitted by applicable law, shall be paid by Licensee to Licensor upon demand.

15. Licensor shall be entitled at any time to enter the Studio(s) to inspect or to perform repairs therein.
16. Licensee has deposited with Licensor, as security for Licensee's compliance with this Agreement, the Security Deposit. Licensor makes no representations regarding the rate of return that shall be earned on the Security Deposit. If there is a default hereunder, Licensor may use all or any portion of the Security to cure the default or for the payment of any other amount due and payable from Licensee to Licensor in accordance with this Agreement. Licensee shall, within 15 days following Licensor's notice, deposit with Licensor in cash an amount sufficient to restore the full amount of the Security. Licensee shall not assign or encumber the Security, and no prohibited assignment or encumbrance by Licensee of the Security shall bind Licensor. Licensor shall not be required to exhaust its remedies against Licensee or the Security before having recourse to Licensee, any Guarantor, the Security or any other security held by Licensor, or before exercising any right or remedy, and recourse by Licensor to any one of them, or the exercise of any right or remedy, shall not affect Licensor's right to pursue any other right or remedy or Licensor's right to proceed against the others. If there is then no uncured default under this Agreement, the Security or any balance shall be paid or delivered to Licensee promptly after the Expiration Date and Licensee's vacating of the Studio(s) in accordance with this Agreement. If Licensor's interest in the Building is sold or leased, Licensor shall transfer the Security or any balance to the new Licensor and, upon such transfer, the assignor shall thereupon be automatically released by Licensee from all liability for the return of the Security (and Licensee agrees to look solely to the assignee for the return of the Security).
17. Licensee acknowledges that Licensor has informed Licensee that Licensor or its assigns is an entity which is exempt from taxation under Section 501(c)3 (a "Non-Profit Entity") or other sections of the Internal Revenue Code (Tax-exempt Entity). Licensor hereby represents to Licensee that Licensor is, and shall continue to be during the Term, a Non-Profit Entity, but may assign this agreement to another party at its sole discretion.
18. Licensee covenants, represents and warrants that Licensee has had no dealings or negotiations with any broker or agent in connection with this Agreement and Licensee covenants and agrees to pay, hold harmless and indemnify Licensor from and against any and all costs, expenses (including, without limitation, reasonable attorneys' fees and disbursements), loss and liability for any compensation, commissions or charges claimed by any broker or agent with respect to this Agreement or the negotiation thereof.
19. The liability of Licensor for Licensor's obligations under this Agreement shall be limited to Licensor's interest in the Studio(s). Licensee shall not look to any property or assets of Licensor (other than Licensor's interest in the Studio(s)) in seeking either to enforce Licensor's obligations under this Agreement or to satisfy a judgment for Licensor's failure to perform such obligations. Licensor shall have no liability for any consequential, indirect or punitive damages suffered by Licensee or anyone claiming by, through or under Licensee, in connection with this Agreement or Licensee's use and occupancy of the Studio(s).
20. By signing this Agreement, Licensee acknowledges that the undersigned agrees to participate as a member of 40 West Studios in the 3 to 4 district-wide art walks each year. Licensee shall have at least 90-days advanced notice of such art walks. Participation requirements include the Licensee's presence for an evening (typically 6-9pm) of open studios and the display of artwork on the exterior wall of the Licensee's studio.
21. By signing this Agreement, Licensee acknowledges that the undersigned has read Exhibit A (Building and House Rules) and will shall comply with all Building and House Rules, now and in the future. Any violation of the preceding shall constitute default of this Agreement.
22. This Agreement shall inure to the benefit of Licensor's successors and assigns and may not be modified except by writing and signed by both parties.

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ACCEPTED AND AGREED TO:

For Lakewood-W. Colfax BID & Assigns, Licensor

For _____, Licensee
Print name above

By: _____
Signature

By: _____
Signature

Title: Executive Director

Title: _____

Date: _____

Date: _____

Exhibit A: Building and House Rules

These Building and House Rules are in addition to the terms and conditions outlined in the preceding agreement.

As part of the supportive and professional community of 40 West Studios, please always use your best judgment and be thoughtful of your neighbors of this communal creative space at all times. This Exhibit—Building and House Rules—represents a general list of requirements and expectations but is not necessarily all-encompassing. It may be amended from time to time at the Licensor’s sole discretion. Any action not expressly prohibited in the House Rules but deemed inappropriate can be grounds for default and termination of a Licensee’s Use Agreement. Please also see permitted uses below. A Licensee may request additional uses, which may or may not be granted by the Licensor, at its sole discretion.

Studio Permitted Uses: The practice of and related products and services pertaining to visual arts, photography, graphic design, video and digital arts, fiber arts, jewelry design, architectural design, interior design, stage design, fashion design, low-intensity, hand-crafted woodworking, metalworking, and repurposed/reclaimed arts, mixed media arts, literary arts, other Licensor-approved art uses, including demonstrations, classes, teaching and/or coaching, web design and development, software design and development, and any use required by the Licensor for the supervision of the premises—all with the prerequisite that the use does not negatively impact the comfortable use of adjacent spaces by others, in terms of noise, odor, dust or toxic fumes, or other safety hazards or concerns.

Building and House Rules: **Please Read and Indicate Your Acceptance by Initialing Here:** _____ ←

1. All Licensees must be members of 40 West Arts and abide by these rules and others that may be added by Studio Management, as well as the financial obligations as stipulated in the License Agreement.
2. Licensees will be respectful to each other and act in a professional and appropriate manner at all times.
3. Because the studio space walls do not reach to the ceiling, keep noise and other interference (light, smell, etc.) at a considerate level. This does not apply to exterior shop studios 14, 15, and 16. It is understood that due to the uses in these spaces that a reasonable amount noise and other interference may be present.
4. Storage of Licensee’s materials will be kept within Licensee’s own studio space, unless other arrangements are made in writing with Licensor.
5. Smoking inside or in front of the 40 West Studios building is prohibited.
6. Other than display space on walls in front of each Studio, all walkways are to be kept clear at all times. The kitchen area, front lobby and gallery space will be programmed collaboratively with Licensor making final determination.
7. Please assist in keeping kitchen, restrooms and utility area clean at all times.
8. Licensees must dispose of all garbage from individual Studio space in the trash receptacle behind the building.
9. Each Licensee is responsible for the cleanliness of his or her own Studio space.
10. All rags, cloths, and paper towels containing oil-based paint and or thinner must be properly stored and disposed of.
11. Facility & studio keys are assigned to Licensees. Duplication or lending a key to a non-Licensee is prohibited.
12. Sleeping overnight in the studio is prohibited.
13. The community kitchen and refrigerator are for everyone to use. Please clean up after yourself after kitchen use.
14. Heating and AC temperatures are preset by the Building Owner.
15. Modifications of the Studio or any other space are prohibited unless prior written approval by Licensor. Licensees may hang items on interior walls as permitted. No nails or alternations to Studio wooden doors, please.
16. Licensee is responsible for any guests brought into the space and the Licensee must always be present when guests are in the building.
17. Do not pour any chemicals, solvents, or paint into the restroom or kitchen sinks. Use the utility sink to wash out brushes, non-toxic paint, etc. Dispose of all hazardous materials properly as directed by the material’s manufacturer.
18. The Performance Use Agreement provides Licensees access to the space. Licensees are responsible for supplying their own materials and work furnishings.
19. Licensor is not responsible for damage or theft of materials brought into Studios or the premises by Licensees.
20. Licensor is not responsible for injuries to Licensee and/or his or her visitors while on the premises.