

NORTH CAROLINA
DURHAM COUNTY

LEASE OF NON-RESIDENTIAL PROPERTY

This Lease is made as of the ___ day of _____, 20___ between the City of Durham ("Landlord") and Liberty Arts, Inc. ("Tenant").

1. GRANT. The Landlord hereby leases to the Tenant, and the Tenant accepts, the arts pavilion located on a portion of a certain parcel of land together with the improvements thereon and the fixtures therein, known as 505 Rigsbee Avenue, parcel #104933, in the County of Durham, North Carolina ("the Premises"). The Premises are located in the City of Durham.

2. TERM. This lease is for a period of 36 months, and shall begin March 6, 2013 and shall expire March 5, 2016.

3. RENT. DEPOSIT.

(a) The Tenant shall pay to the Landlord as rent the sum of **\$1.00** for each year of the term. Rent payments are due in advance, without set-off, deduction, or demand, on or before the **10th** day of each month. See Section 12 (Late Payments).

(b) Tenant shall pay a security deposit in the amount of **\$0.00**

4. PURPOSE. The Tenant may not use the property for any purpose other than: ___ commercial ___ industrial ___x___ other specify): Arts Foundry.

5. RETURNED CHECKS. Tenant shall pay \$30.00 for each check returned for insufficient funds or because the drawer had no account at the bank.

6. EXTENSION OF LEASE TERM. Tenant may request an extension of the term by 2 years by sending notice to the Landlord at least 60 days before the expiration of the term. Landlord may, in its sole discretion, approve Tenant's request for extension, and if so approved, shall notify Tenant in writing before the expiration of the original 36 month term.

7. CONDITION OF PREMISES AND REPAIRS. Tenant will maintain the Premises, both inside and outside, in a good state of repair and preservation, except for ordinary wear or tear or obsolescence in spite of repair. Landlord will be responsible for the maintenance and upkeep of the grounds surrounding the Premises. Tenant will not use or permit the use of any part of the Premises for any unlawful purpose or permit any unsafe or unsanitary condition or nuisance to exist thereon. At the end of the term, the Landlord will assume responsibility for the maintenance of the Premises, both interior

and exterior.

8. USE AND CARE OF THE PREMISES.

- (a) All activities conducted on the Premises shall be for a public purpose such that the Landlord would be legally authorized to conduct such activities on the Premises.
- (b) The Premises will be available for use by the public in accordance with guidelines as developed and implemented by the Tenant. Such guidelines will not discriminate based upon sex, race, color, age, religion, national origin, disability, veteran status or political affiliation or belief in any manner.
- (c) The Premises shall not be used as an investment property.
- (d) Unless permitted by the Landlord in writing, the Premises will not be used in a trade or business, including the following uses:
 - (i) As a place that is used for the purpose of meeting or dealing with patients, clients or customers in the course of trade or business or that is otherwise used for or in connection with any trade or business;
 - (ii) As a place where inventory is held for use in the trade or business of selling products at wholesale or retail;
 - (iii) For lease or rent to any other person.

However, the use of the Premises to teach classes in the arts or to create works of art later sold shall not be deemed to be in violation of this provision. Tenant will cooperate with the Landlord if the Landlord wants to use the Premises to offer classes to students taking sculpture and forging through its recreational programs. Tenant welcomes proposals from organizations that would like to offer programs to people interested in learning the art of sculpture, and Tenant is also willing to work with the Landlord's Department of Parks and Recreation and Durham County schools to develop programs of this nature.

9. ALTERATIONS. FIXTURES. (a) Tenant shall have the right from time to time to substitute personal property or fixtures constituting a part of the Premises, provided that the personal property or fixtures to be substituted for the personal property or fixtures to be replaced shall be of comparable quality and that the Tenant shall have given the Landlord notice in writing of its intention to effect such substitution at least 7 days prior to such substitution. Removal of any portion of the Premises other than

personal property or fixtures replaced in accordance with the preceding sentence shall be made only with the prior written consent of the Landlord. (b) Provided there is continued compliance with applicable laws and regulations of governmental authorities, the Tenant shall have the right to remodel the Premises or make additions, modifications and improvements thereto from time to time, the cost of which remodeling, additions, modifications and improvements shall be paid by the Tenant and which shall, when made, become a part of the Premises. During the term of this lease, such remodeling, additions, modifications and improvements shall be undertaken only after the Tenant obtains written approval from the Landlord.

7. KEYS. The Tenant shall not add or change any locks without the Landlord's written consent. At the end of the term, the Tenant shall give to the Landlord all keys that Tenant has for the Premises, including any keys made from Landlord's keys.

81. UTILITIES. The Tenant shall pay all proper charges for all utilities, including oil, gas, electricity, water, sewer, garbage pickup, cable, and telephone.

92. LATE PAYMENTS. If the full rental payment is not received by the Landlord on or before the 10th day of the month due, Tenants shall pay a late fee of 5% of the rental payment or \$15.00, whichever is greater.

103. POSSESSION. The Landlord shall not be liable for its failure to deliver possession because of a cause beyond its reasonable control, including holdover by a previous tenant. However, the rent shall be prorated to reduce the rent for the period during which the Landlord fails to deliver possession.

114. ASSIGNMENT AND SUBLETTING. The Tenant may neither assign nor sublet either any rights in, or any part of, the Premises without the written consent of the Landlord. The Tenant shall remain liable to the Landlord under this lease regardless of assignments or subleases.

125. INSURANCE. Tenant will obtain such insurance or evidence of insurance as the Landlord's Risk Manager may reasonably require, including, but not limited to, the following:

(a) Commercial Property Insurance covering building and contents on a replacement cost basis. Deductibles greater than \$10,000 will require approval by the Landlord's Risk Manager. Landlord must be named as the mortgagee. Tenant shall be responsible for all losses not covered by insurance. Tenant will pay both the premium and the deductible for insured losses.

(b) Liability Insurance:

(i) General Commercial Liability Insurance: A combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year, covering premises/operations, projects/completed operations, broad form property damage, explosion, collapse, and underground hazards if the hazards exist in the performance of this lease, contractual liability, and independent contractors, if any are used in the performance of this lease. Landlord must be named additional insured, and an original of the endorsement to effectuate the coverage must be attached to the certificate. If by blanket endorsement, the agent may so indicate in the GL section of the certificate in lieu of an original endorsement.

(ii) Worker's Compensation Insurance covering statutory benefits, employees, owners or partners, officers, and relatives (who work on the Premises), employers' liability, any limits. Tenant shall provide such certification of same to the Landlord.

(c) Flood Insurance: Satisfactory evidence, which may consist of a letter from the appropriate agent of the National Flood Insurance Association, that the Premises is not located in an area designated by the Secretary of Housing and Urban Development as having special flood hazards. In the event the Premises are so located, the Tenant shall provide the Landlord with satisfactory evidence that the maximum amount of available flood insurance is in effect.

All insurances mentioned in this section shall: (a) be provided by companies authorized to do business in the state of North Carolina. These companies must have a best rating of A or better; (b) be evidenced by a certificate providing notice to the Landlord of not fewer than 30 days prior to cancellation or reduction of coverage; (c) certificates shall be addressed to: Attention Real Estate Manager, City of Durham, North Carolina, 101 City Hall Plaza, Durham, NC 27701; (d) both the insurance certificate and the additional insured endorsement must be originals and must be approved by the Landlord's Risk Manager before the Tenant can engage in any work under this lease.

136. ACCESS. The Landlord shall keep keys to the Premises. The Landlord and its agents and contractors may enter the Premises, including the interior, in case of emergency or with the consent of the Tenant. Without limiting its rights under the preceding sentence, the parties agree that the Landlord and its agents and contractors may enter the Premises, excluding the interior, during daylight hours to make surveys, repairs, improvements, inspections, and do other work. During the last 10 weeks of the term and until the Premises have been rented beyond the term or sold, Tenant shall permit Landlord to show the Premises, including the interior, to prospective tenants or purchasers, from 8:00 AM - 4:30 PM, Monday - Friday. The Landlord may place and maintain for sale and for rent signs on the Premises.

147. VACATING. (a) The Tenant shall surrender vacant possession of the

Premises on or before the end of the term. Time is of the essence in complying with the preceding sentence. (b) On vacating the Premises, the Tenant shall see that all utilities are paid in full and disconnected (unless other arrangements are made with the Landlord), that the Premises (including, if applicable, plumbing fixtures, stoves, refrigerators, and sinks) are clean, that the doors and windows are closed and locked, and that all other provisions of this lease are complied with. So that Landlord may provide security to the Premises after the Premises are vacant and may use the Premises for its purposes, Tenant shall notify Landlord in advance of the expected date that the Premises will become vacant and shall also notify Landlord within 1 working day after the Premises actually become vacant. This subsection "b" applies even if Tenant vacates before the end of the term. (c) If the Tenant fails to comply with its obligations under this section, Tenant shall be liable for resulting damages suffered by the Landlord, including, if applicable, the inability to use the Premises for the purposes for which the Landlord has provided notice to the Tenant, which notice may be given before or during the term.

18. DEFAULT. (a) If the Tenant fails to pay the rent when due or fails to perform any other material obligation under this lease, or if a material purported fact in the Tenant's rental application is substantially false, or if a bankruptcy case designating Tenant as a debtor is commenced or Tenant is made the subject of insolvency proceedings, and such failure, event, or condition continues for 10 days after notice of such failure, event, or condition is sent, then the Landlord may at any time (i) terminate this lease and cause the Tenant's estate to be ceased, or (ii) terminate the Tenant's right to possession of the Premises without causing the Tenant's estate to be ceased or terminating this lease. In either event, the Tenant shall deliver possession of the Premises to the Landlord. In addition, the Landlord may reenter and take possession in accordance with legal procedures. If the Landlord terminates this lease, the Tenant shall be liable for accrued rent, damages resulting from the Tenant's breach, and other accrued obligations and liabilities. If the Landlord terminates the Tenant's right to possession without terminating the lease, this lease shall remain in effect, and the Landlord shall make reasonable efforts to re-let the Premises on the Tenant's behalf. Tenant shall compensate the Landlord for the costs and expenses of such efforts. (b) The Landlord's waiver of or failure to exercise or enforce any of its rights under this lease shall not constitute a waiver of any right thereafter. The Landlord's rights under this section are in addition to other rights under this lease or as provided by law.

19. INDEMNIFICATION. (a) To the maximum extent allowed by law, Tenant shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this lease or out of the use or occupancy of the Premises pursuant to this lease, including for Environmental Contamination. In performing its duties under this subsection "a," Tenant shall at Tenant's sole expense defend Indemnitees with legal counsel reasonably acceptable to Landlord. (b) Definitions. As used in subsections "a" and "c" of this section -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities,

obligations, fines, penalties, settlements, and expenses (included within "Charges" are interest and reasonable attorneys' fees assessed as part of any such item).

"Environmental Contamination" means petroleum products (including oil, gasoline, and kerosene), hazardous wastes, hazardous substances, hazardous materials, toxic substances, toxic wastes, hazardous air pollutants, and toxic pollutants, as those terms are used in any federal, state, or local laws, rules, regulations, codes, and ordinances, as amended from time to time. "Indemnitees" means Landlord and its officers, officials, independent contractors, agents, and employees, and does not include Tenant. (c) Limitations of Tenant's Obligation. Subsection "a" of this section shall not require Tenant to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

150. ADA. If Tenant receives any notice or document (a) which alleges any violation of the Americans with Disabilities Act ("ADA") relating to the Premises, or (b) which pertains to any claim made or threatened relating to the Premises regarding alleged noncompliance with the ADA, or (c) which pertains to any governmental or regulatory action or investigation instituted or threatened relating to the Premises regarding alleged noncompliance with the ADA, Tenant shall, within 10 days after receipt of such notice or document, provide the Landlord with a copy.

161. FIRE, CASUALTY, AND EMINENT DOMAIN. If the Premises or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Premises or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Tenant receives net proceeds from insurance or any condemnation award in connection therewith, such proceeds shall be utilized to rebuild, repair or replace the Premises.

172. EFFECTS ON OTHER RIGHTS. The Landlord shall not be liable for any loss or damage occurring to the personal property of Tenant, except through the intentional act of the Landlord, and except as otherwise provided by law or this lease. Nothing in this lease shall limit the City of Durham's governmental powers regarding the Premises, including eminent domain, zoning, subdivision, and police.

183. ADDRESSES. NOTICES. Notices to the Tenant shall be in writing and sent to:

Liberty Arts, Inc.
Attn: Jackie Macleod
923 Franklin Street
Durham, NC 27701

Notices to the Landlord shall be in writing, and such notices and rent payments shall be sent to:

City of Durham
101 City Hall Plaza
Durham, NC 27701
General Services Department
Real Estate Division

By sending a notice stating its new address, either party may change the address to which notices and rent may be sent.

194. INTERPRETATION. Unless the context requires otherwise, the singular includes the plural, and vice versa. "Including" and "included" mean including or included but not limited to. Section headings are not for interpretation of this lease. In Section 2 (TERM), if the period stated conflicts with the expiration date stated, the period shall control.

IN WITNESS WHEREOF, the parties executed this lease as of the date written above.

LANDLORD:

CITY OF DURHAM

ATTEST:

Clerk

By: _____
City Manager

TENANT:

By: _____ (SEAL)
Title of officer: _____

State of _____
County of _____

ACKNOWLEDGMENT BY
CORPORATION

I, a notary public in and for the aforesaid county and state, certify that
_____ personally appeared
before me this day and stated that he or she is

(strike through the inapplicable:) chairperson/ president/ chief executive officer/ vice-
president/ assistant vice-president/ treasurer/ chief financial officer of Liberty Arts, Inc.,
a corporation, and that by authority duly given and as the act of the corporation, he or she
signed, under seal, the foregoing lease with the City of Durham. This the _____ day of
_____, 20_____.

My commission expires:

Notary Public