

EMERYVILLE LICENSE AGREEMENT

This License Agreement ("**License Agreement**") is made and entered into as of _____ ("**Effective Date**") by the City of Emeryville, a municipal corporation ("**City**"), and P & H Associates, a California limited partnership ("**Property Owner**") and Nigel Sussman, LLC ("**Artist**").

RECITALS

WHEREAS, pursuant to Article 4 of Chapter 2 of Title 3 of the Emeryville Municipal Code, the City has allocated funds for the design, and installation of an original piece of art; and

WHEREAS the Property Owner is the owner of the property improved with a single-story warehouse building and located at Park Street, Horton Street, Sherwin Street, and Hubbard Street in Emeryville (APNs 49-1034-1-4 and 49-1034-1-3) ("**Property**"). A site plan for the Property with a depiction of the licensed area ("**Licensed Area**") is shown on Exhibit A to this agreement; and

WHEREAS, pursuant to Resolution No. _____, _____ ("**Artist**") and the City have executed an agreement dated _____ ("**Art Agreement**") for Artist to design and install a mural ("**Mural**") as an original piece of art on Property's north elevation wall, accessible from Horton Street and Sherwin Avenue public streets and sidewalk rights-of-way as depicted in Exhibit A to the Art Agreement,

NOW, THEREFORE, the parties agree as follows:

1. Grant of License. For the Term of this License Agreement (defined in Section 4.a), Property Owner hereby grants to City, Artist and their respective agents, employees, contractors and sub-contractors, and volunteers, a limited, exclusive and revocable license (the "**License**") to install and maintain the Mural in the Licensed Area (defined below) and, this non-exclusive license for ingress and egress across or through the Property to the Licensed Area, the location of which is depicted in Exhibit A to this License agreement. City and Artist shall not use the Licensed Area for any other purpose or business except as provided in this Agreement without obtaining Property Owner's prior written consent, which consent may be denied in Property Owner's sole and absolute discretion. Notwithstanding any provision or term contained herein to the contrary, this License Agreement does not constitute a deed, a lease or an easement nor does it grant City any estate or interest in land, nor shall any expenditure made by City with respect to the Licensed Area change the character of this revocable License to an irrevocable License.
2. Consideration. The Property Owner hereby acknowledges consideration for the grant of the License.

3. Installation of the Mural. The Mural shall be installed in accordance with all applicable laws and building codes and the Art Agreement and shall be completed in a good and workmanlike manner. City shall pay all costs for work performed by it or on its behalf and shall keep the Property free and clear of mechanics' liens or any other liens.

4. Maintenance of the Mural.

- a. Term. Subject to Section 9, Property Owner agrees not to paint over, change or modify the Mural in any way without the written permission from the City until November 30, 2025 ("**Term**"). Property Owner also agrees to take reasonable steps to ensure that its agents, employees, tenants, contractors, subcontractors and volunteers do not paint over, change or modify the Mural in any way during the Term. The City is not obligated to remove the Mural at the end of the Term or upon any other termination or expiration of the License Agreement. Provided there is no uncured default by City as provided in Section 9, this Section shall survive termination prior to November 30, 2025 of the License Agreement.
- b. Maintenance. During the Term, City shall, at its sole cost and expense, make all necessary repainting, repairs, and restorations, ordinary as well as extraordinary, foreseen as well as unforeseen, to the Mural and all parts of each thereof. In addition, City shall, within five (5) business days after written notice from Property Owner, promptly and adequately repaint, repair and/or remove graffiti from the Mural at City's sole cost and expense. The Property Owner may request for the City to repair damage to the mural at any time during the term of this license agreement. The City shall respond in writing within five (5) business days to arrange maintenance and repair of the Mural and work shall be performed in a timely manner. A failure to provide the maintenance and repair of the Mural as provided in this section, to the reasonable satisfaction of Property Owner, shall be a default under this Agreement and Property Owner shall have the right to terminate the License Agreement.

5. Insurance. Artist shall provide Certificate of Insurance naming P & H Associates, LLC, Ranelagh Ventures LLC, William H. Banker, Jr., and GS Management as additional insureds for the policies of insurance referenced in Section 16 of the Art Agreement. The Artist shall be required to comply with the Art Agreement and provide insurance naming the Property Owner an additional insured during the installation of the Mural and during any subsequent repair and maintenance of the Mural by Artist as described in Section 4.b of this License Agreement.

6. VARA/CAPA Waiver. With respect to the Mural and in consideration of the procedures and remedies specified in this Agreement, Artist waives any and all

claims, arising at any time and under any circumstances, against the Owner Parties (defined herein), arising under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. The Mural shall be incorporated into the Property such that the Mural cannot be removed from the Property without alteration of the Mural. Artist waives any and all such claims against Owner Parties of the Property, and their agents, officers and employees, for any alteration or removal of the Mural. Artist and Property Owner shall each execute the attached Waiver as set forth in Exhibit C.

7. Indemnification.

a. City shall use reasonable care to prevent damage to the Property and shall indemnify and hold harmless Property Owner, and each of their respective partners, affiliates, tenant agents, employees, successors and assigns (collectively the “**Owner Parties**”) from and against all claims, damages or liability, related to the City's use of the Property for installation and maintenance of the Mural. Such indemnity shall extend, but not be limited to, claims, damages, and liability arising from injuries or damages to persons or property. Such indemnity shall not apply to any injuries to persons or property, which result from the willful misconduct or gross negligence of Property Owner.

b. Artist shall use reasonable care to prevent damage to the Property and shall indemnify and hold harmless Owner Parties from and against all claims, damages or liability, related to the Artist's use of the Property for installation and maintenance of the Mural. Such indemnity shall extend, but not be limited to, claims, damages, and liability arising from injuries or damages to persons or property. Such indemnity shall not apply to any injuries to persons or property, which result from the willful misconduct or gross negligence of Property Owner. Artist shall indemnify, defend and hold harmless Owner Parties from all loss and liability, including reasonable attorney's fees, for any infringement of the patent rights, copyright, trade secret and all other intellectual property claims related to the Mural.

8. Limitation of Liability. Notwithstanding anything to the contrary herein, in no event shall Owner Parties be liable to Artist for any special, consequential, indirect or incidental damages arising out of or in connection with this License Agreement.

9. Termination of License: Restoration of the Licensed Area. Unless extended by Property Owner in its sole and absolute discretion, this License Agreement shall automatically terminate on November 30, 2025. Unless otherwise provided for in Section 4.a of this agreement, in the event of a default by City under this Agreement which remains uncured after thirty (30) days written notice, Property Owner shall have the right to terminate this License Agreement. Upon the termination of this License Agreement, Property Owner shall have the right to paint over or otherwise remove the Mural without notice to City or Artist.

10. Notices: All notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "**Notice**", and with the correlative meaning "**Notify**") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section).

Notice to Owner: P&H Associates
c/o GS Management Company
5674 Sonoma Drive
Pleasanton, CA 94566

Notice to City: City of Emeryville
Community Development Department
Attn: Amber Evans
1333 Park Avenue
Emeryville, CA 94608

Notice to Artist: Nigel Sussman, LLC
1511 Addison Street
Berkeley, CA 94703

11. General Provisions.

a. If any action is commenced to enforce any provision of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, including reasonable attorney's fees and expenses.

b. This License Agreement constitutes the entire agreement between Property Owner, Artist and City relating to the License. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect unless it is in writing and signed by Property Owner and City.

c. This License Agreement may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement.

d. The law of the State of California will govern the interpretation and enforcement of this License Agreement. The exclusive venue for any legal action related to this Agreement shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

e. If any provision or portion of this License Agreement is determined to be illegal or unenforceable in any respect, such determination will not affect the validity or enforceability of any other provisions, each of which will be deemed to be independent and severable.

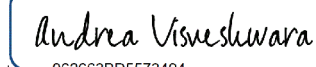
f. This Agreement shall be binding on the heirs, executors, administrators, assigns, and successors-in-interest of the Property Owner.

IN WITNESS THEREOF, said parties have executed this agreement on the date first hereinabove written.

CITY OF EMERYVILLE

By: _____
Christine Daniel, City Manager

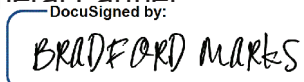
Approved as to form:
DocuSigned by:


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Andrea Visveshwara, Interim City Attorney

PROPERTY OWNER

P & H ASSOCIATES, LLC,
a California limited partnership

By: Ranelagh Ventures, LLC,
Its General Partner

DocuSigned by:

By: _____
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Brad Marks

ARTIST

NIGEL SUSSMAN, LLC

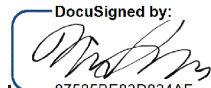
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Nigel Sussman, Artist

EXHIBIT A
Emeryville License Agreement



EXHIBIT B

Mural Location

Mural Façade

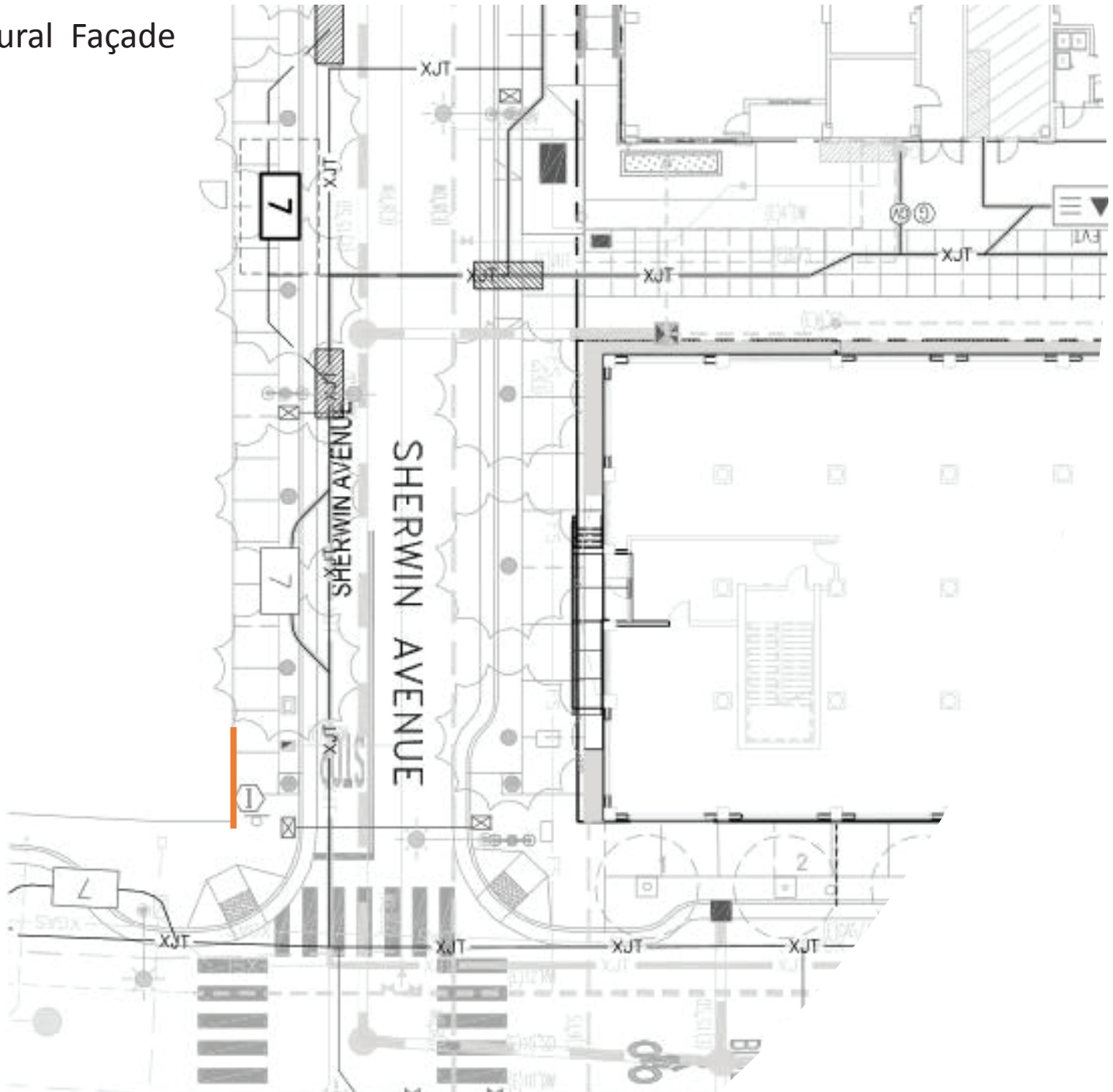


EXHIBIT C
Waiver of Proprietary Rights for Artwork

NIGEL SUSSMAN, LLC, a _____ (“Artist”) and his respective agents and others working on their behalf (collectively, “Producer”) has designed an installation of a mural (“Work”) at 1514 Sherwin Street, Emeryville, California (the “Property”). In consideration of approval by P & H Associates, a California limited partnership, the owner of the Property (“Owner LLC”) of the Work to be created or installed by Producer on the exterior wall on the Property, Producer agrees to waive and does hereby waive voluntarily all rights to attribution and integrity with respect to the Work and any and all claims as may arise under the Visual Artists Rights Act of 1990, 17 U.S.C. §§106A and 113(d) (“VARA”), the California Art Preservation Act (Cal. Civ. Code §§987 and 989) (“CAPA”), or any other local, state, foreign or international law, as currently drafted or as may be hereafter amended, that conveys the same or similar rights (“Moral Rights Laws”), with respect to the Work, its display, removal from display, exhibition, installation, conservation, storage, study, alteration and any other activities conducted by Owner LLC or any of their respective employees, officers, agents, members, owners, partners, affiliates, subsidiaries, directors, successors and assigns (“Owner Parties”). The Work shall be incorporated into a building such that the Work cannot be removed from the building without physical defacement, mutilation, alternation, distortion, destruction, or other modification (collectively, “Modification”) of the Work and Producer waives, to the fullest extent possible, any and all such claims under any Moral Rights Laws arising out of or against any current or future owners of the Property, and its agents, officers and employees, for Modification of the Work.

Producer agrees and hereby grants Owner the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the Work, in whole or in part, without prior written notification as provided in the License Agreement between Producer and Owner dated _____ (the “License Agreement”). For the avoidance of doubt, all terms of this waiver shall survive the term of the License Agreement.

Owner LLC has the right to elect to, but no obligation to, pursue claims against third parties for modifications or damage to the Work done without the Owner LLC’s authorization including claims against third parties for modifications or damage or to restore the Work. In the event that the Owner pursues such a claim, it shall notify Producer, and Producer shall cooperate with the Owner’s efforts to prosecute such claims.

Producer bears the sole responsibility for providing Owner with any changes to the Producer’s address for notices which changes must be mailed to Owner at _____.

Producer understands the effect of this waiver and hereby acknowledges that Producer is surrendering the rights described herein with respect to the Work.

PROPERTY OWNER:

P & H ASSOCIATES,
a California limited partnership

By: Ranelagh Ventures, LLC
Its General Partner

Brad Marks

PRODUCER:

NIGEL SUSSMAN, LLC

Nigel Sussman, Artist