

**MEMORANDUM OF UNDERSTANDING
BETWEEN
ARTIST BOAT, INC.
AND
GALVESTON INDEPENDENT SCHOOL DISTRICT**

This MEMORANDUM OF UNDERSTANDING (“*MOU*”) is entered into this ___ day of _____, 2024, by and between **ARTIST BOAT, INC.**, a non-profit corporation organized under the laws of the State of Texas and authorized and operating under Internal Revenue Code section 501(c)(3)(a) (“*Artist Boat*”) and **GALVESTON INDEPENDENT SCHOOL DISTRICT**, an independent school district and political subdivision of the State of Texas operating under the Constitution and laws of the State of Texas (“*GISD*” or the “*District*”), acting through their respective authorized representatives. Artist Boat and GISD are each individually a “*Party*” and collectively the “*Parties*” to this Agreement.

RECITALS

WHEREAS, GISD and Artist Boat desire to work together to attempt to acquire two tracts of real property located on Galveston Island: The Kahala Tract, approximately 164 acres (Sections 3, 4, and 5 of the Preserve at West Beach as described in Plat Record 2009A, Map 112, Galveston County Map Records); and the Ohana Tract, approximately 40 acres (Section 2 of the Preserve at West Beach as described in Plat Record 2009A, Map 112, Galveston County Map Records) (the Kahala Tract and the Ohana Tract are hereinafter referred to as the “Property”).

WHEREAS, it is the intention of the Parties that after acquisition of the Property, GISD and Artist Boat shall, subject to the terms of to be negotiated ownership and conservation /management agreements and applicable funding source requirements, work together to assure that the Property is protected in perpetuity, becomes part of the Coastal Heritage Preserve, and is used exclusively for the educational purposes of GISD and the conservation purposes of Artist Boat.

NOW THEREFORE, the Parties agree that the purpose of this MOU is to describe the basis for their cooperation and the terms of their agreements thus far relating to the framework for the acquisition of the Property and thereafter ownership, management and use of the Property exclusively for the educational purposes of GISD and the conservation purposes of Artist Boat, same being as follows:

1. Funding.
 - (a) Artist Boat agrees to pay all cost and expenses associated with the acquisition of the Property, including but not limited to, seeking and obtaining funding for same. To the extent GISD incurs any cost and expenses, including but not limited to attorney’s fees, associated with the acquisition of the Property and obtaining funding for same, the negotiation and preparation of this MOU, and the negotiation and preparation of the contemplated ownership and management agreements, Artist Boat shall reimburse GISD for said cost and expenses within thirty (30) days

of receipt of invoices and documents in support of same from GISD.

- (b) To partially fund acquisition of the Kahala Tract, the Parties intend to pursue a grant through the federal FY24 Bipartisan Infrastructure Law Coastal Zone Management Habitat Protection and Restoration Competition (Funding Opportunity Number NOAA-NOS-OCM-2024-27096) (BIL Grant). For land conservation projects under the BIL program, the lead applicant must be a governmental organization such as GISD and the fee title to property acquired under a BIL grant must be held by a governmental organization, not a private non-profit organization. The pre-application "Letter of Intent" is due to the federal National Oceanic and Atmospheric Administration (NOAA) no later than August 15, 2024, and this MOU shall be used to satisfy a requirement of the Letter of Intent. Assuming NOAA's acceptance of the Letter of Intent, the full application is due to NOAA no later than January 1, 2025.
 - (c) Partial funding for the Property acquisitions will also be sought through grants under the federal Gulf of Mexico Energy and Security Act (GOMESA), the US Fish and Wildlife Coastal Wetlands Planning, Protection, Response Act (CWPRRA) through the Texas Parks and Wildlife Department, and other sources as identified.
 - (d) GISD agrees to be the lead applicant for the BIL Grant, and to sign a letter to the Texas General Land Office stating its intention to be identified as the lead applicant on the BIL Grant application. GISD will have the opportunity to review and approve all application materials for the BIL Grant prior to submission.
 - (e) Artist Boat will be responsible for all grant application preparation, including but not limited to the BIL, GOMESA, and CWPRRA grant applications. Artist Boat will provide GISD with the opportunity to review and approve all grant and funding application materials prior to submission.
 - (f) Artist Boat shall be solely responsible to pay all costs associated with acquisition of the Property and to the extent the grant funding approved is insufficient, Artist Boat shall be solely responsible to raise the deficiency through its private fund-raising activities.
2. Property Acquisition. Subject to Artist Boat obtaining, either through grants or private fund-raising, the funding required for acquisition of the Property, the Parties shall cooperate to acquire the Property as follows:
- (a) Artist Boat shall be responsible for the negotiation and preparation of a real estate contract for the purchase of the Property on terms reviewed by and deemed acceptable to GISD and its Board of Trustees. Artist Boat will be responsible for all buyer costs of acquisition of the Property, including but not limited to: fundraising toward the purchase price; real estate contract preparation and negotiation; appraisals; survey (if buyer's responsibility under the real estate

contract); due diligence; environmental investigation; and other costs that are to be borne by the buyer in the real estate transaction.

- (b) Artist Boat will coordinate due diligence review with GISD, and the Property acquisitions will not close until GISD has approved the due diligence performed.
 - (c) Subject to the terms of this MOU GISD agrees to receive deeds to the Property upon closing of those transactions on terms acceptable to GISD.
3. Definitive Agreements. The Parties agree that GISD's obligations described in this MOU are conditioned upon the Parties negotiating and entering into at or prior to closing of the acquisition of the Property, comprehensive, executed and binding agreements relating to the ownership, management, maintenance and use of the Property on terms acceptable to GISD and its Board of Trustees, including furthering GISD's public purpose and protecting GISD's interest (the "Definitive Agreements"). The Parties agree that the Definitive Agreements shall include, but not be limited to, the following:
- (a) Artist Boat will be responsible for all aspects of Property maintenance and management, including but not limited to all cost of conservation and operation, payment of ad valorem taxes (if any), and other charges associated with ownership of the tracts.
 - (b) Upon or immediately after acquisition of the Property, the Property will be placed under conservation easements for conservation protection and monitoring with Artist Boat as holder and GISD as landowner. These conservation easements will be perpetual and will limit use of the Property to GISD's educational use and Artist Boat's conservation use, consistent with the public purpose of GISD and the conservation mission of Artist Boat.
 - (c) Insurance at no cost to GISD and indemnification provisions designed to protect GISD for all claims, risks, costs and liabilities for which GISD might otherwise be responsible as owner of the Property.
 - (d) Property use agreements that give GISD and its students and staff preferential access to the Property at no cost to GISD in furtherance of it public educational purposes.
4. Notices. All notices, consents, directions, approvals, instructions, requests and other communications and all payments, as applicable, given to a Party under this MOU shall be given in writing to such Party at the address set forth below or at any other address as such Party designates by written notice to the other Party in accordance with this Section 4 and may be (i) sent by registered or certified U.S. Mail with return receipt requested, (ii) delivered personally (including delivery by private courier services including reputable overnight courier service such as Federal Express) or (iii) sent by e-mail to the party entitled thereto. Any notice

shall be deemed to be duly given or made on the earlier of actual receipt or: (x) three (3) business days after posting if mailed as provided, (y) when delivered by hand unless such day is not a business day, in which case such delivery shall be deemed to be made as of the next succeeding business day, or (z) in the case of email, when received, so long as it was received during normal business hours of the receiving party on a business day or otherwise such delivery shall be deemed to be made as of the next succeeding business day, and further provided that an original of such e-mail is also sent to the intended addressee by one of the means described in clauses (i) or (ii) above. Each Party hereto shall have the right at any time and from time to time to specify additional parties (“Additional Addressees”) to whom subsequent notice thereunder must be given, by delivering to the other party five (5) days’ prior notice thereof setting forth a single address for each such Additional Addressee; provided, however, that no party hereto shall have the right to designate more than two (2) such Additional Addressees. The initial notice addresses for the Parties shall be as follows:

If to Artist Boat:

ARTIST BOAT, INC.
Attn: Karla Klay, President
4919 Austin Place
Galveston, Texas 77551
Email: executive.director@artistboat.org

With a copy to:

LAW OFFICE OF ROBERT SWEENEY
Attn: Robert Sweeney
Email: rdsweeney123@outlook.com

If to GISD:

GALVESTON INDEPENDENT SCHOOL DISTRICT
Attn: Dr. Matthew Neighbors, Superintendent
3904 Avenue T
Galveston, Texas 77550
Email: MatthewNeighbors@gisd.org

With a copy to:

THOMPSON & HORTON LLP
Attn: Mark D. Smith
500 North Akard Street, Suite 3150
Dallas, Texas 75201
Email: msmith@thompsonhorton.com

5. Relationship of the Parties. The relationship of the Parties under this MOU is that of independent parties, each acting in its own best interests, and notwithstanding anything in this MOU to the contrary, no partnership, joint venture or other business relationship is established or intended hereby between the Parties.
6. Entire Agreement, Amendment and Waiver. This MOU supersedes any prior agreements between the Parties concerning the subject matter of this MOU, and no oral statements, representations or prior written matter relating to the subject matter hereof, but not contained in this MOU, shall have any force or effect. Neither this MOU nor any of the terms hereof, including this Section 6, may be amended, supplemented, waived or modified orally, but may only be amended, supplemented, waived or modified by an instrument in writing signed by the Party against which the enforcement of the amendment, supplement, waiver or modification shall be sought.
7. Counterparts. This MOU may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same agreement. Not all signatures need be on the same counterpart.
8. Governing Law. THIS MOU AND THE ACTIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (EXCLUDING, TO THE EXTENT ALLOWED BY LAW, PRINCIPLES OF CONFLICT OF LAWS). To the extent allowed by law, any suit, action or proceeding against any party arising out of or relating to this MOU, any transaction contemplated thereby, or any judgment entered by any court in respect of any of the above may be brought in State District Court located in Galveston County, Texas, and each Party hereby submits to the nonexclusive jurisdiction of such court for the purpose of any such suit, action or proceeding.
9. Interpretation and Reliance. No presumption will apply in favor of any Party hereto in the interpretation of this Agreement or in the resolution of any ambiguity of any provisions hereof.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed effective as of the day and year first above written.

[Signature Page Follows]

ARTIST BOAT, INC.

**GALVESTON INDEPENDENT
SCHOOL DISTRICT**

By: _____
 Karla Klay
Its: President

By: _____
 Dr. Matthew Neighbors
Its: Superintendent