**PUBLIC ART EASEMENT AGREEMENT**

THIS PUBLIC ART EASEMENT AGREEMENT (“Agreement”) is by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Grantor”) and the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a municipal corporation formed and existing pursuant to \_\_\_\_\_\_\_\_\_\_\_\_ Code, by and through its \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“City”). Grantor and the City may be referred to herein as the “parties” or a “party” as the case may be. The “Effective Date” of this Agreement shall be the date last signed by both parties.

**RECITALS**

1. The City has adopted a program for the placement of art in and on public and private locations throughout the City of \_\_\_\_\_\_ to benefit the citizens of \_\_\_\_\_\_.
2. The City owns certain work commonly known as “\_\_\_\_\_\_\_”, which consists of a mural, and is depicted on Exhibit A, and/or any successor artwork (“Artwork”).
3. The Artwork is located on the exterior of certain real property owned by Grantor, known as the \_\_\_\_\_\_\_\_\_\_\_\_\_\_, with an address of \_\_\_\_\_\_\_\_\_\_\_, and legally described on Exhibit B (“Property”). At the time of installation of the Artwork, the Grantor and the City understood and agreed that the City owns the Artwork, the City maintains the Artwork, and the City may remove the Artwork in the future from its location on the Property.
4. Grantor and the City desire to formalize and clarify the above agreements regarding the installation of the Artwork on the Property, based on the terms and conditions contained herein.

**AGREEMENT**

NOW THEREFORE, for valuable consideration, the sufficiency of which is hereby agreed and acknowledged by the parties, the parties agree as follows:

1. Grant of Easement. Grantor grants and conveys to the City an easement on, over, and across the Property for the purpose of installing, maintaining, repairing, replacing, modifying, removing and/or replacing the Artwork, including, but not limited to, reasonable access to and within any building and/or structure related to the Artwork if necessary.
2. Term of Agreement. The term of this Agreement shall be perpetual, unless terminated as provided herein.
3. Ownership. City retains all ownership rights to the Artwork, including but not limited to, marketing, copyright and exhibition rights. Grantor shall be entitled to include the Artwork in photographs, films or videotapes of the Property if such materials are an incidental part of advertising for a business conducted by Grantor or a tenant of Grantor in the Property.
4. Maintenance. At its sole cost and expense, the City shall solely be responsible for any and all operation, repair, maintenance, and/or replacement, condition and/or any modifications of the Artwork during this Agreement.
5. Modification. Grantor shall make no modification to, or undertake any maintenance, operation, or replacement or repair of or to, the Artwork. Grantor shall not interfere with the appearance or artistic impression of the Artwork by placing obstructions on or in front of it, by erecting structures adjacent to, above or below the Artwork or by undertaking other measures that would detract from enjoyment of the Artwork. In the event the Artwork may interfere with work necessary to Grantor’s operation of the Property, Grantor may request action from the City to address such issue, and the City shall work with the Grantor to accommodate its request.
6. Removal. The City may remove the Artwork from the Property if, in the sole discretion of City, the Artwork is suffering excessive damage, removal is necessary for maintenance of the Artwork, or for any other reason. If the City permanently removes the Artwork from the Property and/or upon the termination of this Agreement, the City will restore the area on the Property in which the Artwork is located to substantially the same condition as existed prior to the Artwork’s installation, normal wear and tear excepted.
7. Right of Entry. Throughout the term of this easement or any extension thereof, the City shall have the right to enter the Property during normal business hours, and at all other times with advance approval of the Grantor, for any and all of the purposes described in the Agreement.
8. Insurance and Casualty. City may, but is not required to, carry casualty insurance on the Artwork with coverage amounts and terms as determined by the City in its sole discretion, at City’s cost. Grantor is solely responsible for insuring the Property itself. Grantor may, but is not required to, carry insurance on the Property with coverage amounts and terms as determined by Grantor in its sole discretion, at Grantor’s cost.
9. Taxes. Grantor shall pay all taxes and assessments related to the Property as they become due and payable.
10. Termination. The City may terminate this Agreement at any time upon at least thirty (30) days’ prior written notice to Grantor. The written notice shall specify a date for the termination of the Agreement. On or before such termination date, the City shall remove the Artwork from the Property. The City will restore the area on the Property in which the Artwork is located to substantially the same condition as existed prior to the Artwork’s installation, normal wear and tear excepted. With the City’s approval, Grantor may terminate the Agreement at any time upon at least one hundred twenty (120) days’ prior written notice to City for any one of the following reasons, which shall be stated with specificity and be accompanied by satisfactory evidence of such reason: a) that the property is to be sold and the buyer requires removal of the easement as a condition of the purchase and sale; or b) that the property is to be refinanced and the lender requires removal of the easement as a condition of the refinancing; or c) that circumstances have materially changed and the continued existence of the easement or maintenance of the Artwork substantially impedes Grantor’s reasonable use and enjoyment of the Property. The City shall not unreasonably withhold or delay consent to termination upon Grantor’s satisfactory demonstration of one of the foregoing reasons for termination. In the event of termination of this Agreement, the parties agree to sign and record a termination in the records of Ada County, Idaho.

1. Default. In the event of a default under this Agreement, the non-defaulting party shall provide written notice to the other party specifying the nature of such default. The defaulting party shall have thirty (30) days from the date of its receipt of such notice to cure such default, or such longer period as may be necessary to address such default so long as the defaulting party is diligently proceeding with the cure, not to exceed ninety (90) days. In the event of an uncured default, the non-defaulting party is entitled to termination of this Agreement, damages, specific performance, and/or any other remedies in law or equity.
2. Indemnification. To the fullest extent permitted by law, each party shall indemnify, save and hold harmless the other party and its officers, employees and agents from and for any and all liability, losses, claims, actions, judgment for damages, and/or expenses for loss, injury or death in connection with this Agreement and/or the other party and/or its employees, guests’ or invitees’ use (including any public use) of the Artwork in any manner whatsoever and not caused by or arising out of the intentional or tortious conduct of the other party or its officers, agents, employees, guests or business invitees.
3. Notice. Any and all notices required to be given by either of the parties hereto shall be in writing and be deemed communicated when received in the United States mail, certified, return receipt requested, addressed as follows:

**City Grantor**

With respect to Grantor, in the event the above address is no longer valid, notice to the address of the Property shall meet the notice requirements herein.

1. Entire Agreement. This Agreement contains the entire agreement of the parties regarding the subject matter hereof.
2. Amendments. The parties may only amend this Agreement in a writing signed by both parties and recorded in the records of Ada County, Idaho.
3. Governing Law. This Agreement and performance under it is governed by and construed in accordance with the law of the State of Idaho and the City of Boise without regard to any choice of law principles that might provide for application of a different jurisdiction’s law. Any dispute arising out of this Agreement shall be adjudicated solely in the federal or state courts within the State of Idaho. The parties each agree that they are subject to the personal jurisdiction of the state and federal courts within the State of Idaho and each waives the right to challenge the personal jurisdiction of those courts over it.
4. Attorneys’ Fees. In the event of an allegation, claim, demand and/or action regarding this Agreement, the prevailing party shall be entitled to its reasonable attorneys’ fees and costs incurred in such matter, including any on appeal.

1. Severability. Should any term, provision, condition or other portion of this Agreement or the application thereof be held to be inoperative, invalid, or unenforceable, the remainder of this Agreement or the application of the term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.
2. No Waiver. No waiver of full performance by any party shall be construed, or operate as a waiver of any subsequent default or breach of any of the terms, covenants or conditions of this Agreement.
3. Runs with the Land; Binding Effect. The easement granted in this Agreement shall run with the land and be binding upon and inure to the benefit of Grantor and the City, and their respective successor or assigns, and any person or entity acquiring any right, title, or interest in the Property.
4. Recitals and Exhibits. The recitals and exhibits to this Agreement are incorporated herein and made a part hereof.

[End of Text]

EXECUTED EFFECTIVE as of the Effective Date.

**Property Owner**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CITY OF \_\_\_\_\_\_\_\_\_\_\_\_:**

 Dated:

**ATTEST:**

 Dated:

**EXHIBIT A**

**DEPICTION OF ARTWORK**

**EXHIBIT B**

**LEGAL DESCRIPTION OF PROPERTY**