This instrument prepared by: City of Knoxville Block No. 01180 Douglas Gordon Property Assessor’s Parcel

Attorney Identification No. 095JB01001

City of Knoxville

400 Main Street

Knoxville, Tennessee 37902 Resolution No. R-119-2016

After recording return to:

City of Knoxville Public Arts Committee

Public Art Murals Program

PO Box 2506

Knoxville, TN 37902

**ART EASEMENT**

THIS TEMPORARY EASMENT AGREEMENT, is made by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Grantor”), and the City of Knoxville, Tennessee (“City”), a municipal corporation organized and existing pursuant to the laws of the State of Tennessee.

**RECITALS**

A. The City has adopted a program for the placement of art in and on public and private locations throughout the City of Knoxville. The Public Arts Committee administers the City’s public art program.

B. Grantor owns the property legally described in Exhibit A (attached hereto and incorporated herein and referred to as “Grantor’s Property”) and is willing to make said property available to the City for the placement of public art (hereinafter, “Artwork”). Said Artwork is described in Exhibit B, attached hereto and incorporated herein.

Now, therefore, for and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged,

1. Grant of Temporary Easement. Grantor hereby gives, grants, and conveys to the City, its successors and assigns, a temporary easement and the right of entry in, over, across and upon Grantor’s Property for the purpose of development, construction, use, operation, maintenance, and placement of the Artwork. The location of the Artwork shall be as approved by the Public Arts Committee.
2. Term of Easement. This temporary easement shall be for a period of ten (10) years from the date of execution. Unless terminated as provided in section 3, below, the easement shall automatically renew at the expiration of the ten-year period for an additional ten years thereafter, and shall remain in full force and effect unless and until terminated pursuant to section \_\_\_\_\_\_.

If the artwork for the proposed building is installed on removable panels, the temporary easement shall be for a period of five (5) years from the date of execution and there shall be automatic renewal of the temporary easement.

1. Termination.
	1. At or after the expiration of the ten-year easement period, the temporary easement may be terminated by either party upon 30 days written notice to the other party. City expressly agrees that upon expiration, the Artwork shall be removed and Grantor’s Property shall be restored to its prior condition. Such removal shall occur within 90 days of the termination of the easement, unless this period is extended in writing by the Grantor.
	2. Either the City or the Grantor may terminate this temporary easement at any time at its sole discretion upon 30 days written notice prior to the expiration of the ten-year easement period, should City fail to substantially perform City’s obligations under Section 4, below. Should the Grantor elect to exercise this right of termination, City expressly agrees and warrants that the Artwork shall be removed and Grantor’s Property shall be restored to its prior condition. Such removal shall occur within 90 days of the termination of the easement, unless this period is extended in writing by the Grantor.
2. Maintenance and Removal of Artwork. City shall be responsible for maintaining and if necessary repairing the Artwork during the existence of the temporary easement. Grantor may remove the Artwork from the property if, in the sole judgment of the Grantor, the Artwork is being excessively damaged, and City fails or refuses to maintain or repair the Artwork after 90 days written notice from the Grantor requesting City to do so. If the Grantor removes the Artwork from the property, the Grantor will restore the property to its original condition. Alternatively, at the City’s sole discretion, the City may access the wall on which the Artwork is located to maintain or repair the Artwork if Grantor has failed to do so after 90 days written notice from the City that the Artwork requires maintenance or repair.
3. Right of Entry. The City shall have the right to access the wall area on the property described in Exhibit A on which the Artwork is located during normal business hours, and at all other times with advance approval of the Grantor, for any and all of the purposes described in this agreement.
4. Binding Effect. The easement granted in this agreement shall run with the land and be binding upon and inure to the benefit of and may be enforced by the Grantor and the City, and their respective successors or assigns, and any person or entity acquiring any right, title, or interest in the property.
5. Contractual Relationships. Assignment. This agreement does not constitute either party as the agent, partner, employee, or legal representative of the other for any purpose whatsoever. The parties are not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of the other or to bind the other in any manner whatsoever.
6. Notice. Notice shall be made to the following addresses, unless otherwise provided for in writing, and notice shall be deemed effective upon date of receipt by the recipient:

City of Knoxville : Grantor (name and mailing address):

Rick Emmett \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Office of Policy and Development \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

400 Main Street, Room 655 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Knoxville, Tennessee 37902 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Amendments. The parties expressly reserve the right to modify this agreement, from time to time, by mutual agreement. No modification or amendment of the provisions of this agreement shall be effective unless in writing and signed by authorized representatives of the parties.
2. Ownership of Artwork and Vara. Grantor acknowledges that Grantor does not own the Artwork. Grantor acknowledges that the artist(s) who created the Artwork retain all their VARA rights as conferred by 17 U.S. Code § 106A for the duration of this temporary easement except that Grantor may reproduce images of the Artwork only if those images are merely incidental to images made of Grantor’s Property.
3. Ownership of Grantor’s Property. Grantor represents and warrants that it owns Grantor’s Property and that it has full power, authority and right to grant this temporary easement.
4. Incorporation. City agrees to incorporate the terms of this Easement in any deed or other legal instrument by which City divests any interest in all or a portion of the Property that includes this Easement.
5. Remedies. The parties acknowledge that breaches of this Agreement will effect substantial harm to the public interest which harm is difficult or impossible to prove as actual damages in an action hereunder. The parties agree that the prevailing party in an action for the breach of this agreement shall be entitled to liquidated damages that shall not exceed the amount of $2500 regardless of the number of material breaches and specific performance of the terms of this agreement. The failure to exercise on any occasion any right shall not operate to forfeit the right on another occasion. The use of one remedy shall not be taken to exclude or waive the right to use another.
6. Invalidity of Particular Provisions. 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.
7. 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.
8. Indemnification and Hold Harmless. Neither party shall indemnify the other. Both parties shall hold the other party, its officers, employees, agents, volunteers, successors and assigns harmless from any and all claims, liabilities, actions, demands, personal injuries, death, or property damage resulting from or arising out of the of the construction to be conducted including all costs, counsel fees, expenses and liabilities incurred in connection with any such claim(s), except as allowed by the “Remedies” section above.
9. General Provisions.
	* 1. The interpretation and performance of this Easement shall be governed by the laws of the State of Tennessee.
		2. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purposes herein. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
		3. If any provision of this Easement is found to be invalid, the remainder of the provisions or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected.
		4. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.
		5. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment hereto.
		6. This instrument may be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF,City has executed this Temporary Easement Agreement on the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2017.

**APPROVED AS TO FORM:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Charles W. Swanson,**

**Law Director**

 **CITY OF KNOXVILLE GRANTOR**

**By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Madeline Rogero, Mayor**

STATE OF TENNESSEE )

COUNTY OF KNOX )

 Personally appeared before me, the undersigned authority, a Notary Public of Knox County, Tennessee, Madeline Rogero, of the City of Knoxville and that she as Mayor, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the City of Knoxville by herself as Mayor.

 WITNESS my hand and seal, at office, this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 2017.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public

My Commission Expires:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF TENNESSEE )

COUNTY OF KNOX )

 Personally appeared before me, the undersigned authority, a Notary Public in and for said County and State aforesaid, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Grantor, the within named witness and bargainor, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand and official seal at office, this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 2017.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public

My Commission Expires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_