

PUBLIC ART LOAN AND DISPLAY AGREEMENT

THIS PUBLIC ART LOAN AND DISPLAY AGREEMENT (“Agreement”), is made by and between Alachua County, a charter county and political subdivision of the State of Florida, (“County”) and _____ (“Artist”), collectively the “parties”.

WHEREAS, the Board of County Commissioners of Alachua County, Florida (“Board”) holds public meetings in the Jack Durrance Boardroom located on the second floor of the Alachua County Administration Building, 12 SE 1st Street, Gainesville, FL 32601 (“Boardroom”); and

WHEREAS, by Resolution 19–45, the County created the *Art in Jack Durrance Boardroom Program* (“Program”), through which the County selects art created by local artists to be temporarily displayed in the Boardroom; and

WHEREAS, the Artist is the creator and owner of the art, which is depicted in **Exhibit “A”**, attached hereto and incorporated herein (the “Art”); and

WHEREAS, the Artist submitted an application seeking to loan the Art to the County for the Program and for the purposes of having the Art temporarily displayed in the Boardroom, a copy of which is attached hereto as **Exhibit “B”** and is incorporated herein; and

WHEREAS, the Board has approved the Artist’s application and the parties hereto now desire to enter into this Agreement to establish the rights, duties, obligations and responsibilities of the parties regarding the temporary loan and display of the Art in the Boardroom.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties mutually covenant and agree as follows:

1. Recitals. The recitals set forth above are true and are incorporated into this Agreement.

2. Effective Date. This Agreement shall be effective when executed by both parties (“effective date”) and shall expire upon the date that the Art is removed from the Jack Durrance Boardroom (“Term”), unless this Agreement is terminated earlier as provided herein.

3. Art Display and Loan. The Artist grants to the County a loan of the Art, subject to the terms of this Agreement. The County anticipates displaying the Art in the Boardroom for a period of three months. The County may, in its sole discretion, shorten, interrupt or terminate the display period. The Artist may request termination of the display period and surrender of the Art back to the Artist upon sending twenty (20) calendar days written notice to the County in accordance with this Agreement.

4. Artist’s Warranties and Representations. The Artist represents and warrants to the County that he/she: (i) is the sole creator of the Art; (ii) is the owner of the Art and all of the rights under copyright in the Art; and (iii) has full authority to loan the Art and grant the rights provided in this Agreement. The Artist further represents and warrants that nothing in the Art defames any person or entity, infringes any copyright, or otherwise violates the rights of any third party.

5. Copyright Permission. The Artist grants to the County: (i) the right to display the Art in the Boardroom; and (ii) the irrevocable right to use images of the Art in materials about or relating to the exhibition of the Art and/or the Administration Building and/or the County, and to allow others to do so, in all media now known or later developed and including, but not limited to,

television, the Internet and Social Media, provided that the such use by the County shall not be for commercial purposes. As the Art will be displayed in a room that, from time to time, is open and accessible to the general public and is broadcast on television at times, the Artist agrees that the Art may be photographed or videotaped by the general public and may also be broadcast on television, without necessary of any prior notice. This paragraph and the grant of right herein shall survive the termination of this Agreement.

6. Personality Rights. The Artist grants the County the irrevocable right to use the Artist's name, photograph, likeness, and biography in connection with the County's exercise of the rights granted in this Agreement. This paragraph and the grant rights herein shall survive the termination of this Agreement.

7. Installation, Care, and Removal.

A. Condition of Art upon Transfer to the County. The Artist and the County will make mutually agreeable arrangements for the Art to be delivered to the Boardroom. The absence of any notation on this Agreement or its attachments as to the condition of the Art at the time it was received by the County shall not mean it was in good condition on receipt.

B. Shipping and Installation. The Artist shall make all arrangements, and shall pay all costs, for shipping the Art to and from the Boardroom, including but not limited to all packing, unpacking and shipping and handling. Upon its arrival at the Boardroom, the Artist shall unpack the Art and shall be responsible for directing, and supervising the installation of the Art in the Boardroom by County staff; however, consent to the installation or removal techniques in all areas of the Boardroom shall be solely within the discretion of the County Manager or designee and upon such conditions as the County Manager or designee, in his/her sole discretion, deem necessary.

C. Signage. Signage for the Art shall be provided by the Artist and shall be limited to a plaque no larger than 6" wide, 4" long, and 1/4" deep. Wording on the plaque must be limited to the following information: the name of the Art, and the name, physical address, website address, and telephone number of the Artist.

D. Care of Art. The Artist shall be solely responsible for the care and maintenance of the Art and for any required repairs while it is on display or otherwise in the possession of the County. The County shall provide the Artist with reasonable access to provide such care, maintenance and repairs after request by the Artist. The County shall use reasonable efforts not to damage the Art, but the County shall not have any duty, obligation or responsibility to actively care for or otherwise actively maintain the Art. The County has the right, but not the duty, obligation or responsibility, to execute any emergency preservation measure without the Artist's permission if such measure, in the sole discretion of the County, is required to protect the Art, or to protect the health and safety of County staff or the public.

E. Surrender and Removal. The County reserves the right, in the County sole discretion, to terminate the display of the Art at any time and de-install it from the Boardroom. This authority to terminate is delegated to the County Manager. The County shall notify the Artist that the Art has been de-installed and that the Art is

available for the Artist to remove it from the Administration Building (“termination notice”). Upon termination or expiration of the Term, the Art will be surrendered only to the Artist or to the Artist’s designated agent, or, in the event of the death of the Artist, to the legal counsel or the representative of the estate of the Artist. The Artist shall make all necessary arrangements, and pay all costs, to remove the Art from the Administrative Building within ten (10) calendar days after receipt of termination notice (the “Removal Deadline”).

8. **Termination.** In addition to the other termination rights set forth in this Agreement, either party has the right to terminate this Agreement for any reason by giving the other party ten (10) calendar days’ written notice. In the event of termination or expiration of the term of this Agreement, the provisions of paragraph 7(E) above will apply.

9. **Post-Termination Rights.** If the Artist does not remove the Art by the Removal Deadline, then the County has the absolute right to (i) place the Art in storage and (ii) to charge the Artist regular storage fees and any related insurance costs, if any, and to perfect and enforce a lien for these fees and charges. If the Artist does not remove the Art within twenty (20) calendar days after the Removal Deadline, the Art shall be deemed an unrestricted gift by the Artist to the County.

10. **Notices.** All notices shall be in writing and sent to the other party by one of the following methods: (i) certified mail, return receipt requested, (ii) personal delivery with receipt, or (iii) via electronic mail. Notice by certified mail, return receipt requested shall be deemed delivered and received five (5) business days after mailing. Notice by personal delivery shall be deemed received upon actual receipt by the other party, and notice by electronic mail will be deemed received when sent. For purposes of all notices, the County’s and the Artist’s contact information is:

For the Artist:

For the County:

Alachua County Manager
12 SE 1st Street
Gainesville, Florida 32601
Email:
gpeebles@alachuacounty.us

Name _____
Address _____
City/State _____
Zip _____
Phone # _____
Email _____

11. **Security and Insurance.** The County **DOES NOT** owe any duty to the Artist to care for, maintain or safeguard the Art. The County will provide no additional security for the Art beyond the currently security measures provided in the Administration Building and the Boardroom. The Artist shall be solely responsible for any and all loss or damage to the Art which occurs during the Term of this Agreement. Artist bears sole responsibility for obtaining and maintaining insurance for the Art while it is in transit to or from the Administration Building, being installed and de-installed in the Boardroom, and is on display/exhibit in the Boardroom. The County will not insure the Art. The Artist agrees that any insurance policy obtained by the Artist for the Art shall waive subrogation against the County, including its Board, employees, agents, attorneys, contractors, guests, and invitees.

12. **Indemnification.** **THE ARTIST AGREES TO WAIVE AND RELEASE AND**

AGREES TO INDEMNIFY, DEFEND AND HOLD THE ALACHUA COUNTY AND ITS BOARD OF COUNTY COMMISSIONERS, OFFICERS, EMPLOYEES, ATTORNEYS AND VOLUNTEERS (COLLECTIVELY THE "COUNTY") HARMLESS FROM ANY LIABILITY, CLAIMS, DEMANDS, LOSS AND ACTIONS (INCLUDING ATTORNEYS' FEES AND COSTS) ARISING OUT, DIRECTLY OR INDIRECTLY, OF THIS AGREEMENT OR INCIDENT INCIDENTAL OR RELATED TO THIS AGREEMENT, AND INCLUDING ANY CLAIM BY ANY INDIVIDUAL, INSTITUTION, OR OTHER PERSON CLAIMING FULL OR PARTIAL TITLE, PROPERTY RIGHT OR COPYRIGHT TO THE ART. THE ARTIST ACCEPTS ALL RISKS ASSOCIATED WITH THE ART BEING ON DISPLAY OR STORED IN THE ADMINISTRATION BUILDING AND THE BOARDROOM, AND THE ARTIST HEREBY RELEASES ALL CLAIMS AND SUBROGATION AGAINST THE COUNTY FOR ANY LOSS OR DAMAGE TO THE ART, HOWEVER CAUSED. This indemnification provision will survive the termination of this Agreement. Nothing contained in this Agreement shall constitute a waiver by the County of sovereign immunity, the limits of liability or other provisions of §768.28, Florida Statutes.

13. Public Records. In accordance with §119.0701, Florida Statutes, Artist, if and *when acting on behalf of the County*, shall, as required by Florida law:

- A. Keep and maintain public records required by the County to perform the Services.
- B. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida law or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of the Agreement if Contractor does not transfer the records to the County.
- D. Upon completion of the Agreement, transfer, at no cost, to the County all public records in possession of Contractor or keep and maintain public records required by the County to perform the Services. If Contractor transfers all public records to the County upon completion of the Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the Agreement, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the County's information technology systems.

IF ARTIST HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COUNTY'S PUBLIC RECORDS CUSTODIAN AT publicrecordsrequest@alachuacounty.us OR (352) 264-6906 OR 12 SE 1ST STREET, GAINESVILLE, FL 32601.

If Contractor fails to comply with this section, Contractor will be deemed in default under this Agreement. The County may enforce as set forth in §119.0701, Florida Statutes. Contractor

who fails to provide the public records in response to a request within a reasonable time may be subject to penalties imposed under §119.10, Florida Statute, and costs of enforcement, including fees, under §119.0701 and §119.12, Florida Statutes.

During the term of this Agreement, Contractor may claim that some of Contractor's work, collection, or records (hereafter collectively referred to as "Confidential Information"), is, or has been treated as confidential and proprietary by Contractor in accordance with §812.081, Florida Statutes, or other law, and is exempt from disclosure under the Florida's public record laws. Contractor shall notify the County. County will promptly notify Contractor in writing if the County receives a request for disclosure of Contractor's Confidential Information. Contractor may assert any exemption from disclosure available under applicable law or seek a protective order against disclosure from a court of competent jurisdiction. Contractor shall protect, defend, indemnify, and hold harmless Alachua County and its commissioners, officers and employees from and against any claims, actions and judgments arising out of a request for disclosure of Confidential Information or relating to violation or infringement of trademark, copyright patent, trade secret or intellectual property right; however, the foregoing obligation shall not apply to County's misuse or modification of Contractor's Confidential Information in a manner not contemplated by this Agreement. Contractor shall investigate, handle, respond to, and defend, at Contractor's sole cost and expense, any such claim, even if any such claim is groundless, false, or fraudulent. Contractor shall pay for all costs and expenses related to such claim, including, but not limited to, payment of attorneys' fees, costs and expenses. Upon completion of this Agreement, the provisions of this paragraph shall continue to survive. Contractor releases the County from claims or damages related to disclosure by the County.

14. County's Discretion. The County retains sole and complete discretion regarding the County's exercise of the rights granted in this Agreement, including but not limited to whether the County will accept physical delivery or display the Art, where the Art will be displayed within the Administration Building, the manner of installation and de-installation of the Art, how long the Art will be exhibited (within the duration of this Agreement), and whether the County will use in any way images of the Art. The Artist shall not install, de-install or remove the Art from the Boardroom, or modify the Art's display, except with the permission of the County Manager and in conjunction with an authorized County representative.

15. Waiver. A party's waiver of any provision, right or remedy under this Agreement must be in writing and signed by an authorized representative of the waiving party (*i.e.*, the Artist or the County Manager) to be effective. If a party does waive any provision, right, or remedy under this Agreement, such waiver will not preclude the party from enforcing any other provision, right or remedy. A party's failure, neglect, or delay to enforce the provisions, rights, or remedies of this Agreement will not be construed or deemed to be a waiver of such party's rights to do so and will not affect the validity or all or any part of this Agreement or prejudice such party's right to take subsequent action.

16. Binding Effect. This Agreement shall be binding on all parties, as well as their respective personal representatives, agents, heirs, assigns, or successors in interest.

17. Severability Clause. If any provision of this Agreement is declared invalid, void or unenforceable by court of competent jurisdiction, the remainder of this Agreement will not be affected, and each remaining provision will be valid and enforceable to the fullest extent permitted by law.

18. Governing Law and Venue. This Agreement shall be construed and governed in accordance with the laws of the State of Florida. The venue for any action arising under or related to this Agreement shall be in a court of the state court in and for Alachua County, Florida, and each party hereby submits to the jurisdiction of said court.

19. Amendments. The parties may amend this Agreement only by mutual written agreement that is executed by both parties. Neither party will assign or transfer any interest in this Agreement without prior written consent of the other party.

20. Force Majeure. The parties will exercise every reasonable effort to meet their respective duties under this Agreement but will not be liable for delays resulting from force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any government laws or regulation, acts of nature, fires, strikes, national disasters, wars, riots, transportation problems and any other cause whatsoever beyond the reasonable control of the Parties. Any such cause will reasonably extend the performance of the delayed duty to the extent of the delay so incurred and so agreed by the parties.

21. Electronic Signatures. The parties agree that an electronic version of this Agreement shall have the same legal effect and enforceability as a paper version. The parties further agree that this Agreement, regardless of whether in electronic or paper form, may be executed by use of electronic signatures. Electronic signatures shall have the same legal effect and enforceability as manually written signatures. Delivery of this Agreement or any other document contemplated hereby bearing an manually written or electronic signature, by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

22. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior written or oral agreements, understandings, or representations between the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed for the uses and purposes therein expressed on the day and year written below.

ARTIST

Signature

Printed Name

Date: _____

ALACHUA COUNTY, FLORIDA

By: _____
Anna Prizzia, Chair
Board of County Commissioners

Date: _____

ATTEST:

APPROVED AS TO FORM

J.K. "Jess" Irby, Esq., Clerk

Alachua County Attorney's Office

EXHIBIT A: Depiction of the Art

EXHIBIT B: Artist Application