

After recording return to:
Economic Development Dept
Public Art Mural Program
City of Oregon City
625 Center Street
Oregon City, OR 97045

ART EASEMENT

THIS ART EASEMENT, effective on _____ (month/day/year), is between _____ (“Grantor”), and the City of Oregon City, an Oregon municipal corporation (“City”).

RECITALS

A. The City has adopted a Tourism Strategic Plan which recognizes the integral part that murals can play in increasing community identity, beautifying the City, serving as a tourist attraction and as an avenue for involving youth and others in artistic expression. The Economic Development Department administers the City’s mural program.

B. Grantor owns the real property located at _____ (“Property”), which is legally described in Exhibit A (attached and incorporated herein) and is willing to make Property available to the City for the placement of an outdoor mural as specified in the City’s Public Art Mural Program Guidelines (hereinafter, “Artwork”). The Artwork is described in Exhibit B, attached and incorporated herein.

IN CONSIDERATION of the mutual promises and performances set forth below, the parties incorporate the Recitals above and agree as follows:

1. Grant of Easement. Grantor conveys, grants and warrants to the City, its successors and assigns, an easement for the purpose of installing, maintaining, operating and exhibiting the Artwork at Property. The location of the installation of the Artwork at the Property shall be as approved by the Oregon City Arts Commission or the City Commission.

2. Term of Easement. This easement shall be for a period of no less than five years from the date of execution (“Initial Term”) which can be extended through a subsequent written Easement Agreement, unless sooner terminated as provided in Section 3.

3. Termination.

- a) During the Initial Term (or at any time thereafter), the easement may be terminated by Grantor with the City’s consent in writing upon Grantor’s showing that:
 - i) the Property is to be sold; or
 - ii) the Property is to be substantially remodeled or altered in a way that precludes continued maintenance of the Artwork.The City shall not unreasonably withhold consent to termination upon Grantor’s satisfactory demonstration of any of the foregoing conditions of termination.
- b) The City may terminate the easement at any time at its sole discretion upon 30-days written notice to Grantor if Grantor fails to substantially perform Grantor’s obligations under Section 4.
- c) Grantor expressly agrees and warrants that upon effective termination under Section 3, the Artwork shall be removed by Grantor no later than 30-days from the effective date of termination and the Property restored to its prior condition. Time for removal may be extended in writing by the City.

4. Maintenance and Repair. Grantor shall be solely responsible for maintaining and if necessary repairing the Artwork described in Exhibit B during the term of the easement. If in the sole judgment of the City, the Artwork is being excessively damaged and Grantor fails or refuses to maintain or repair the Artwork after 30-days written notice from the City, the City Economic Department staff will contact the artist to make the necessary repairs. Murals that are not properly repaired or maintained may be subject to removal and/or penalties pursuant to the enforcement procedures of Oregon City Municipal Code Chapters 1.16, 1.20 and 1.24.

5. Limitations of the Medium: Grantor acknowledges the rights of attribution and integrity generally conferred by Section 106A(a) of Title 17 of the U.S. Code, (The Visual Artists Rights Act of 1990, "VARA"), and any other rights of the same nature granted by other federal, state, or foreign laws. However, the artwork is a mural located on the exterior wall of a building that is susceptible to damage or destruction either by weather or for other reasons and that such damage may require removal from the building. In no event shall the City, or anyone duly authorized by the City, be deemed liable for any such damage, destruction or removal that might be necessary as a result of damage to the mural, or the building by virtue of the existence of the mural.

6. Right of Entry. The City shall have the right to access any portions of the Property at or near where 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 easement including but not limited to installation, inspection, or removal.

7. Binding Effect. This easement shall run with the land and be binding upon and inure to the benefit of 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.

8. Independent Status. Neither party is the agent 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.

9. Notice. Notice shall be made to the following addresses, unless otherwise provided for in writing:

<u>City of Oregon City</u>	<u>Grantor</u> (name and mailing address)
Economic Development Dept	_____
Public Art Mural Program	_____
City of Oregon City	_____
625 Center Street	_____
Oregon City, OR 97045	_____

10. Non-Assignment; Amendment. The parties' obligations under this easement may not be assigned without the written mutual consent. The easement may be modified by written mutual agreement executed by authorized representatives of the parties.

11. Remedies. The parties acknowledge that breaches of the covenants in this easement 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 shall be entitled to a) liquidated damages in an amount of \$2,500 per material breach; b) specific performance of the covenants of this easement, and each of them; c) reasonable attorney's fees; and d) any other remedies available at law or in equity. The remedies under this Section are cumulative. 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.

12. Invalidity of Particular Provisions. In the event any term, provision, condition or other portion of this easement or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of this easement 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.

13. 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 easement.

14. Indemnification. To the extent permitted by Oregon Law and subject to the limits of the Oregon Tort Claims Act, ORS 30.260 to 30.300, the City shall indemnify and defend Grantor against all claims, demands, actions and suits arising from tortious conduct by Grantee. Grantor shall indemnify and defend the City against all claims, demands, actions and suits arising from tortious conduct by Grantor.

IN WITNESS WHEREOF, the parties/persons have caused this instrument to be executed by its duly authorized representative(s).

GRANTOR

By: _____
NAME OF GRANTOR REPRESENTATIVE

(print name of grantor representative)

STATE OF _____)
County of _____) ss.

This instrument was acknowledged before me on this _____ day of _____, 202__ by _____, as _____ of the Grantor.

Notary Public for _____
My commission expires: _____

GRANTEE: City of Oregon City, Oregon

By: _____

Exhibit A

Legal Description of the Property

Exhibit B

Description of the Artwork