

After recording return to:
City of Portland
Bureau of General Services
Property Acquisition & Services Manager
1120 SW 5th Avenue, Room 1204
Portland OR 97204

ART EASEMENT

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

RECITALS

A. The City has adopted a program for the placement of art in and on public and private locations throughout the City of Portland. The Regional Arts and Culture Council administers the City’s art program.

B. Grantor owns the property legally described in Exhibit A (attached hereto and incorporated herein) and is willing to make said property available to the City for the placement of public art, as defined in Portland City Code section 5.74.020c. (hereinafter, “Artwork”). Said Artwork is described in Exhibit B, attached hereto and incorporated herein.

IN CONSIDERATION of the mutual promises and performances set forth below, the parties 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 described in Exhibit B on and in the real property described in Exhibit A, including any building and structure thereon (“property”). The location of the Artwork shall be as approved by the Regional Art and Culture Council.

2. Term of Easement. This easement shall be for a period of five (5) years from the date of execution. Unless terminated as provided in section 3, below, the easement shall automatically renew thereafter, and shall remain in full force and effect unless and until terminated.

3. Termination.

- a) At the expiration of the five year easement period, the easement may be terminated by either party upon 30 days written notice to the other party. Grantor expressly agrees and warrants that upon expiration, the Artwork shall be removed and the Property restored to its prior condition. Such removal shall occur within 30 days of the termination of the easement, unless this period is extended in writing by the City.
- b) Within the initial five year easement term or at any time thereafter, the easement may be terminated by Grantor with the City’s consent in writing upon Grantor’s showing of any of the following: i) that the property is to be sold and the buyer requires removal of the easement as a condition of the purchase and sale; or ii) that the property is to be refinanced and the lender requires removal of the easement as a condition of the refinancing; or iii) that the property is to be substantially remodeled or altered in a way that precludes continued maintenance of the Artwork; or iv) 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 consent to termination upon Grantor’s satisfactory demonstration of any of the foregoing conditions of termination.
- c) The City may terminate the easement at any time at its sole discretion upon 30 days written notice to Grantor, should Grantor fail to substantially perform Grantor’s obligations under Section 4, below. Should the City elect to exercise this right of termination, Grantor expressly agrees and warrants that the Artwork shall be removed and the Property restored to its prior condition. Such removal shall occur within 30 days of the termination of the easement, unless this period is extended in writing by the City.

4. Maintenance and Removal of Artwork. Grantor shall be responsible for maintaining and if necessary repairing the Artwork described in Exhibit B during the existence of the easement. The City may remove the Artwork from the property 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 requesting Grantor to do so. If the City removes the Artwork from the property, the City will restore the property to its original condition. Alternatively, at the City's sole discretion, the City may enter upon the property to maintain or repair the Artwork if Grantor has failed to do so after 30 days written notice from the City that the Artwork requires maintenance or repair.

5. Right of Entry. The City shall have the right to enter the property described in Exhibit A 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.

6. Binding Effect. The easement granted in this agreement 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.

7. Contractual Relationships. Assignment. This agreement does not constitute either party as 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. The parties shall not assign this agreement without the prior written consent of the other.

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

City of Portland

Grantor

City of Portland - Bureau of General Services
Property Acquisition & Services Manager
1120 SW 5th Avenue, Room 1204
Portland OR 97204

AND

Portland City Attorney's Office
1220 SW 5th Avenue, Room 430
Portland OR 97229

9. 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.

10. 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 a) liquidated damages in an amount of \$2500 per material breach; b) specific performance of the terms of this agreement, and each of them; c) reasonable attorney's fees; and d) any other remedies available at law or in equity. The rights under this agreement 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.

11. 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.

12. 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.

13. Term. This agreement may be terminated upon delivery of a letter of termination executed by any party, provided that any such letter shall provided for a 180 day period for the Artwork to be removed.

