



## CITY OF KETTERING

PARKS, RECREATION AND CULTURAL ARTS DEPARTMENT

### ROSEWOOD ARTS CENTER

2655 Olson Drive • Kettering, Ohio 45420 • (937) 296-0294

## Group Exhibition Agreement

### Kettering Health Art Gallery at Rosewood Arts Center

This Rosewood Arts Center Group Exhibition Agreement (“Agreement”) is entered into between the City of Kettering, Ohio (“City” or “Rosewood Arts Center”), and you (“Artist”) (collectively referred to as “Parties” and individually as a “Party”).

- A. **Agreement.** By responding to a call for submissions, virtually or physically, the Artist acknowledges that they have read this Agreement in its entirety, understand the terms of this Agreement, have had the opportunity to consult with legal counsel regarding the terms of this Agreement, and knowingly, voluntarily, and willfully enter into this Agreement without any duress or coercion of any kind.
- B. **Consent to Exhibit.** Artist agrees to have their submitted artwork evaluated for exhibition at Rosewood Arts Center. Depending on the requirements in call, submissions may be virtual or physical. Artwork chosen for exhibition will be in the sole discretion of Rosewood Arts Center. Exhibits will include artwork from other artists.
- C. **Artist Responsibilities**
  1. By the date requested by the Rosewood Arts Center staff and before providing any artwork, unless the call for submissions provided otherwise, Artists shall provide the following to Rosewood Arts Center:
    - i. A completed Rosewood Arts Center entry form (provided by City) including the title, date, media, and value of the Artwork; and
    - ii. Payment of the entry fee.
  2. If selected to participate in the Exhibition, Artist shall deliver to the Rosewood Arts Center, 2655 Olson Drive, Kettering, OH 45420, the artwork chosen for exhibition (the “Artwork”).
  3. Artist shall arrange, pay for, and assume all risks associated with preparing the Artwork for proper transport and display at the Rosewood Arts Center including, but not limited to, framing, packing, shipping, and delivery to the Rosewood Arts Center.
  4. Artist shall deliver the Artwork to the Rosewood Arts Center on or before a date which will be determined by Rosewood Arts Center staff and which will be prior to the opening date of the exhibition. Artwork will be on display at the Rosewood Arts Center through the end of the exhibition.
  5. Artist shall remove the Artwork from Rosewood Arts Center after the end of the exhibition but no later than the date specified by Rosewood Arts Center staff. Artist is responsible for all costs to remove and transport the Artwork from the Rosewood Arts Center.
  6. Artist shall maintain adequate insurance to cover any damage that may occur to the Artwork during its packaging, shipping to the Rosewood Arts Center, display at the Rosewood Arts Center, or removal from the Rosewood Arts Center.
  7. Artist shall perform all necessary cleaning, maintenance, and restoration of the Artwork. The Artist shall supply any shelving or display devices that are specific to their needs.

8. Unless an earlier date is specified by Rosewood Arts Center staff, Artist shall have the Artwork removed from the Rosewood Arts Center and off all City property no later than fifteen (15) calendar days after the conclusion of the exhibit, as described in Paragraph A. Any portion of the Artwork that is not removed from the Rosewood Arts Center and off all City property by the date specified by Rosewood Arts Center staff or within fifteen (15) calendar days after the conclusion of the exhibit, whichever is earlier, is abandoned (“Abandoned Artwork”), and the following shall apply to the Abandoned Artwork:
  - i. Artist expressly waives any and all rights related to the Artwork under the Visual Artists Rights Act, 17 U.S.C. §106A, including the rights of attribution and integrity, and under the Copyright Act. Artist's waiver includes, but is not limited to, those rights pertaining to sale, distortion, mutilation, destruction, relocation, and modification of the Artwork;
  - ii. Artist transfers and assigns Artist's ownership of and all interests in the Artwork to City, thereby granting City full ownership of all rights, title, and interests in the Artwork;
  - iii. Artist acknowledges and warrants that no other person or entity possesses an interest in the Abandoned Artwork, and Artist shall indemnify and hold harmless City from any claim of ownership or interest of any kind in the Artwork; and
  - iv. City may exercise any right of ownership over the Abandoned Artwork, including, without limitation, selling, distorting, mutilating, destroying, relocating, keeping, altering, or storing the Abandoned Artwork.

**D. Rosewood Arts Center's Responsibilities**

1. Rosewood Arts Center shall determine the exhibition opening and closing dates in its sole discretion.
2. Rosewood Arts Center shall exhibit the Artwork in the Rosewood Arts Center between the opening and closing dates of the exhibition provided, however, that Rosewood Arts Center may remove the Artwork from display at any time in its sole discretion.
3. Rosewood Arts Center shall reimburse Artist for the fair market value, as determined in Rosewood Arts Center's reasonable discretion, of any damage to the Artwork while it is on display at the Rosewood Arts Center. Reimbursement under this paragraph is limited to a maximum of Twenty Thousand Dollars (\$20,000.00).
4. Rosewood Arts Center shall promote the exhibition by through electronic and print media, which may include targeted email announcements, printed postcards, etc.
5. Rosewood Arts Center may reject any work that is not consistent with the work originally reviewed and/or any work that is not professionally presented or secured for hanging or other suitable presentation.

**E. Grant of License.** Artist hereby grants to Rosewood Arts Center a revocable, non-exclusive, non-transferable, royalty-free license to do the following:

1. Exhibit the Artwork to the public in the Rosewood Arts Center;
2. Sell any of the Artwork that Artist has instructed Rosewood Arts Center to sell. In such a case, Rosewood Arts Center may sell the Artwork and accept payment of the purchase price. Rosewood Arts Center shall retain thirty percent (30%) of the purchase price as a commission (the “Commission”), shall retain an amount equivalent to any charge backs or fees associated with a credit card purchase, and shall afterward send the balance to the Artist. The Commission shall be due to the City whether the Artwork is sold during or as a direct result of the exhibition of the sold Artwork at the Rosewood Arts Center.
3. Photograph the Artwork and file prints;
4. Reproduce the Artwork in City publications or marketing materials or distribute reproductions of the artwork to schools, colleges, or other education organizations for educational use, grant application, or exhibition prospectus;

5. Sub-license reproductions of the Artwork for the purposes of distribution through media outlets including, but not limited to newspapers, periodicals, and broadcast news provided, however, that any such sub-licensed reproduction must be credited “courtesy of [Artist’s name]”; and

**F. Representations and Warranties.** Artist represents and warrants that

1. Artist has full power and authority to enter into this Agreement and perform all of its obligations hereunder;
2. The execution, delivery and performance of this Agreement will not violate the provisions of any agreement to which it is a party or by which it is bound;
3. the Artwork is wholly original with Artist and will not infringe or violate the trademark, trade name, copyright, right of privacy or publicity, property rights or any other right of any third party; and
4. The Artwork is appropriate for public viewing and is not lewd, obscene, sexually explicit, pornographic, disparaging, defamatory, or violate any laws or otherwise contain content that Rosewood Arts Center in its sole discretion decides is inappropriate or objectionable.
5. No third party has any interest in Abandoned Artwork described in Section E.

**G. Term and Termination**

1. The term of this Agreement begins on the date this Agreement is agreed to by Artist and ends fifteen (15) days after the end of the exhibition of the Artwork at the Rosewood Arts Center. Sections C, E(4)-(5), F, and H-N will survive the termination of this Agreement.
2. City may terminate this Agreement at any time and for any reason.
3. Either Party may terminate this Agreement upon ninety (90) days written notice to the other Party.

**H. Indemnification, Limitation of Liability, and Waiver**

1. Artist agrees to indemnify, defend, and hold harmless the City and all of its employees, agents, elected officials, successors, and assigns (the “Indemnified Parties”) from and against all losses, claims, damages, costs, causes of action, or liability of every kind and character including reasonable attorney’s fees and costs (together, “Claims”) arising out of or in any way connected with this Agreement including, without limitation, (i) the exhibition or sale of the artwork, (ii) Artist’s breach of any representation, warranty, covenant, or obligation contained in this Agreement, and (iii) any claim of ownership or interest in Abandoned Artwork.
2. Except as expressly provided in Section B(3) of this Agreement, Artist, on behalf of Artist, Artist’s heirs, successors, and assigns, hereby waives, releases and relinquishes all Claims that Artist may have against the Indemnified Parties arising from or related to Artist’s performance of this Agreement or Rosewood Arts Center’s sale of any of the Artwork. Artist voluntarily assumes all risks of any and all injuries, harm or loss of life that may result from performance of this Agreement. **WITHOUT LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES SHALL THE INDEMNIFIED PARTIES BE LIABLE TO ARTIST FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS.**

**I. Relationship of the Parties.** The relationship between City and Artist is not one of employer and employee, principal and agent, joint venture, or partnership. Artist acknowledges and agrees that Artist is responsible for paying all taxes related to the any money payable to Artist hereunder and that City will not withhold any money for payments which Artist is required to make pursuant to any applicable law, governmental regulation, rule or order.

**J. Severability.** If any provision of this Agreement is illegal or unenforceable, that provision is severed from this Agreement and the other provisions remain in force.

- K. **No Strict Construction.** The language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any Party.
- L. **Governing Law and Venue.** This Agreement is to be governed by and construed in accordance with the laws of the State of Ohio, without regard to choice of law rules. The Parties consent to the exclusive jurisdiction and venue of the federal and state courts located in Montgomery County, Ohio, waive any objection thereto, and agree that any dispute arising under or related to this Agreement shall be brought therein.
- M. **Modification.** This agreement may only be modified or amended by a signed, written agreement between the Parties. Waiver of any provision of this Agreement shall not constitute a waiver of the right to later enforce that provision or any other provision of this Agreement.
- N. **Entire Agreement.** This Agreement states the full agreement between the parties and supersedes all prior negotiations and agreements with respect to the subject matter of this Agreement. No changes in the terms of this Agreement will be effective unless approved in writing by an authorized representative of the City.