

Rosewood Gallery Group Exhibition Agreement REV A - 10/2013

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

By submitting a signed artist entry form, submitting artwork for display, or paying an artist entry fee to Rosewood Gallery, the Parties acknowledge 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.

Artist desires to have some of Artist's artwork displayed by Rosewood Gallery, and Rosewood Gallery is interested in displaying an exhibit that includes all of the artwork that Artist delivers to Rosewood Gallery and that Rosewood Gallery is capable of displaying;

Accordingly, the Parties agree as follows:

A. Artist Responsibilities

- 1 Artist shall deliver to the Gallery all of the artwork that Artist wishes to display at Rosewood Gallery (the "Artwork") located at 2655 Olson Drive, Kettering, OH 45420 (the "Gallery").
- 2 Artist shall arrange, pay for, and assume all risks associated with preparing the Artwork for proper transport and display at the Gallery including, but not limited to, framing, packing, shipping, and delivery to the Gallery.
- 3 Artist shall deliver the Artwork to the Gallery on a date which will be determined by Rosewood Gallery and which will be prior to the opening date of the exhibition and shall leave the Artwork on display at the Gallery through the end of the exhibition.
- 4 Artist shall remove the Artwork from the Gallery after the end of the exhibition and is responsible for all costs to remove and transport of the Artwork from the Gallery after the end of the exhibition.
- 5 Artist shall maintain adequate insurance to cover any damage that may occur to the Artwork during its packaging, shipping to the Gallery, display at the Gallery, or removal from the Gallery.
- 6 Artists shall deliver the following to Rosewood Gallery at least six (6) weeks before the exhibition opening:
 - i. A completed entry form (provided by City) including the title, date, media, and value of the Artwork; and
 - ii. Payment of the entry fee; and
 - iii. Artist's current résumé and Artist's statement.
- 7 Artist shall perform all necessary cleaning, maintenance, and restoration of the Artwork.
- 8 Artist shall remove the Artwork from City property no later than fifteen (15) business days after the conclusion of the exhibition.

B. Rosewood Gallery's Responsibilities

- 1 Rosewood Gallery shall determine the exhibition opening and closing dates in its sole discretion.
- 2 Rosewood Gallery shall exhibit the Artwork in the Gallery between the opening and closing dates of the exhibition provided, however, that Rosewood Gallery may remove the Artwork from display at any time in its sole discretion.

- 3 Rosewood Gallery shall reimburse Artist for the fair market value, as determined in Rosewood Gallery's reasonable discretion, of any damage caused to the Artwork by the negligence of any of Rosewood Gallery's employees while it is on display at the Gallery. Reimbursement under this paragraph is limited to a maximum of Five Thousand Dollars (\$5,000).
- 4 Rosewood Gallery shall promote the exhibition by press release to the local media and by sending announcements to the Rosewood Gallery mailing list.
- 5 Rosewood Gallery may reject any work that is not consistent with the work originally reviewed and/or any work that is not professionally present or secure for hanging or other suitable presentation.

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

- 1 Exhibit the Artwork to the public in the Gallery;
- 2 Sell any of the Artwork that Artist has instructed Rosewood Gallery to sell. In such a case, Rosewood Gallery may sell the Artwork and accept payment of the purchase price. Rosewood Gallery 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 Gallery.
- 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
- 6 Allow the public to photograph the Artwork unless otherwise notified by Artist at least three weeks before the exhibition of the Artwork at the Gallery begins.

D. **Representations and Warranties**

- 1 Artist represents and warrants that
 - i. Artist has full power and authority to enter into this Agreement and perform all of its obligations hereunder;
 - ii. 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;
 - iii. 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
 - iv. 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 Gallery in its sole discretion decides is inappropriate or objectionable.
 - v. No third party has any interest in Abandoned Artwork described in Section E.

E. **Abandoned Works.** Any artwork not removed from City property as described in Section A(8) shall be deemed abandoned ("Abandoned Artwork") and the following shall apply:

- 1 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.
- 2 Artist automatically transfers and assigns Artist's full ownership of and all interest in the Artwork to City.
- 3 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.

F. 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 Gallery. Sections A(8), C(4)-(5), D, E, and G-M 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.

G. Indemnification, Limitation of Liability, and Waiver

- 1 Artist agrees to indemnify, defend, and hold harmless the City and/or all of its respective 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 Gallery'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.**

- H. 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.
- I. 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.
- J. 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.
- K. 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.
- L. 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.

M. **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.