

## **PUBLIC ART LOAN AND DISPLAY AGREEMENT**

### **THIS PUBLIC ART LOAN AND DISPLAY AGREEMENT**

2020 Q4 ~~2019~~, by and between Alachua County, a charter county and political subdivision of the State of Florida, ("County") and Maria J. Hernandez ("Artist").

**WHEREAS**, the County is the owner of the Alachua County Administration Building located at 12 SE 1<sup>st</sup> Street, Gainesville, Florida 32601 (the "Administration Building"); and

**WHEREAS**, the County's Board of County Commissioners (the "Board") holds its regular public board meetings in the Jack Durrance Boardroom located in room number 209 on the second floor of the Administration Building; and

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

**WHEREAS**, the Artist is the creator and owner of two works of art entitled "Gator Sunset" and "Above the Prairie" (the "Art"), which is depicted the photograph of the Art that is attached hereto and incorporated herein as **Exhibit "A"**; and

**WHEREAS**, the Artist submitted an application seeking to loan the Art to the County for the purposes of having it temporarily displayed in the Jack Durrance Boardroom; 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 with regard to the temporary loan and display of the Art in the Jack Durrance Boardroom.

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

1. **Recitals.** The recitals set forth above are true and correct and are hereby incorporated into and made a part of this Agreement.
2. **Effective Date.** This Agreement shall be effective when executed by both parties and shall expire upon the date that the Artist removes his/her art from the Administration Building ("Term"), unless this Agreement is terminated earlier as provided herein.

3. **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.

4. **Loan and Grant of License.**

a. **Loan.** The Artist grants to the County a loan of the Art, subject to the terms of this Agreement.

b. **Copyright Permission.** The Artist grants to the County: (i) the right to display the Art in the Administration Building, including the Jack Durrance 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 the World Wide Web, 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, the Artist agrees that the Art may be photographed or videotaped by the general public and may also be broadcast on television. This paragraph and the grant of right herein shall survive the termination of this Agreement.

c. **Personality Rights.** The Artist grants the County the irrevocable right to use the Artist 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.

5. **Transfer, Installation, Care, and Removal of Art.**

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 Administration Building. 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 Administration Building, including but not limited to all packing, unpacking and shipping and handling. Upon its arrival at the Administration Building, the Artist shall unpack the Art and shall be responsible for directing

and supervising the installation of the Art in the Jack Durrance Boardroom by County staff; however, consent to the installation or removal techniques in all areas of the Jack Durrance Boardroom shall be solely within the discretion of the County Manager and upon such terms and conditions as the County Manager shall, in his/her sole discretion, deem necessary. Consent may be withheld unless the Artist agrees to all terms and conditions imposed by the County Manager.

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 ¼" 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 Local 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 other property, or to protect the health and safety of County staff or the public.

e. Duration of Display and Loan. The County anticipates displaying the Art in the Jack Durrance 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.

f. Surrender and Removal. The Art will be surrendered only to the Artist or to Artist's authorized agent or representative, or, in the event of the death of the Artist, to the authorized legal representative of the estate of the Artist. 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 Jack Durrance Boardroom. Upon such termination and de-installation, 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. 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 said notice from the County (the "Removal Deadline").

6. Termination. In addition to the other termination rights set forth in this Agreement, either party has the right to terminate this Agreement for convenience by giving the other party twenty (20) calendar days' written notice. In the event of termination, County shall de-install the Art and notify the Artist that the Art is available for the Artist to remove it from the

Administration Building. 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 said notice from the County (the "Removal Deadline").

7. **Post-Termination Rights.** If the Artist does not remove the Art by the Removal Deadline, then the County has the absolute right to place the Art in storage, to charge 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.

8. **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 two (2) 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 representatives are:

**For the County:**

Alachua County  
County Manager's Office  
12 SE 1<sup>st</sup> Street  
Gainesville, Florida 32601  
Attn: Gina Peebles, Assistant County Manager  
Email: [gpeebles@alachuacounty.us](mailto:gpeebles@alachuacounty.us)

**For the Artist:**

Maria J. Hernandez  
4891 NE 195 CT  
Williston, FL 32696  
[Mjh4art@gmail.com](mailto:Mjh4art@gmail.com)

9. **Security, Insurance, Risk and Indemnification.**

a. **Security, Insurance and Risk.** The County shall, as a voluntary accommodation to the Artist, exercise as much care in respect to the Art as it does in safeguarding its own property; however, the County **DOES NOT** owe any duty to the Artist to care for, maintain or safeguard the Art. The Artist acknowledges and agrees: (i) to hold harmless the County, and its Board, employees, agents, attorneys, contractors, guests, invitees, and



Advisory Committee, from any and all claims, damages, loss or injury of any kind resulting from or in any way arising directly or indirectly out of this Agreement; and (ii) that the County will provide no additional security for the Art beyond the currently security measures provided in the Administration Building and 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, and on display/exhibit. The County shall not insure the Art. 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, invitees, and Advisory Committee. Artist agrees that the value he/she selects for insurance purposes is the true value of the Art. 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.

b. Indemnification and Release. **THE ARTIST AGREES TO INDEMNIFY, DEFEND AND HOLD THE COUNTY HARMLESS FROM ANY LIABILITY (INCLUDING ATTORNEY'S FEES AND THE COST OF DEFENDING ANY ACTION) ARISING OUT OF ANY CLAIM BY ANY INDIVIDUAL, INSTITUTION, OR OTHER PERSON CLAIMING FULL OR PARTIAL TITLE OR COPYRIGHT TO THE ART. THE ARTIST ACCEPTS ALL RISK ASSOCIATED WITH THE ART BEING ON DISPLAY OR STORED IN THE ADMINISTRATION BUILDING OR ELSEWHERE, AND HEREBY RELEASES ALL CLAIMS AND SUBROGATION AGAINST THE COUNTY, INCLUDING ITS BOARD, EMPLOYEES, AGENTS, ATTORNEYS, CONTRACTORS, AND ADVISORY COMMITTEE FOR ANY LOSS OR DAMAGE TO THE ART, HOWEVER CAUSED.**

10. 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 Administration Building, or modify the Art's display, except with the permission of the County Manager and in conjunction with an authorized County representative.

11. 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.

12. **No Joint Venture.** Nothing contained in this Agreement creates a joint venture, partnership, or agency relationship between the parties.

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

14. **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.

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

16. **Amendments.** The parties may amend this agreement only by mutual written agreement that is executed by both parties.

17. **Entire Agreement.** This Agreement constitutes the entire agreement and supersedes all prior written or oral agreements, understandings, or representations.

[This space was intentionally left blank]

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

ALACHUA COUNTY, FLORIDA

By: \_\_\_\_\_  
Robert Hutchinson Chair  
Board of County Commissioners

Date: \_\_\_\_\_

ATTEST:

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

(SEAL)

APPROVED AS TO FORM

\_\_\_\_\_  
Alachua County Attorney's Office

ARTIST

\_\_\_\_\_  
(Artist's signature)

\_\_\_\_\_  
Maria J. Hernandez  
(Artist's name printed)

STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 16 day of December, 2019, by Maria Hernandez as \_\_\_\_\_, on behalf of the corporation, who is ☒ personally known to me, or who ☐ produced driver's license as identification.



\_\_\_\_\_  
Notary Public

IF THE ARTIST IS NOT A NATURAL PERSON, PLEASE PROVIDE A CERTIFICATE OF INCUMBANCY AND AUTHORITY, OR A CORPORATE RESOLUTION, LISTING THOSE AUTHORIZED TO EXECUTE CONTRACTS ON BEHALF OF YOUR ORGANIZATION. IF THE ARTIST IS A NATURAL PERSON, THEN YOUR SIGNATURE MUST BE NOTARIZED.

**EXHIBIT A: Color Photograph of the Art**



**GATOR SUNSET**



**ABOVE THE PRARIE**