

ARTISTIC DISPLAY LICENSE AGREEMENT

THIS AGREEMENT, is entered into this ____ day of _____, 20 ____, by and between the Board of County Commissioners of Archuleta County, with its mailing address of P.O. Box 1507, 398 Lewis Street, Pagosa Springs, CO 81147 (hereinafter, "BoCC") and Pagosa Arts Initiative, with its mailing address of P.O. Box 5852, 262 Pagosa Street, Pagosa Springs, CO 81147 (hereinafter, "Licensee") as agent for selected local student artists ("Artist") (together, the "Parties").

The Parties hereto agree to the following terms and conditions concerning Artist's display of artwork on the west side exterior wall of the county building located at 449 San Juan Street, Pagosa Springs, CO (the "Property").

1. Effective Date. This Agreement will be effective beginning July 6, 2021 through July 6, 2022 and will automatically terminate unless extended, cancelled, or revoked as set forth in paragraph 8 below.

2. Display of Artwork. In order to encourage artistic expression, to inspire a sense of civic pride, and to integrate arts into the community, BoCC agrees to allow Artist to display his or her artwork on the Property provided that Artist complies with the terms of this Agreement.

3. Approved Artwork. The following artwork may be displayed on the Property, if the BoCC has determined that the Artwork Criteria described in paragraph 4 have been met:

- a. Paintings of all media;
- b. Other works of visual art such as prints, drawings, stained glass, carvings, mosaics, fiber and textiles, photographs, drawings, and collages; and,
- c. Crafts or artifacts constructed of clay, wood, metal, glass, stone, plastic and other materials, provided that the artwork may be hung on a wall.

4. Artwork Criteria.

- a. The artwork shall have aesthetic merit. The term "aesthetic" means that the artwork is pleasing in appearance to the average person.
- b. The artwork shall be of interest to the general public. The artwork must have universal, and not particularized, appeal in order to attract a broad audience.
- c. The purpose of the exhibition of artwork on the Property is not to create a marketplace for art or to create a forum for public political debate, but to encourage the community's appreciation of artwork in a forum that may be viewed by all community members. Accordingly, BoCC will not approve artwork that implies that BoCC is sponsoring and/or endorsing any commercial establishment or business (although Artist may place contact information near his or her approved

and posted artwork). Furthermore, BoCC may reject artwork that associates BoCC with a position other than neutrality on matters of political controversy.

- d. The artwork must not be obscene. "Obscene artwork" means artwork, taken as a whole that to the average person applying contemporary community standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political or scientific value.
- e. The artwork must not be controversial, offensive, and/or intimidating, nor may the artwork incite tension and/or encourage violence.
- f. The artwork shall not endanger public safety and must comply with building codes and accessibility requirements.
- g. The artwork shall not require excessive maintenance.
- h. The artwork shall be original artwork; replicas of another artist's work shall not be accepted.
- i. The artwork shall be capable of being mounted on a backing and not directly onto the designated wall of the Property.

5. Artwork Location and Presentation.

- a. The artwork shall be displayed on the west side wall of the 449 San Juan Street building in downtown Pagosa Springs, Colorado.
- b. Artist will create a mock-up drawing of the artwork to be displayed and present it to BoCC for final approval prior to the start of displaying it on the Property.
- c. Artist shall be responsible for any and all materials and tools needed to create the artwork, including, but not limited to paints, brushes, ladders, scaffolding, etc.
- d. Artist will store all materials and tools off-site overnight and/or when not working on the artwork.

6. Location and Time.

- a. BoCC shall allow Artist to display approved artwork on the Property until such time as the building is sold or when this Agreement is terminated as described in paragraph 8 below.
- b. Artist's artwork may be viewed at the Property at any time, as it is located outside of the building.

- c. BoCC shall have the authority to extend or shorten the length of Artist's exhibit.
7. Removal of Artwork. BoCC will require the immediate removal of artwork that it determined to be inconsistent with the Artwork Criteria described in paragraph 4 above.
8. Termination.
- a. Termination for Convenience. BoCC may terminate this Agreement at any time and for any reason upon thirty (30) days' notice to Licensee.
 - b. Termination for Breach of Agreement. BoCC may immediately terminate this Agreement if the Artist violates any of the provisions of this Agreement.
9. Waiver and Release. Licensee and Artist waives and releases any and all claims against BoCC and its elected officials, non-elected officials, directors, officers, employees and affiliates for any liability, loss, damage, expenses and attorneys' fees, resulting from (i) death or injury to person or (ii) loss, theft or damage to property of Licensee and/or Artist caused by or arising from Licensee and/or Artist's presence or activities on the Licensed Premises, regardless of the cause and even if caused by negligence, active or passive. Licensee and Artist agrees not to file any legal action against the BoCC on the basis of these waived and released claims.
10. Indemnification. To the extent permitted by law, Licensee and Artist agrees to indemnify and hold harmless the BoCC, its elected officials, officers, employees, contractors, agents and insurers, from and against all liability, claims and demands arising out of their use of the Licensed Premises. To the extent permitted by law, Licensee and Artist agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at their expense, or, at the option of the BoCC, agree to pay the BoCC or reimburse the BoCC for the defense costs incurred by the BoCC in connection with any such liability, claims or demands. To the extent permitted by law, Licensee and Artist also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent.

The Parties agree that this Agreement shall not to be construed as a waiver of any immunities or defenses provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* In addition, the BoCC, its commissioners, officials, officers, directors, agents, contractors and employees, do not waive or intend to waive by any provisions of this Agreement, the rights, immunities and protections afforded the Parties by the Owners of Recreation Areas statutes, C.R.S. § 33-41-101 *et seq.*

11. Liability. Licensee and Artist understand that BoCC shall not be liable for any theft, damage or loss of Artist's artwork. Artist is responsible for obtaining any desired insurance coverage for the artwork.

12. General Provisions.

- a. Entire Agreement; Amendments. This Agreement, together with all Exhibits, is the entire agreement between the Parties and supersedes all prior or contemporaneous communications, representations, understandings, and agreements, either oral or written, relating to the subject matter of this Agreement. This Agreement may be amended only as stated in a written document signed by the Parties, which states that it is an amendment to this Agreement. If there are any inconsistencies between this Agreement and other documents, including the Exhibits, this Agreement will control.
- b. Severability. If any provision of this Agreement is held illegal, invalid, or unenforceable, all other provisions of this Agreement will remain enforceable, and the illegal, invalid, or unenforceable provision will be considered modified so that it is valid to the maximum extent permitted by law.
- c. Waiver. Any waiver under this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.
- d. Third-Party Beneficiaries. This Agreement is for the exclusive benefit of BoCC and Licensee and/or Artist, and not for the benefit of any third party.
- e. Governing Law. This Agreement is governed by Colorado law. The Parties consent to the exclusive jurisdiction of the state and federal courts for Archuleta County, Colorado.
- f. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or PDF of executed counterparts constitutes effective delivery.
- g. Assignment. Licensee and/or Artist may not assign or transfer this License, except upon the express written authorization of the BoCC.

Approved and Adopted as of the date first set forth above.

BoCC:

BOARD OF COUNTY COMMISSIONERS
OF ARCHULETA COUNTY, COLORADO

ATTEST:

Clerk & Recorder

By: _____

Printed Name: _____

Title: _____

Artist:

PAGOSA ARTS INITIATIVE

By: Sherry L Phillips

Printed Name: Sherry L Phillips

Title: president