

## **LICENSE AGREEMENT**

THIS LICENSE AGREEMENT (this “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 (the “Execution Date”), by and between the City of Shakopee, a Minnesota municipal corporation (the “City”), and Selena Walsh, a single individual (the “Owner”). The City and the Owner may be referred to individually as a “Party” or collectively as the “Parties”.

### **RECITALS**

- A. The Owner is the fee owner of certain real property including a building located (the “Building”) located at 113 Lewis St. South, Shakopee, Minnesota (PID No. 270011910), legally described on the attached Exhibit A (the “Property”).
- B. The City has requested that the Owner assist the City with the development of certain murals within the City by the installation of a mural generally as depicted on the attached Exhibit B (“the Mural”) on the Building.
- C. The Mural will provide certain intangible benefits to the Building and the Owner is willing to allow the City to install the Mural on the Building subject to the terms and conditions of this Agreement.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the parties agree as follows:

- 1. Incorporation. The recitals set forth above, and the attached Exhibits are incorporated and made a part of this Agreement.
- 2. Grant of License to City. The Owner grants to the City, its successors and assigns, an exclusive irrevocable license, subject to the terms of this Agreement, to construct, render, maintain, repair remove, and replace the Mural in the approximate location on the Building as depicted on the attached Exhibit C.

3. Approval as to Form of Mural. The Mural shall be generally in the form as approved by the City as depicted on Exhibit B. The City shall have sole approval of the form and design of the Mural.

4. Costs, Maintenance and Repairs. The City shall be responsible for the costs of the design and installation of the Mural. The City may perform visual inspections of the Mural and shall perform any maintenance or repairs at the City's expense. The City shall be solely responsible for the cost and expense of any maintenance or repairs to the Mural made by City during the Term of this Agreement. The Owner shall not be responsible for any costs associated with Mural or its maintenance, and the terms of this Agreement will not be considered an affirmative duty upon the Owner to maintain or repair the Mural, except as provided in Section 7. The City shall not be responsible for the costs of any maintenance of repairs to the Building, except for any maintenance or repairs resulting from any damage caused by the City, its employees, or contractors made during the City's maintenance or repairs to the Mural. The Owner shall not alter or modify the Mural without the prior written consent of the City.

5. Term. The Owner agrees that the Mural will remain on the Building for ten (10) years from the Execution Date (the "Term"), subject to the provisions of section 8. Prior to the ending of the Term or the termination of this Agreement, the Owner shall not remove or modify the Mural unless the City agrees to such modification or removal in a writing signed by the City.

6. Waiver of First Amendment Rights. The Owner understands and agrees that it may not modify or remove the Mural, and explicitly waives her First Amendment Rights only with respect to the limitations imposed by this Agreement with respect to the Mural.

7. Reimbursement. If the Owner's actions result in the loss of the Mural before the end of the Term, the Owner agrees to reimburse the City for a percentage of the cost of the Mural proportional to the length of time remaining in the Term of this Agreement.

8. Extension or End of Term. Following the end of the 10-year term of this Agreement, the City shall evaluate the Mural and determine: i) whether it desires for the Mural to be maintained in which case the parties may enter an extension of this Agreement, or ii) painted to the then-current color of the Building. Any decisions to return the Building to its then current color shall be coordinated with the Owner and such repainting shall be at the City's expense. The City must provide Owner notice of the City's desire to enter into an extension of this Agreement at least sixty (60) days prior to the end of the Term.

9. Fees. The City shall not pay any license fees or other fees to the Owner under this Agreement.

10. No Adverse Possession. The City agrees its use of the Property is with the Owner's permission and is not open, continuous, notorious, or in any other manner supportive of a claim of adverse possession, prescriptive easement, or other entitlement to the Property. The Parties acknowledge that this Agreement is a license to use the Property for the purpose described and does not confer any estate or interest in the Property to the City.

11. Compliance with Governmental Regulations. The City shall comply with all applicable laws, ordinances, and governmental regulations affecting the Property and its use of the Property. The City shall not use the Property for the transportation, storage, handling, or disposal of any Hazardous Substance, Hazardous Waste, pollutant or contaminant as those terms are defined in 42 U.S.C. § 9601 et. seq. (“CERCLA”) or Minnesota Statutes Chapter 115B (“MERLA”).

12. Insurance. The City at its expense, during the term of this Agreement, shall keep in full force and effect a policy or policies of “occurrence” based general liability insurance, providing coverage for personal property damage, personal injury, and contractual liability with respect to its use of the Property and the Mural, which insurance may be part of coverage under the municipal insurance trust

13. Indemnification. The City shall defend, indemnify, and hold harmless the Owner against all suits, demands, causes of action, liabilities, or claims for injury or damages of whatever nature, including personal injury, death, or damage to property, arising out of or related to the City’s use of the Property.

14. Disclaimer. The Owner disclaims any warranty that the Property is suitable for the City’s desired use. Notwithstanding the foregoing, Owner represents and warrants to the City that Owner is the fee owner of the Property and has all right and power to enter into this Agreement.

15. No Other Improvements, Modifications to Property by City. With the exception of the Mural, the City shall not make any improvements or modifications to the Property or the Building without the Owner’s prior written consent. All improvements shall be done at the City’s expense.

16. Termination. The City may determine that the Building should be returned to its prior façade at any time, and may terminate this Agreement prior to the end of the Term at any time. Upon termination of this Agreement, the City’s use of the Property is immediately terminated. Following the expiration of the Term or the earlier termination of this Agreement, all ongoing maintenance of the Mural will be the responsibility of the Owner.

17. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

18. Entire Agreement. This Agreement constitutes the entire agreement between the Parties affecting the Property, and there are no other agreements, either oral or written, between the Parties. No subsequent alteration or amendment to this Agreement will be binding upon City or Licensee unless in a writing signed by the Parties.

19. Relationship of City and Owner. This Agreement does not create the relationship of principal and agent, or a partnership or joint venture, the sole relationship between the parties being that of licensor and licensee under this Agreement.

20. No Assignment. The City shall not assign this Agreement without obtaining the prior written consent of the Owner, which consent the Owner may grant or deny at its sole discretion. The Owner's consent to any sublicensing or assignment of this Agreement, other than to the Artist, shall not be a waiver of its rights under this Paragraph to any subsequent sublicensing or assignment.

21. Notice. Except as otherwise expressly provided in this Agreement, any notice or other communication under this Agreement by either Party to the other will be deemed to be sufficiently given if it is dispatched by certified mail, return receipt requested or delivered personally or sent by nationally recognized overnight courier to:

a. If to City: City of Shakopee  
Attn: City Administrator  
485 Gorman Street  
Shakopee, MN 55379

b. If to Owner: Selena Walsh  
2395 Heron Lane  
Deerwood, MN 56444

or at such other address as each Party may, from time to time, designate in writing and forward to the other as provided in this Paragraph.

22. Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected and the rights and obligations of the parties under this Agreement shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

23. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument.

24. Recording. This Agreement shall be recorded in the land records of Scott County, Minnesota.

*[signature pages follow]*

The parties have executed this License Agreement as of the date first written above.

**OWNER**

By: \_\_\_\_\_  
Selena Walsh

STATE OF MINNESOTA    )  
                                          )  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2023, by Selena Walsh, a single individual, Owner.

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

**CITY OF SHAKOPEE**

By: \_\_\_\_\_  
Matt Lehman, Mayor

By: \_\_\_\_\_  
William H. Reynolds, City Administrator

STATE OF MINNESOTA    )  
                                      )  
COUNTY OF SCOTT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Matt Lehman and William H. Reynolds, the Mayor and City Administrator, respectively, of the City of Shakopee, a Minnesota municipal corporation, by and on behalf of said municipal corporation.

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

This Agreement was drafted by:

Kennedy & Graven, Chartered  
150 South 5<sup>th</sup> Street, Suite 700  
Minneapolis, MN 55402  
(612) 337-9300

## **EXHIBIT A**

### **Legal Description of the Property**

## **EXHIBIT B**

### **Depiction of the Mural**

## **EXHIBIT C**

### **General Location of the Mural**