



CITY OF BERKLEY COMMUNITY DEVELOPMENT

3338 COOLIDGE HWY, BERKLEY, MICHIGAN 48072

AGREEMENT FOR MURAL INSTALLATION AND MAINTENANCE

This AGREEMENT is made this _____ day of _____, 20__, between City of Berkley, a Michigan municipality (hereinafter "the City"), whose mailing address is 3338 Coolidge Hwy, Berkley, MI 48072, and _____ (hereinafter "the Applicant"), whose mailing address is _____.

WITNESSETH:

WHEREAS, the City understands the importance of art in the community and the role that wall murals play in attracting business and visitors to Berkley to view artwork and to attend public or community events;

WHEREAS, artwork and murals are permitted under the City's sign ordinance upon the determination from the Zoning Board of Appeals that the proposed artwork/mural does not contain a commercial message;

WHEREAS, the Applicant has requested a determination from the Zoning Board of Appeals and, after the required public hearing, the Board has determined that the proposed artwork/mural does not contain a commercial message;

WHEREAS, the City and Applicant (hereinafter collectively referred to as "Parties") desire to execute an agreement establishing the Parties' rights and responsibilities with respect to the installation, maintenance, ownership, and advertising of a Mural upon a building located in Berkley, Michigan;

NOW THEREFORE, in consideration of the premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS.

- a. "Building" means the building located at _____
 - b. "Commercial Message" means any wording, symbol, image, shape, picture, or combination thereof, or other representation that, directly or indirectly, names, advertises, or promotes a business, goods, service, institution, person, activity, location, or idea
 - c. "Good condition" means that the Mural is free of dirt, debris, and any other object or surface interfering with the public's view of the Mural
 - d. "Mural/work of art" means any mural or work of art that does not include a commercial message to be determined by the Zoning Board of Appeals
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- e. "Rendering" means the Artist's sketch or graphic design or other means of illustration, produced onto paper, of a scale rendition of the proposed Mural, including the color, shading and texture of the proposed Mural
- f. "Sign" any device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public
- g. "Wall sign" means any sign attached parallel to, but within 12 inches of a wall, painted on the surface of, or erected and confirmed within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one sign surface
- h. "Zoning Board of Appeals" means the body that is responsible for determining if the proposed mural/artwork contains a commercial message

ARTICLE 2. MURAL SPECIFICATIONS

- a. Artistic Freedom. The provisions of this Article 2 shall not in any way limit or restrict Artist's right to include content in the mural that is not commercial, indecent, obscene, or unlawful.
- b. Commercial Content. The mural shall not include an advertisement or be commercial in nature. Murals shall not contain any wording, symbol, image, shape, picture, or combination thereof, or other representation that, directly or indirectly, names, advertises, promotes, or calls attention to a business, goods, service, institution, person, activity, location, or idea.
- c. Obscene and Indecent Content. The mural shall comply with City ordinances prohibiting indecency and obscenity in public.

ARTICLE 3. MURAL REVIEW AND APPROVAL

- a. Application. Applicant/Owner shall submit a Mural/Artwork application to the Community Development Department. A separate review process is required for any mural/artwork proposed to be commissioned or financed by the Downtown Development Authority.
- b. Public Hearing. City staff shall schedule the required public hearing, as specified in the Berkley Zoning Ordinance.
- c. Public Meeting. The Zoning Board of Appeals shall hold a public hearing and shall determine if the proposed mural/artwork includes a commercial message. If it is determined that the mural/artwork does not contain a commercial message, it can move forward. If it is determined that the mural/artwork does contain a commercial message, it cannot be classified as a mural/artwork and is subject to standards of a wall sign, located in Article 11 of the Berkley City Zoning Ordinance.

ARTICLE 4. COMMERCIAL MESSAGE/CONTENT

- a. Social Media. Applicant/Owner is permitted to showcase the mural/artwork on personal or professional social media pages and websites, provided that the image is not used as a logo or part of the business brand.
- b. For Sale Merchandise. Reproductions of the mural/artwork on promotional merchandise or for-sale materials to advertise a business is strictly prohibited. Such materials include, but not limited to: teeshirts or other clothing items, tote bags, glasses or mugs, posters, postcards, etc.



ARTICLE 5. INSTALLATION

- a. Time of Installation. Artist may begin installing the mural after this Agreement's execution.
- b. Materials. Artist shall be responsible for providing, at its cost, all materials necessary to install the mural. The City shall not be responsible to pay for or reimburse costs to Artist or Applicant for the installation of the mural.
- c. Landscaping Protection. Artist shall take care to protect any landscaping on the Property during installation. Removal of landscaping shall not be permitted unless separate approvals have been given by the City.

ARTICLE 6. MAINTENANCE AND REPAIRS

- a. Maintenance and Repairs. Applicant/Owner shall be responsible for maintaining the mural in good condition at all times. If, for any reason, the mural is not so maintained, as determined by the City, the City shall notify Applicant/Owner of the need to perform maintenance and/or repairs and identify the actions necessary. If, after 60 days from the date of the City's notification to Applicant/Owner of the need for maintenance and/or repairs, Applicant/Owner has not performed the actions identified by City as being necessary for compliance with this provision, City may seek court order to compel such actions to be performed.
- b. Access. Owner (if different from Applicant) hereby grants Artist a right of access to the property to paint the mural and to perform necessary maintenance and repairs.
- c. Alterations. Changes to the existing mural shall not be permitted during necessary maintenance and/or repairs. Alternative colors are permitted, but any substantive changes, as determined by the City, will be required to be reviewed to ensure changes do not include a commercial message.

ARTICLE 7. REMOVAL

- a. Removal by Owner. Owner may remove the mural at Owner's expense at any time for any reason.

ARTICLE 8. MISCELLANEOUS PROVISIONS

- a. Modification and Amendment. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written approval by the City Manager.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

Owner

(Print Name)

(Signature)

Artist

(Print Name)

(Signature)

City

(Print Name and Title)

(Signature)