

**TOWN OF SUPERIOR
RESOLUTION NO. R-26
SERIES 2022**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF
SUPERIOR APPROVING AN ART AGREEMENT WITH MITCH LEVIN DBA
HIGH VOLTAGE FOR AN ART LOAN EXTENTION**

WHEREAS, The Town has a lease agreement with the Sports Stable that will automatically renew for an additional 18 months on May 22, 2022;

WHEREAS, The Artist agrees to the extended Art Agreement loan of "Let Your Heart Soar" for an additional 18 months;

WHEREAS, the Sports Stable is in support of the renewal of the easement for an additional 18-month period.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:

Section 1. The Town hereby approves the Art Agreement for the extended loan of "Let Your Heart Soar" for an additional 18-month period for a cost of \$2,000.

ADOPTED this 25th day of April, 2022.



Clint Folsom

Clint Folsom, Mayor

ATTEST:

Patricia Leyva

Patricia Leyva, Town Clerk

ART INSTALLATION AGREEMENT

THIS ART INSTALLATION AGREEMENT (the "Agreement") is made and entered into this 25th day of April, 2022 (the "Effective Date"), by and between the Town of Superior, a Colorado municipal corporation with an address of 124 East Coal Creek Drive, Superior, CO 80027 (the "Town"), and Mitch Levin, d/b/a High Voltage, an independent contractor with an address of 3254 Palo Parkway, Boulder, CO 80301, ("Artist") (each individually a "Party" and collectively the "Parties").

WHEREAS, the Town has an approved lease agreement with the Sports Stable who owns the real property more particularly described and depicted in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Premises"); and

WHEREAS, the Town wishes to extend the loan of Artist's artwork for continued installation on the Premises.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION I – INSTALLATION

Artist has completed the creation, fabrication and installation on the Premises of the artwork described in **Exhibit B**, attached hereto and incorporated herein by this reference (the "Art").

SECTION II – COMPENSATION

A. The Town shall pay Artist a total fee of \$2,000 for the continued installation of the Art in compliance with this Agreement. The fee shall constitute full compensation for all services and materials to be performed and furnished by Artist under this Agreement, including all costs relating to delivery and removal of Art.

B. The fee shall be paid as follows: 100% upon the Effective Date.

SECTION III – WARRANTIES

A. Artist warrants to the Town that Artist has created the Art and possesses unencumbered title to the Art and the Art has not been offered or accepted for sale elsewhere.

B. Artist guarantees all parts and workmanship for the Art for 18 months following the Effective Date, and during that time, Artist shall replace any defective parts or rework any defective craftsmanship in a timely fashion at no cost to the Town.

SECTION IV – MAINTENANCE AND CHANGES

A. While Artist should design the Art to be relatively maintenance-free, the Town shall be responsible for maintenance of the Art, including periodic cleaning as necessary to remove the buildup of dust and dirt. Notwithstanding the foregoing, the Town shall not be liable for

degradation caused by normal wear and tear, vandalism, theft, damage by motor vehicles and weathering.

B. The Town shall not intentionally alter, modify or damage the Art without the prior consent of Artist, except when necessary to protect the public health, safety or welfare.

C. The Town shall notify Artist of any proposed significant alteration of the property on which the Art is installed if, in the Town's reasonable discretion, such alteration would affect the intended character and appearance of the Art.

D. Artist shall notify the Town of any changes in Artist's contact information as shown in the Notice section below. If a failure to do so prevents the Town from locating Artist, such failure shall be deemed a waiver by Artist of the right to enforce any provision of this Agreement requiring the approval of Artist.

SECTION V – INSURANCE AND INDEMNIFICATION

A. The Town and Artist stipulate and agree that the value of the Art is \$20,000_. The Town shall insure the Art against loss or damage to the Art itself, but only up to that stipulated value. The Town shall not, however, insure Artist against any third-party claims arising out of or connected with the Art or Artist's activities under this Agreement – any such insurance shall be the sole responsibility of Artist.

B. Artist hereby indemnifies and holds harmless the Town, its officers, agents and representatives from any claim by any third party for injury, loss or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the Art or Artist's activities pursuant to this Agreement.

SECTION VI – REPRODUCTION RIGHTS

A. Artist reserves all rights to the reproduction of the Art except that Artist grants to the Town an irrevocable license to make photographic reproductions of the Art without compensation to Artist, provided that these rights are exercised in a tasteful and professional manner, and Artist is duly credited. All reproductions by the Town shall contain a credit to Artist and a copyright notice substantially in the following form: "Copyright, _____", with the date of publication.

B. The Town is not responsible for any third-party copyright infringement or for protecting the intellectual property rights of Artist. Artist holds the Town and its officers, employees, representatives and agents harmless from any claim of copyright infringement pertaining to the Art.

C. Artist shall use Artist's best efforts to give a credit reading substantially as "an original work commissioned by the Town of Superior" in any public showing under Artist's control of photographic and video reproductions of the Art.

SECTION VII - MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. Independent Contractor. Artist is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Artist to perform work under the

terms of this Agreement shall be, and remain at all times, employees or agents of Artist for all purposes. Artist shall make no representation that it is a Town employee for any purposes.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.



TOWN OF SUPERIOR, COLORADO

Clint Folsom

Clint Folsom, Mayor

ATTEST:

Patricia Leyva

Patricia Leyva, Town Clerk

ARTIST:

STATE OF _____)
) ss.
COUNTY OF _____)

Subscribed to and affirmed before me by Mitch Levin this ____ day of _____, 2022.

(SEAL)

Notary Public

My commission expires:

EXHIBIT A

terms of this Agreement shall be, and remain at all times, employees or agents of Artist for all purposes. Artist shall make no representation that it is a Town employee for any purposes.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.



TOWN OF SUPERIOR, COLORADO

Clint Folsom
Clint Folsom, Mayor

ATTEST:

Patricia Leyva
Patricia Leyva, Town Clerk

ARTIST:

Mitchell Levin

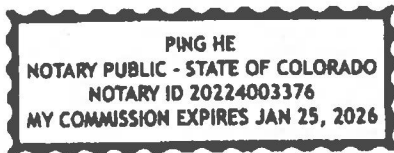
STATE OF Colorado)
) ss.
COUNTY OF Boulder)

Subscribed to and affirmed before me by Mitch Levin this 11th day of May, 2022.

(SEAL)

Ping He
Notary Public

My commission expires: Jan. 25, 2026



PREMISES

ART EASEMENT AGREEMENT

This ART EASEMENT AGREEMENT (the "Agreement") is made and executed this 17TH day of ~~NOVEMBER~~, 2020 (the "Effective Date") by and between Sportstable, a **limited liability corporation** with a legal address of 1 Superior Drive, Superior CO 80027 ("Grantor"), and the Town of Superior, a Colorado municipal corporation with a legal address of 124 East Coal Creek Drive, Superior, Colorado 80027 (the "Town") (each individually a "Party" and collectively the "Parties").

WHEREAS, Grantor is the owner of certain real property in the Town of Superior with an address of 1 Superior Drive, Superior, CO 80027, more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, (the "Property");

WHEREAS, the Town wishes to install certain art installations on a portion of the Property as depicted on Exhibit B, attached hereto and incorporated herein by this reference (the "Art Installations"); and

WHEREAS, to accomplish this purpose, Grantor is willing to grant to the Town an easement on a portion of the Property (the "Easement Property"), as set forth in this Agreement.

NOW THEREFORE, in and for the consideration of the sum of \$10.00 and other good and valuable consideration paid by the Town to Grantor, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Grant of Easement. Grantor hereby grants to the Town and its employees, licensees, contractors, invitees and agents, an easement to enter, re-enter and use the Easement Property to construct, modify, maintain and repair the Art Installation, as depicted on Exhibit B.
2. Term, Renewal and Termination.
 - a. Term. This Agreement shall commence on the Effective Date and shall terminate **18 MONTHS** thereafter.
 - b. Renewal. Unless terminated as provided herein, this Agreement shall automatically renew for successive **18-month** terms.
 - c. Termination. Either Party may terminate this Agreement at any time upon 90 days' prior written notice. Upon termination of this Agreement, the Town shall, at its expense, remove the Art Installation from the Easement Property.
2. Town's Rights. The Town shall have and exercise the right to ingress and egress in, to, over and across the Property for any lawful purpose needed for the full enjoyment of the rights granted by Grantor to the Town hereunder.
3. Grantor's Rights. Grantor retains all rights to the undisturbed use and occupancy of the Property not conveyed herein, insofar as such use and occupancy is consistent with and does not materially impair any grant herein contained.

4. Town's Obligations. In exercising its rights under this Agreement, the Town agrees to the following:

a. The Town shall access the Art Installation in such a reasonable manner as to minimally disrupt Grantor's Property or its use by Grantor and its tenants.

b. The Town shall cause any of the Easement Property, including landscaping, which is damaged by the Town during the Town's activities on the Easement Property to be returned to its original condition, or as near thereto as may be reasonably accomplished, all at the expense of the Town or its contractors or agents.

c. The Town shall be solely responsible for the maintenance of the Art Installation.

d. The Art Installation shall be constructed and maintained in a commercially reasonable and expeditious manner in compliance with all applicable law.

5. Grantor's Obligations. Grantor agrees to the following:

a. Grantor shall not interfere with the Town's exercise of any of its rights under this Agreement.

b. Grantor shall not install or permit the installation of any structure (above or below ground) or landscaping that would materially impair the Art Installation or impair the Town's rights under this Agreement.

6. Indemnification. Grantor shall indemnify, hold harmless and defend the Town and its representatives, officers, employees, agents, and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney fees, arising from or in any way connected with injury to or the death of any person or physical damage to any property resulting from any act, omission, condition, or other matter arising solely out of Grantor's negligent or intentional acts or omissions and related to or occurring on or about the Easement Property under this Agreement.

7. Warranty. Grantor warrants that it has the full right and legal authority to make the grant of the easement contained in this Agreement.

8. Recordation. Except as otherwise expressly provided herein, all provisions of this Agreement, including the benefits, burdens and covenants, are intended to run with the land and shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. The Town may record this Agreement in the official records of Boulder County.

9. Miscellaneous.

a. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

4. Town's Obligations. In exercising its rights under this Agreement, the Town agrees to the following:

a. The Town shall access the Art Installation in such a reasonable manner as to minimally disrupt Grantor's Property or its use by Grantor and its tenants.

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**EXHIBIT B
ART**

