



4800 Ashford Dunwoody Road
Dunwoody, Georgia 30338
dunwoodyga.gov | 678.382.6700

MEMORANDUM

To: Mayor and City Council

From: Michael Starling, Director of Economic Development

Date: 12/13/2021

Subject: **Art Easement – 5339 Chamblee Dunwoody Road**

BACKGROUND

The Public Art Ordinance requires an Art Easement between the City of Dunwoody and the Property Owner where the Art will be installed. In this case, the Property Owner is the Dunwoody Public Facilities Authority who approved the installation of the Proposed art installation at the February 8, 2021 Public Facilities Authority Meeting.

The Art Commission Approved the art installation, Metal Butterflies on Wall at the October 5, 2021 Board Meeting.

RECOMMENDED ACTION

Staff respectfully requests Mayor and Council to approve the Art Easement at 5339 Chamblee Dunwoody Road between the City of Dunwoody and the Dunwoody Public Facilities Authority.

After recording return to:

ART EASEMENT

THIS AGREEMENT, effective on 12/13/2021 (month/day/year), is between the **Dunwoody Public Facilities Authority** (“Grantor”), and the City of Dunwoody, a Georgia municipal corporation (“City”).

RECITALS

A. The City has adopted a program for the placement of art in and on public and private locations throughout the City of Dunwoody. The Dunwoody Art Commission administers the City’s public art program.

B. Grantor owns the property legally described in Exhibit A (attached hereto and incorporated herein) and is willing to make said property available to the City for the placement of public art, as defined in the City of Dunwoody Code (hereinafter, “Artwork”). Said Artwork is described in Exhibit B, attached hereto and incorporated herein.

IN CONSIDERATION of the mutual promises and performances set forth below, the parties agree as follows:

1. Grant of Easement. Grantor conveys, grants and warrants to the City, its successors and assigns, an easement for the purpose of installing, maintaining, operating and exhibiting the Artwork described in Exhibit B on and in the real property described in Exhibit A, including any building and structure thereon (“property”). The location of the Artwork shall be as approved by the Dunwoody Art Commission.

2. Term of Easement. This easement shall be for a period of 1 Year years from the date of execution. Unless terminated as provided in section 3, below, the easement shall automatically renew thereafter, and shall remain in full force and effect unless and until terminated.

3. Termination.

- a) At or after the expiration of the easement period, the easement may be terminated by either party upon 30 days written notice to the other party. Grantor expressly agrees and warrants that upon expiration, the Artwork shall be removed and the Property restored to its prior condition. Such removal shall occur within 30 days of the termination of the easement, unless this period is extended in writing by the City.
- b) Within the initial easement term (or at any time thereafter), the easement may be terminated by Grantor with the City’s consent in writing upon Grantor’s showing of any of the following: i) that the property is to be sold and the buyer requires removal of the easement as a condition of the purchase and sale; or ii) that the property is to be refinanced and the lender requires removal of the easement as a condition of the refinancing; or iii) that the property is to be substantially remodeled or altered in a way that precludes continued maintenance of the Artwork; or iv) that circumstances have materially changed and the continued existence of the easement or maintenance of the Artwork substantially impedes Grantor’s reasonable use and enjoyment of the Property. The City shall not unreasonably withhold consent to termination upon Grantor’s satisfactory demonstration of any of the foregoing conditions of termination.
- c) The City may terminate the easement at any time at its sole discretion upon 30 days written notice to Grantor, should Grantor fail to substantially perform Grantor’s obligations under Section 4, below. Should the City elect to exercise this right of termination, Grantor expressly agrees and warrants that the Artwork shall be removed and the Property restored to its prior condition. Such removal shall occur within 30 days of the termination of the easement, unless this period is extended in writing by the City.

4. Maintenance and Removal of Artwork. Grantor shall be responsible for maintaining and if necessary, repairing the Artwork described in Exhibit B during the existence of the easement. The City may remove the Artwork from the

property if, in the sole judgment of the City, the Artwork is being excessively damaged, and Grantor fails or refuses to maintain or repair the Artwork after 30 days written notice from the City requesting Grantor to do so. If the City removes the Artwork from the property, the City will restore the property to its original condition. Alternatively, at the City's sole discretion, the City may access the Artwork to maintain or repair the Artwork if Grantor has failed to do so after 30 days written notice from the City that the Artwork requires maintenance or repair.

5. Right of Entry. The City shall have the right to access the area on the property described in Exhibit A on which the Artwork is located during normal business hours, and at all other times with advance approval of the Grantor, for any and all of the purposes described in this agreement.

6. Binding Effect. The easement granted in this agreement shall run with the land and be binding upon and inure to the benefit of the Grantor and the City, and their respective successors or assigns, and any person or entity acquiring any right, title, or interest in the property.

7. Contractual Relationships. Assignment. This agreement does not constitute either party as the agent or legal representative of the other for any purpose whatsoever. The parties are not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of the other or to bind the other in any manner whatsoever. The parties shall not assign this agreement without the prior written consent of the other.

8. Notice. Notice shall be made to the following addresses, unless otherwise provided for in writing:

City of Dunwoody

City of Dunwoody
Attn: City Manager
4800 Ashford Dunwoody Road
Dunwoody, Georgia 30338

Grantor (name and mailing address)

Dunwoody Public Facilities Authority
Attn: City Manager
4800 Ashford Dunwoody Road
Dunwoody, Georgia 30338

9. Amendments. The parties expressly reserve the right to modify this agreement, from time to time, by mutual agreement. No modification or amendment of the provisions of this agreement shall be effective unless in writing and signed by authorized representatives of the parties.

10. Remedies. The parties acknowledge that breaches of this Agreement will affect substantial harm to the public interest which harm is difficult or impossible to prove as actual damages in an action hereunder. The parties agree that the prevailing party in an action for the breach of this agreement shall be entitled to a) specific performance of the terms of this agreement, and each of them; b) reasonable attorney's fees; and c) any other remedies available at law or in equity. The rights under this agreement are cumulative. The failure to exercise on any occasion any right shall not operate to forfeit the right on another occasion. The use of one remedy shall not be taken to exclude or waive the right to use another.

11. Invalidity of Particular Provisions. Should any term, provision, condition or other portion of this agreement or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of this agreement or the application of the term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

12. No Waiver. No waiver of full performance by any party shall be construed, or operate, as a waiver of any subsequent default or breach of any of the terms, covenants or conditions of this agreement.

IN WITNESS WHEREOF, the parties/persons have caused this instrument to be executed by its duly authorized representative(s).

GRANTOR

By: _____
"NAME OF GRANTOR REPRESENTATIVE"

 (print name of grantor representative)

(print title of grantor representative)

STATE OF _____)
) ss.
 County of _____)

This instrument was acknowledged before me on _____, 20 by
 _____ as _____ of the Grantor.

 Notary Public – State of _____

IN WITNESS WHEREOF, the City of Dunwoody, Georgia, has caused this instrument to be executed by its duly authorized representative(s) on _____ (date).

CITY OF DUNWOODY

By: _____

 (print name of city representative)

(print title of city representative)

EXHIBIT A – PROPERTY DESCRIPTION

5339 Chamblee Dunwoody Road
Dunwoody, GA 30338
North DeKalb Arts Center



9' High by 9' Wide metal sculpture will be installed directly on wall to the left of the entrance to the Spruill Center for the Arts.

EXHIBIT B – DESCRIPTION OF ART WORK

Metal Butterflies on Wall
9' High by 9' Wide
Artist – Kathy Walton