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05/16/2016 12:35:00 PM

Fee: \$62.00

**AFTER RECORDING RETURN TO:**

City of Klamath Falls  
Attn: City Recorder  
500 Klamath Avenue  
Klamath Falls, OR 97601

**PUBLIC ART EASEMENT**

This Public Art Easement (hereafter referred to as "Easement"), is made effective on May 16<sup>th</sup>, 2016 between Lance and Bernice Lesueur (collectively "Grantor"), and the City of Klamath Falls, an Oregon Municipal Corporation ("City").

**RECITALS:**

- A. The City is developing a park at 537 Main Street which abuts a blank wall, which is the north exterior wall of 533 Main Street. It is the desire of the City to decorate that wall with public art and to install light fixtures on the wall to illuminate the public art, and provide security for the park area.
- B. Grantor owns 533 Main Street which is the property shown in the attached Exhibit "A" and by this reference is incorporated herein. Grantor is willing to make said property available to the City for the placement of approved public art, electrical conduit and light fixtures.
- C. Review and approval of the public art, and the light plan by the Grantor is required prior to the installation of any public art, electrical conduit, or light fixtures.

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

**AGREEMENT:**

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 any public art, electrical conduit, or light fixtures on the real property described in the attached Exhibit "A" ("property").
2. Term of Easement. This Easement shall be perpetual, unless terminated as set forth herein.
3. Public Art Approval. The Grantor shall review and approve each public art piece to be installed on the north exterior wall of 533 Main Street. Conceptual drawings or photographs of the artwork, electrical conduit, or light fixtures to be

installed shall be submitted to the Grantor no later than thirty (30) days before the artwork is scheduled be installed. The Grantor shall respond to the Grantee within ten (10) days of the art proposal being submitted. Failure to respond to the installation request shall be interrupted as approval being granted to the City.

4. Termination.

- a) At any time after ten (10) years from the effective date, 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 Public Art, electrical conduit, or lighting fixtures. The City shall not unreasonably withhold consent to termination upon Grantor's satisfactory demonstration of the foregoing conditions of termination. City expressly agrees and warrants that upon termination, the Public Art, electrical conduit, or light fixtures 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) The City may terminate the Easement at any time at its sole discretion upon 30 days written notice to Grantor. Should the City elect to exercise this right of termination, City expressly agrees and warrants that the Public Art, electrical conduit, or light fixtures 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.
- c) In Grantor's sole discretion, Grantor may terminate this Easement if the subject building is damaged to the degree that costs of repairs would exceed fifty percent (50%) of the then-fair market value of the building exclusive of land, and the Grantor demolishes the building.

5. Maintenance and Removal of Public Mural. City shall be responsible for maintaining and if necessary repairing the public art, electrical conduit, or light fixtures during the existence of the Easement. The City may remove the public art, electrical conduit, or light fixtures from the property if, in the sole judgment of the City, the public art, electrical conduit, or light fixtures is being excessively damaged. If the City removes the public art from the property, the City will restore the property to its original condition. At the City's sole discretion, the City may enter upon the property to maintain or repair the public art, electrical conduit, or light fixtures. City shall not disturb Grantor's tenant's use of the premises at 533 Main Street. City shall be responsible for any damage caused to the Property or Grantor's building. All construction/maintenance of installation of

the art will be performed at City's sole risk. City will indemnify Grantor for any claims or liability arising from City's use of this Easement.

6. Right of Entry. The City shall have the right to enter the property described in Exhibit "A" 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 Easement.
7. Binding Effect. The Easement granted 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.
8. Contractual Relationships/Assignment. This Easement 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 Easement without the prior written consent of the other.
9. Notice. Notice shall be made to the following addresses, unless otherwise provided for in writing:

CITY  
City of Klamath Falls  
PO Box 237  
Attn: City Attorney  
Klamath Falls, OR 97601

GRANTORS  
Lance and Bernice Lesueur  
527 Main Street  
Klamath Falls, OR 97601

10. Amendments. The parties expressly reserve the right to modify this Easement, from time to time, by mutual agreement. No modification or amendment of the provisions of this Easement shall be effective unless in writing and signed by authorized representatives of the parties.
11. Remedies. The parties agree that the prevailing party in an action for the breach of this Easement shall be entitled to a) specific performance of the terms of this Easement, and each of them; b) reasonable attorney's fees; and c) any other remedies available at law or in equity. The rights under this Easement 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.
12. Invalidity of Particular Provisions. Should any term, provision, condition or other portion of this Easement or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of this Easement 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.

13. 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 Easement.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by its duly authorized representatives.

**CITY**

City of Klamath Falls

By: \_\_\_\_\_

Nathan Cherpeski, City Manager

Attested By: \_\_\_\_\_

KRISTINA  
BUCKLEY

Elisa D. Olson, City Recorder  
ASSISTANT TO

STATE OF OREGON )

County of Klamath ) ss.

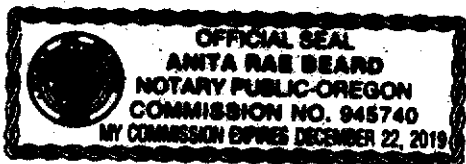
**GRANTORS (Property Owners)**

Lance and Bernice Lesueur

\_\_\_\_\_  
Lance Lesueur

\_\_\_\_\_  
Bernice Lesueur

On the 12 day of May, 2016, personally appeared Lance and Bernice Lesueur, and being first duly sworn, acknowledged said instrument to be their voluntary act and deed.



WITNESS my hand and official seal.

\_\_\_\_\_  
Anita Rae Beard

SIGNATURE OF NOTARY PUBLIC

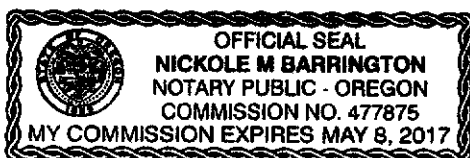
Notary Public for Oregon

My Commission Expires: December 22, 2019

STATE OF OREGON )

County of Klamath ) ss.

On the 16<sup>th</sup> day of May, 2016, personally appeared Nathan Cherpeski and Elisa D. Olson, who, each being first duly sworn, did acknowledge that the former is the City Manager and the latter is the City Recorder of the City of Klamath Falls, an Oregon municipal corporation, and that the foregoing instrument was signed on behalf of said municipal corporation, that this instrument is the voluntary act and deed of said municipal corporation.



WITNESS my hand and official seal.

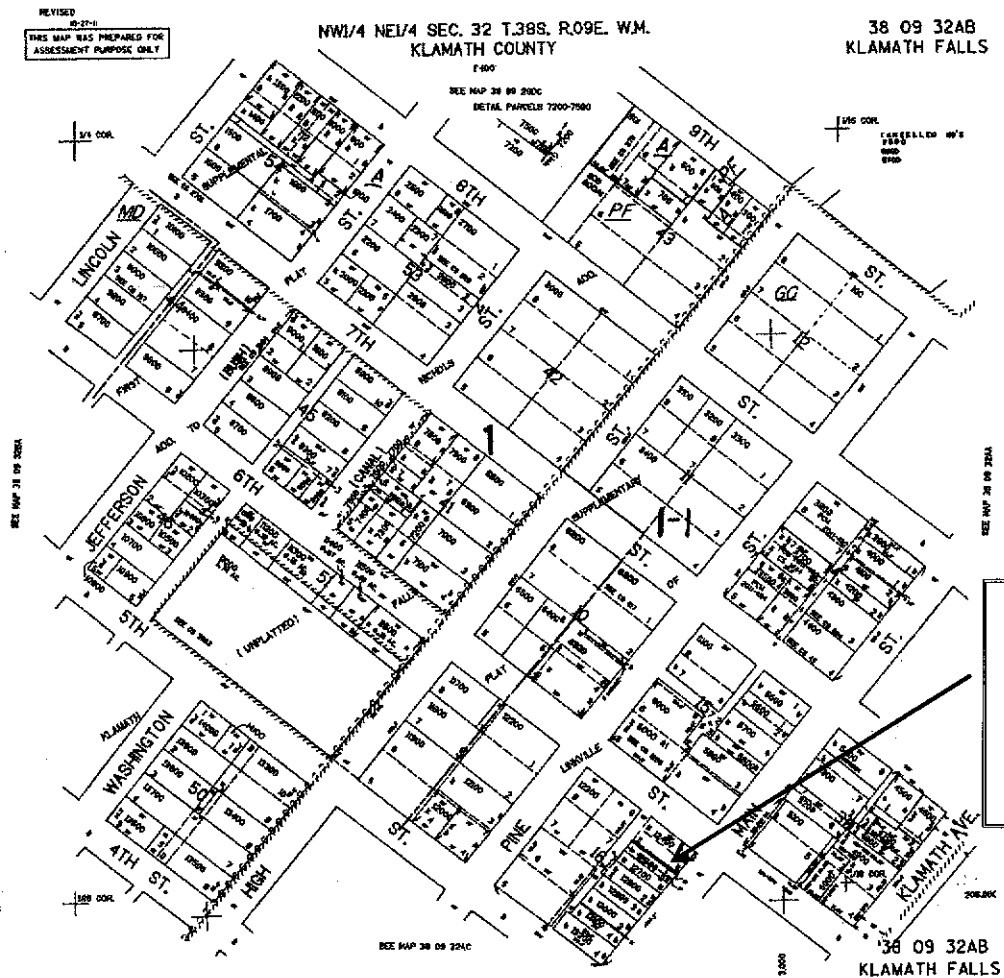
\_\_\_\_\_  
Nickole M. Barrington

SIGNATURE OF NOTARY PUBLIC

Notary Public for Oregon

My Commission Expires: 5-8-2017

## Exhibit "A"



Exterior North Wall  
of Tax Lot 12600  
(533 Main Street)  
subject to the  
provision of this  
Easement.



North wall of 533  
Main Street for  
displaying of public  
art and subject to  
the provisions of  
this Easement.