

Art Loan Agreement

Art Loan: [REDACTED] – Gravity Sculpture

This Art Loan Agreement (“Agreement”), effective January __, 2019, is by and between the **Town of Middlebury, Vermont** (“Borrower”), and [REDACTED] of [REDACTED] [REDACTED] (“Lender”).

1. Lender agrees to loan, and Borrower agrees to borrow, the artwork described on Schedule A (“Artwork”) in accordance with the terms and conditions of Agreement for one year, beginning on _____, 2019 and ending on _____ (the “Term”).
2. In consideration of the loan of the Artwork, Borrower agrees to create an exhibition of the Artwork in the outdoor plaza at the Borrower’s town offices located at 77 Main Street, Middlebury, Vermont 05753 (the “Site”), which exhibition shall prominently feature the Artwork in a mutually agreed upon area of the Site. The parties agree that there will be no monetary compensation due to either party in connection with Agreement.
3. During the Term, Borrower agrees that Lender’s loan of the Artwork to the Borrower shall be non-exclusive and that the Lender may from time to time loan the Artwork to other individuals or organizations in Lender’s sole discretion. For purposes of this paragraph, the term other individuals shall include the Lender and members of the Lender’s family. In such cases, the Lender shall provide Borrower with (A) at least ten (10) days’ notice of the need to disassemble the Artwork and transport it away from the Site, and (B) the date she expects that the Artwork will be returned to the Site. Disassembly and transportation costs for loans described in this paragraph shall be arranged by mutual agreement between Borrower and Lender at the time of each loan.
4. Lender waives any claim against the Borrower, or its employees or agents, arising out of the assembly or disassembly of the Artwork, except for claims resulting from the gross negligence or willful misconduct of the Borrower or its employees or agents. Borrower will work with Lender to, if reasonably possible, retain the artist who created the Artwork

(“Artist”) to assist in the assembly or disassembly of the Artwork, but if the Artist is not reasonably available the Borrower will work with Lender and/or the Artist’s estate to identify and retain a suitable alternative to assist in the assembly or disassembly of the Artwork.

5. Lender has provided a written estimated valuation of the Artwork in the attached Schedule A. The estimated value is provided for information purposes only and does not represent Borrower’s agreement to the value. In the event of a claim for damages to the Artwork, the Borrower and/or its insurer and Lender and/or its insurer shall each have the right to obtain one or more independent valuations of the Artwork prior to settling a claim, which valuations shall assess the value of the Artwork as of immediately prior to the occurrence of the events forming the basis of such claim and the value lost as a result of the damage. In the event that, following the receipt of such valuations, Borrower and Lender still cannot agree to the value of the Artwork and/or the damage, each of Borrower and Lender shall appoint one independent evaluator, who in turn shall appoint a third independent evaluator. The valuations determined by such third independent evaluator shall be final and binding upon the parties.
6. Borrower will provide physical damage insurance coverage for the Artwork during the time that the Artwork is in its possession with an insurance limit equal to the estimated valuation provided by Lender, and Borrower shall provide Lender with evidence of its physical damage insurance coverage.
7. Borrower will provide general liability insurance coverage associated with the Artwork during the time that the Artwork is in its possession with reasonable insurance limits. Borrower will ensure that Lender is designated as an additional insured under Borrower’s general liability insurance coverage, and will provide Lender with evidence of its liability insurance coverage in the form of a Certificate of Insurance.
8. The Borrower assumes full responsibility for the safety of its employees, agents and visitors in connection with the Artwork, and will post in a prominent place near the Artwork signage that states that no one should touch the Artwork in any fashion and that persons who touch or climb the Artwork do so at their own risk.
9. If the Artwork is damaged while in the Borrower’s possession and control, the Borrower agrees to indemnify Lender from losses resulting from such damage and to reimburse the

Lender for all reasonable costs incurred in repairing the damaged Artwork up to the value of the Artwork set forth on Schedule A hereto, unless otherwise agreed by the parties.

10. Lender hereby grants, subject to any rights that the Artist may have retained, Borrower a non-exclusive, non-transferable, royalty-free license to create, use, reproduce, display and publish photographic or digital images (“Images”) of the Artwork for the following limited purposes: (i) creating marketing and exhibit materials to promote or accompany the exhibit, such as promotional posters, brochures and websites, including but not limited to the Borrower’s website; (ii) creating materials that describe or promote the art programs and exhibits generally sponsored by the Borrower; and (iii) creating materials that market the Borrower provided that any use of the Images shall be subject to the Lender’s prior written approval. The Borrower shall provide copies of any Images approved by Lender pursuant hereto to Lender for Lender’s unlimited use. The rights granted under this paragraph are subject to the following: in no event shall the Borrower disclose the value of the Artwork, the identity of the Lender or any details about the Lender. Any reference to the Lender must be approved in writing by the Lender. In addition to the foregoing, the Lender understands that the Borrower may determine to establish a live video stream of the Artwork for viewing over the internet, and agrees to cooperate with the Borrower in such endeavor at the Borrower’s expense.
11. Lender represents and warrants that Lender is the owner of all rights, title and interest in the Artwork sufficient to enter into this Agreement and for the display of the Artwork by the Borrower and Lender represents that they own rights sufficient to grant the license described in paragraph 10 above, subject to any rights that the Artist may have retained.
12. Each party (the “Indemnifying Party”) shall indemnify, defend and hold harmless the other party (the “Indemnified Party”) from and against any and all liability, claims, damages, expenses, fees, penalties, and causes of action, including costs and reasonable attorneys’ fees, incurred as a result of any breach by the Indemnifying Party, its agents or employees, of this Agreement, or as a result of the negligence or intentional wrongful acts or omissions of the Indemnifying Party, its agents, or employees in connection with the performance of this Agreement; provided, however, that the Indemnifying Party shall have no obligation to indemnify the Indemnified Party for claims arising solely out of the Indemnified Party’s negligence or intentionally wrongful acts or omissions. Without meaning to limit the

foregoing, the Borrower shall indemnify, defend and hold harmless Lender for claims arising from injuries incurred by any of Borrower's employees, agents or visitors during the term of this Agreement in connection with the Artwork.

13. This Agreement may be terminated by either party upon sixty (60) days' prior written notice to the non-terminating party.
14. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties. This Agreement may only be amended by a written document duly executed by all parties.
15. This Agreement shall be interpreted under the laws of the State of Vermont. If any provision of this Agreement is held unenforceable, then such provision will be modified to reflect the parties' intention and all remaining provisions of this Agreement shall remain in full force and effect.

[signatures on next page]

Agreed to by:

██████████, Owner

Date: _____

Town of Middlebury, Vermont

Name:

Title:

Date: _____

SCHEDULE A - [REDACTED] – Loan List

	<u>Estimated Value</u>
1. <i>Gravity</i> by Eben Markowski Metal, (Approx. 120”h x 48”w x 144”d)	\$250,000
<i>Total Estimated Value of Loaned Artwork</i>	\$250,000