

**A  
RESOLUTION  
OF THE CITY COUNCIL  
OF THE CITY OF CHERRY HILLS VILLAGE  
ACCEPTING A DONATION OF ART AND APPROVING AN ART DONATION AGREEMENT**

**WHEREAS**, the Cherry Hills Village Art Commission ("CHVAC") maintains an art donation program that provides a process for evaluating and accepting donations of art; and

**WHEREAS**, the CHVAC has received an art donation application (the "Application") from resident Mark Boulding (the "Donor") for the four pieces *False Summit Series #2, #3, #5, and #6* (the "Art"); and

**WHEREAS**, at their July 26, 2021 meeting the CHVAC recommended that City Council accept the donation and approve the Art Donation Agreement (the "Agreement") with the donor; and

**WHEREAS**, Section 13.7, titled *Bequests, Gifts and Donations*, of the Cherry Hills Village Home Rule Charter, authorizes the City Council to receive bequests, gifts and donations of all kinds of property for public, charitable or other purposes and to do all things and acts necessary to carry out the purposes of such bequests, gifts and donations.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO THAT:**

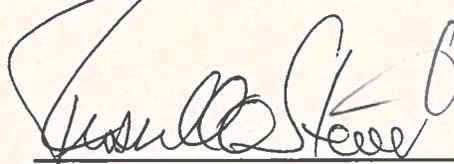
**Section 1.** The City Council hereby accepts the donation of the Art and approves the Agreement in substantially the same form as attached hereto as Attachment A, subject to such changes as may be needed to correct or clarify provisions or to negotiate such changes to the Agreement as may be appropriate that do not increase the financial obligations of the City, as approved by the City Attorney and City Manager.

**Section 2.** The City Council directs the CHVAC and City staff to take all steps necessary to effectuate the donation and to carry out the purpose of such donation.

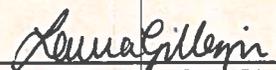
**Section 3.** This Resolution shall be effective immediately upon adoption.

Introduced, passed and adopted at the  
regular meeting of City Council this 17<sup>th</sup> day  
of August, 2021, by a vote of 6 yes 0 no.

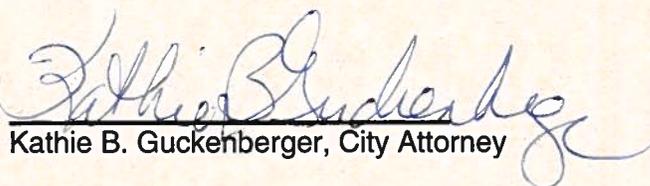
(SEAL)

  
\_\_\_\_\_  
Russell O. Stewart, Mayor

ATTEST:

  
\_\_\_\_\_  
Laura Gillespie, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kathie B. Guckenberger, City Attorney

**ATTACHMENT A:  
ART DONATION AGREEMENT**



## CHERRY HILLS VILLAGE ART COMMISSION ■

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2450 E. Quincy Avenue  
Cherry Hills Village, CO 80113

303-789-2541

### ART DONATION AGREEMENT

THIS ART DONATION AGREEMENT ("Agreement") is made and entered into by and between the City of Cherry Hills Village, a home rule municipality of the State of Colorado, with offices at 2450 E. Quincy Avenue, Cherry Hills Village, Colorado 80113 (the "City"), and Mark Boulding ("Donor") (each individually a "Party" and collectively the "Parties"). This Agreement shall be effective on the date of its mutual execution by the Parties ("Effective Date").

#### RECITALS

WHEREAS, the Donor submitted an Art Donation Application dated July 1, 2021 ("Application") to the Cherry Hills Village Art Commission ("CHVAC"), attached hereto as **Exhibit A**; and

WHEREAS, upon recommendation of the CHVAC, the City desires to accept the donation of the Art pursuant to the terms and conditions set forth herein.

#### **NOW, THEREFORE, the Parties agree as follows:**

1. Description of Art. Donor agrees to donate to the City *False Summit Series #2, #3, #5, and #6* (the "Art") as a charitable gift. The Art is more particularly described in **Exhibit B**, attached hereto and incorporated herein by this reference. Donor agrees to donate the Art to the City for no compensation now or in the future.

2. Delivery and Installation. Site preparation, delivery, and installation shall be completed as more particularly described in **Exhibit C** attached hereto. Donor shall be responsible for any insurance coverage for and repairs of any damage to the Art, at Donor's sole expense, until Art is delivered to and accepted by the City. On the delivery date, the City shall inspect the Art and provide the Donor with written notice of damages to be repaired prior to City's acceptance of the Art, if any. Following any repairs or, if no repairs are necessary, following inspection, City will provide Donor with a written notice of acceptance of the Art. Notwithstanding the foregoing, the City is under no obligation to accept the Art if, in the City's sole discretion, it is not in good condition or is not operable; provided, however, that the City will not exercise this discretion unreasonably.

3. Ownership. Upon the Effective Date, ownership of the Art shall pass to the City. By entering into this Agreement, the Donor hereby irrevocably assigns, conveys and otherwise transfers to City and its respective successors and assigns title to the Art.

4. Artist Rights. If Donor is the creator of the Art, this paragraph 4 shall apply to this Agreement. If Donor is not the creator of the Art, this paragraph shall not apply. Donor represents and warrants that the Art is solely the result of the Donor and creative efforts of the Donor. To the extent the uses, modification, destruction or removal of the Art under this Agreement affect any rights Donor may have under the provisions of federal or state law, including the 1990 Visual Artists' Rights Act under 17 U.S.C. §106A(a) and §113, the Donor hereby knowingly waives any rights provided by those laws. Notwithstanding the foregoing, the Donor shall retain any and all copyrights and reproduction rights to the Art. In addition, Donor grants to the City and its assigns an irrevocable license to make two-dimensional reproductions of the Art for non-commercial purposes, including, but not limited to, reproductions used in advertising,

brochures, media publicity, and catalogues or other similar publications. The City is not responsible for any third-party infringement of Donor's copyright or for protecting the intellectual property rights of Donor.

5. Warranties. Donor represents and warrants that: (i) except as otherwise disclosed in writing to the City, the Art is unique and original and does not infringe upon any copyright; (ii) the Art has not been accepted for sale elsewhere; and (iii) the Art is free and clear of any liens from any source whatsoever.

6. Maintenance, Relocation and Removal. The City shall give the Art the same care and maintenance as it does comparable City property. Nothing in this Agreement shall preclude any right of the City in its sole discretion to: (i) remove the Art from public display; (ii) move or relocate the Art to another location selected by the City for public display; or (iii) destroy the Art.

7. Insurance. The City shall obtain and maintain the types, forms, and coverage(s) of insurance for the Art deemed by the City to be sufficient to meet or exceed the City's minimum statutory and legal obligations arising from ownership of the Art and under this Agreement.

8. Independent Contractor. Donor is not a partner, joint venture, or employee of the City and the only relationship between Donor and the City is that of an independent contractor. Donor is not entitled to workers' compensation benefits under the City's workers' compensation insurance, and Donor is obligated to pay federal and state income tax on all monies earned under this Agreement.

9. 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 Arapahoe County, Colorado.

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

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

12. 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.

13. Modification. This Agreement may only be modified upon written agreement signed by the Parties.

14. Governmental Immunity. The City, its officers, and its 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 ("CGIA"), or otherwise available to the City and its officers or employees. Presently, the monetary limitations of the CGIA are set at three hundred eighty-seven thousand dollars (\$387,000) per person and one million ninety-three thousand dollars (\$1,093,000) per occurrence for an injury to two or more persons in any single occurrence where no one person may recover more than the per person limit described above.

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

16. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns of the Parties; provided that this paragraph shall not authorize assignment.

17. Attorneys' Fees. If the Donor breaches this Agreement, then it shall pay the City's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

18. Survival. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

19. Force Majeure. Neither the Donor nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, pandemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

20. Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the City of Cherry Hills Village and the Donor.

21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

*REMAINDER OF PAGE LEFT BLANK INTENTIONALLY*

*SIGNATURE PAGE FOLLOWS*

THIS AGREEMENT is executed and made effective as provided herein.

CITY OF CHERRY HILLS VILLAGE,  
COLORADO:

By: [Signature]  
Printed Name: Russell O Stewart  
Title: Mayor  
Date of execution: 8/17/21

ATTEST:

[Signature]  
Laura Gillespie, City Clerk

APPROVED AS TO FORM (excluding exhibits):

[Signature] for  
Kathie Guckenberger, City Attorney

DONOR:

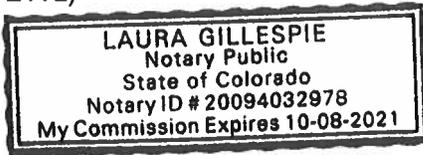
By: [Signature]  
Printed Name: MARK BOULDING  
Date of execution: 8/5/21

STATE OF COLORADO )  
COUNTY OF Arapahoe ) ss.

The foregoing Art Donation Agreement was subscribed, sworn to and acknowledged before me this 5<sup>th</sup> day of August, 2021, by Mark Boulding.

My commission expires: 10/8/21

(SEAL)



[Signature]  
Notary Public

**EXHIBIT A**  
**ART DONATION APPLICATION**



**CHERRY HILLS VILLAGE ART COMMISSION ■**

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**Art Donation Application**

Cherry Hills Village's Public Art Program will accept permanent donations of artwork to the City's collection in accordance with the Art Donation Policy. Artwork in public locations is a vital component of Cherry Hills Village's quality of life, and through the generosity of individual, group and corporate donations, we are able to increase the City's collection. Donated artwork must be in good condition; damaged or poorly maintained works of art will not be considered. CHVAC is under no obligation to accept a donated work of art.

**Donor Information**

Donor's Name: MARK BOULDING

Address: 1415 EAST TUFTS AVE City/State/Zip: CHV 80113

Phone Number: 303 781 2201

Email Address: MARK@MARKBOULDINGART.COM

**Artwork to be Donated (please attach photos)**

Name of Artwork: \_\_\_\_\_

Artist's Name: MARK BOULDING

Artist's Website: WWW.MARKBOULDINGART.COM

Year created: 2015

Type:  Sculpture  Wall Hanging  Other

Description: FALSE SUMMIT SERIES #2, #3, #5, #6

Approximate Size: 30" x 40"

Material(s): DIGITAL PRINTS ON ARCHIVAL PAPER

Year Created: 2015 Estimated Value: \$ 1,500 EACH

Maintenance Requirements/Recommendations: KEEP OUT OF DIRECT SUNLIGHT.

Installation Requirements/Information: \_\_\_\_\_

Siting Request/Recommendation: \_\_\_\_\_

Indicate amount of funding artist will contribute for future conservation and repair of the donated artwork (up to 10% of value): \$ 100 F.A.M.

Please submit this form along with photos of the artwork to:

Laura Gillespie, City Clerk  
City of Cherry Hills Village  
2450 E. Quincy Ave.  
Cherry Hills Village, CO 80113  
lgillespie@cherryhillsvillage.com

The Cherry Hills Village Art Commission holds regularly scheduled meetings on the last Monday of each month and will review your application at the next meeting. If approved, the donor and City of Cherry Hills Village must enter into a standard donation contract between both parties, outlining the circumstances of the donation, as well as funding amounts and payment arrangements (if applicable).

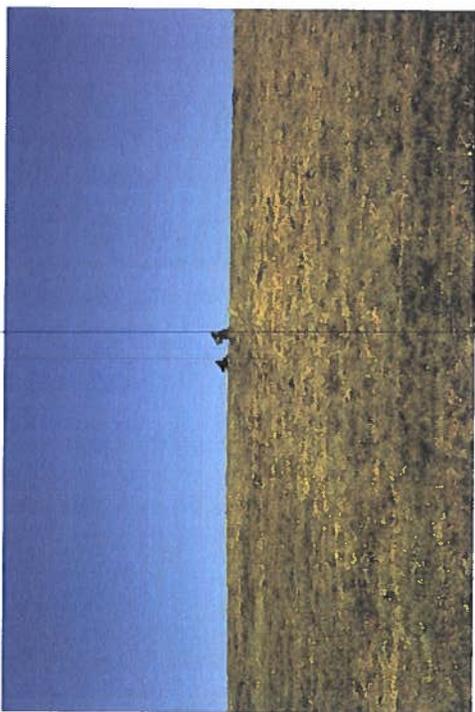
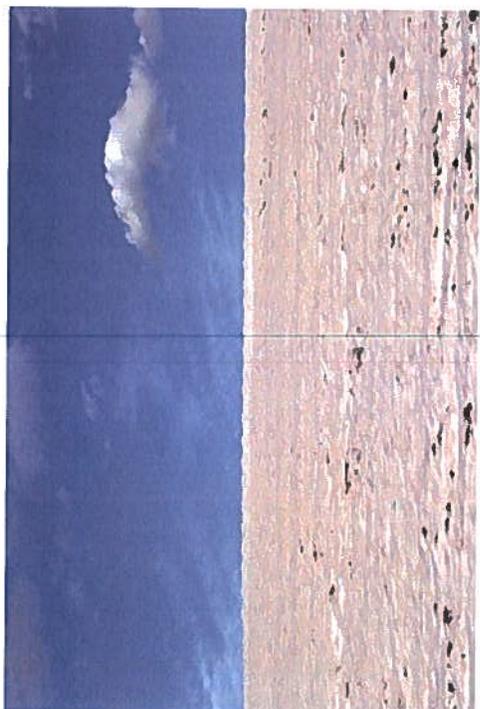
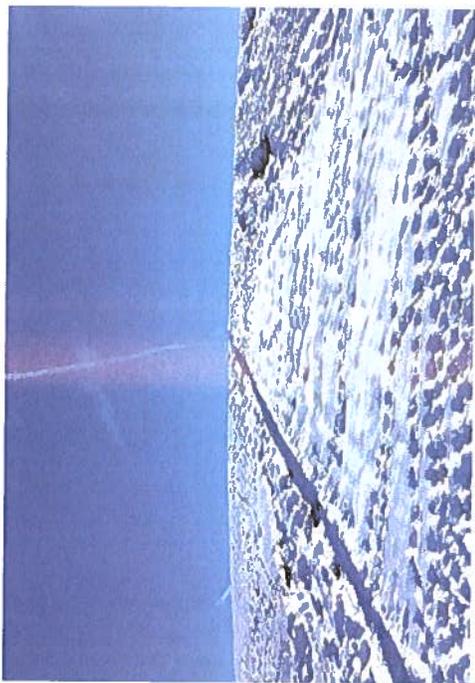
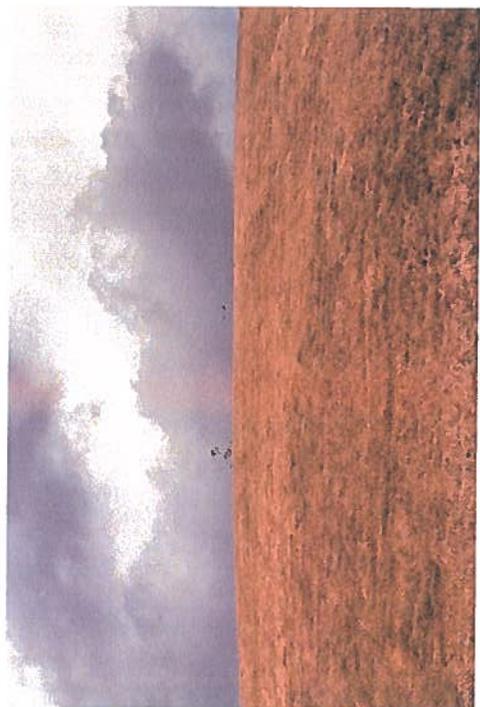
  
Signature

7/1/21  
Date

Internal Use Only:

Donation considered at CHVAC meeting: 7/26/2021

Approved:  Denied:



**EXHIBIT B  
DESCRIPTION OF ART**

Medium: Photographs (four)  
Size: 30" x 40"



**EXHIBIT C**  
**SITE PREPARATION, DELIVERY, AND INSTALLATION**

Installation:     The Art is already located at City Hall.

Location:        The Art will be placed on the administrative side of City Hall.