

1 THE PURSUIT OF HAPPINESS ARTWORK ACCEPTANCE AGREEMENT
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4 **THIS AGREEMENT** (the “Acceptance Agreement”), is dated as of the ____ day of
5 _____, 2015, between the **CITY OF DURHAM**, a North Carolina municipal
6 corporation, (the “City”), and Liberty Arts Inc. (the “Company” or “Contractor”), a nonprofit
7 corporation organized and existing under the laws of the State of North Carolina, hereinafter
8 collectively referred to as the “Parties”.

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10 **NOW, THEREFORE**, for and in consideration of the mutual terms and conditions
11 hereinafter contained, and other good valuable consideration, the receipt and sufficiency all of
12 which are hereby acknowledged, the Parties agree as follows:

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14 **1.0 BACKGROUND AND PURPOSE**

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16 The Company entered into a contract with a certain artist named CHARLIE BROUWER
17 of 268 Akers Rd. NW, Willis, VA (hereinafter, the “Artist”) for the purchase of artwork created
18 by the Artist titled “The Pursuit of Happiness” (hereinafter referred to as the “Artwork”). A
19 photographic representation of the Artwork is attached hereto as Exhibit A., “Photograph of
20 ARTWORK”. The title of the contract for purchase of the Artwork is “Contract for Purchase of
21 Sculpture ‘The Pursuit of Happiness’” dated 2011 (hereinafter, “Artist Agreement”). The
22 Artwork is a sculpture made primarily of pieces of Locust wood screwed together with deck
23 screws made in the shape of a walking man. The Artwork is currently on display as part of the
24 “Bull City Sculpture Show” (“BCSS”) in an outdoor location in the City of Durham, in the
25 Durham Convention Center Plaza at 310 W. Morgan Street. The Company is the sponsor and
26 organizer of the BCSS, and is responsible for the Artwork until the end of the BCSS. The
27 Company wishes to donate the Artwork to the City at the termination of the BCSS and the City is
28 desirous of accepting the Artwork subject to the terms of this Acceptance Agreement.

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30 **2.0 ACCEPTANCE, ASSIGNMENT AND MAINTENANCE OF THE ARTWORK**

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32 **2.1 Acceptance and Maintenance of the Artwork.** The City hereby accepts full
33 title and ownership of the Artwork. The City shall be responsible for all liabilities, costs, and
34 expenses resulting or arising out of owning, operating and maintaining the Artwork pursuant to
35 the terms of this Acceptance Agreement and the Artist Agreement. The City agrees to maintain
36 the Artwork consistent with the requirements of Section 9 of the Artist Agreement, attached
37 hereto as Exhibit B. The City shall insure the Artwork consistent with the coverage the City
38 would carry for all public works of art installed and maintained on City property, and the City
39 shall provide, upon request from Company, evidence of such insurance.

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41 **2.2 Assignment of Artist Agreement Rights to City.** The Artist Agreement
42 transferred ownership in the Artwork to the Company, including copyright and visual arts
43 interests in the Artwork. The Company hereby assigns to the City all rights, benefits, duties and
44 obligations arising from the Artist Agreement, excluding the payment to Artist for the Artwork
45 and any obligations assumed by the Company as part of this Acceptance Agreement.
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47 **2.3 Restoration, Removal, Destruction of the Artwork.** In the event of damage to
48 the Artwork requiring restoration or repair, the City and any future owner, successor, donee,
49 assignee or transferee of the City shall, if practicable, offer the Artist the first opportunity to
50 restore or repair the Artwork and, in any case, shall consult with the Artist with respect to the
51 restoration or repairs by attempting to contact Artist in accordance with Section 5.0, Notice,
52 below. The City shall not be obligated to display the Artwork on city property for any specified
53 period of time; however, the City shall not destroy the Artwork or permit the Artwork to be
54 destroyed without first offering to return ownership of the Artwork to the Artist or his or her
55 successors in interest by first attempting to contact Artist in accordance with Section 5.0, Notice
56 below.

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58 **2.4 Alteration or Modification of the Artwork.** The City shall not distort, mutilate,
59 or otherwise alter the Artwork, except to the extent necessary for safety reasons. In the event
60 such distortion, mutilation, or other alteration occurs, the Artist shall, in addition to any other
61 rights and remedies, have the right to have his or her name removed from the Work and no
62 longer have it attributed to him as its creator.

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64 **3.0 ASSIGNMENT AND TRANSFER OF RIGHTS IN ARTWORK TO CITY**

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66 The Company hereby irrevocably grants, transfers, conveys, assigns and sets over to the
67 City, and its successors and assigns the entire right, title, and interest in perpetuity in and to the
68 Artwork in the United States and worldwide.

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70 The Company hereby irrevocably grants, transfers, conveys, assigns and sets over to the
71 City a worldwide, perpetual, irrevocable, royalty-free, non-transferable, non-sublicensable,
72 exclusive license to use, display, exhibit, prepare derivative works of, distribute copies of,
73 photograph, video, and otherwise reproduce images of the Artwork for non-commercial
74 purposes. Notwithstanding the foregoing, the license does not restrict the Artist from producing,
75 marketing, selling or otherwise transferring works substantially similar to the Artwork for
76 installation and display elsewhere and granting rights similar to those granted herein to such
77 other works.

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79 The Company further agrees to execute and deliver at the request of the City any and all
80 other papers, instruments and assignments and to perform any other reasonable acts the
81 Company may require in order to vest all of Company's rights, title and interest in and to the
82 Artwork in the City (i) as are deemed necessary by City, (ii) for maintaining and perfecting the
83 City's rights to the Artwork, and (iii) as may be or become necessary for obtaining, maintaining,
84 or protecting said Artwork.

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86 **4.0 WAVIER BY ARTIST RIGHTS UNDER VARA IN ARTWORK.**

87 The Company has obtained from the Artist a waiver of his rights to the Artwork consistent with
88 the terms of this Agreement under the Visual Artists Rights Act of 1990 (17 U.S.C. § 106A
89 (2008)) ("VARA") in a form acceptable to the City. It is understood and agreed that, pursuant to
90 the Artist Agreement, and the terms and provisions of this Acceptance Agreement, the City has
91 the requisite authority to remove and disassemble the Artwork, if the City chooses to exercise its
92 rights to do consistent with the terms of this Acceptance Agreement.

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5.0 NOTICES, CHANGE OF NOTICE INFORMATION

5.1 All notices, documentation and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery or certified United States Mail, return receipt requested, addressed as follows:

To the City:
Office of Economic and Workforce Development
City of Durham
807 E. Main Street, Suite 5-100
Durham, NC 27701

Attn: Peter Coyle

To the Company:
Liberty Arts, Inc.
Attn: Jackie MacLeod, President
923 Franklin St.
Durham, NC 27701
E-mail: hello@jackiemacleod.com
Phone 919-260-2931

To the Artist:
Charlie Brouwer
268 Akers Rd. NW
Willis, VA
E-mail: cbouwer@swva.net
Phone: 540-250-2966

5.2 A change of address or person to receive notice may be made by either party by notice given to the other party. It shall be the sole responsibility of each individual party to provide accurate, updated notice information. Any notice or other communication under this Agreement shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

139 **8.0 EXHIBITS**

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141 The following exhibits are made a part of this contract:

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143 Exhibit A “Photograph of Artwork” consisting of 1 page;

144 Exhibit B “Artist Agreement,” consisting of 9 pages;

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146 In case of conflict between an exhibit and the text of this Agreement excluding the exhibit, the
147 text of this Agreement shall control.

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149 **9.0 INDEMNIFICATION**

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151 **9.1 Definitions.** In this Section 9.0, the following definitions shall apply:

152 “Claims” are claims, losses, damages, liabilities, fines, penalties, fees, royalties, costs, demands,
153 actions, suits, and judgments of any kind or nature whatsoever, whether at law or in equity,
154 including court costs and reasonable attorney’s fees assessed as part of any of said items.

155 “Persons Connected with Company” are Company’s officers, members, managers, board
156 members, employees, agents, contractors, subcontractors of all tiers, and invitees, but excluding
157 the City.

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160 **9.2 Indemnification by Company.** “City Indemnitees” are defined as City, its
161 officers, officials, employees, agents, and independent contractors, but excluding Company.
162 Company shall indemnify, defend, and hold harmless the City Indemnitees from and against all
163 Claims arising out of, relating to, or resulting from acts or omissions by Company or Persons
164 Connected with Company occurring prior to Acceptance arising out of, relating to, or resulting
165 from the Company’s obligations with respect to this Agreement. Without limiting the preceding
166 sentence, and as an additional obligation of Company, it is agreed that Company shall indemnify,
167 defend, and hold harmless the City Indemnitees from and against all Claims made by
168 independent contractors, including subcontractors of all tiers, where the independent contractor
169 was engaged by Company to perform work pursuant to this Agreement, except to the extent the
170 Claim is the result of a negligent or wrongful act or omission by any of the City Indemnitees. In
171 performing its duties under this Section 9.2, Company shall defend City Indemnitees with legal
172 counsel reasonably acceptable to City.

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174 **9.3 Survival.** This Section 9.0 shall remain in force despite termination of this
175 Agreement with respect to acts and omissions occurring before termination of this Agreement
176 (whether by expiration of the term or otherwise) and termination of the services of Company
177 under this Agreement.

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179 **10.0 MISCELLANEOUS PROVISIONS**

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181 **10.1 City Policy.** THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF
182 RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR
183 OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK
184 FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

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10.2 Choice of Law and Forum. This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice in Durham County. Such actions shall neither be commenced nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

10.3 Principles of Interpretation and Definitions. In this Agreement, unless the context requires otherwise (a) the singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words “include,” “including,” etc. mean include, including, etc. without limitation; (b) references to a “Section” or “section” shall mean a section of this Agreement; (c) “Contract” and “Agreement,” whether or not capitalized, refer to this instrument; (d) titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this Agreement; (e) “Duties” includes obligations; (f) the word “person” includes natural persona, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities; (g) the word “shall” is mandatory; and (h) the word “day” means calendar day.

10.4 Waiver. No action or failure to act by either party hereto shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

10.5 Performance of Government Functions. Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing legislative, governmental, or other powers or functions.

10.6 Severability. If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

10.7 Compliance with Law. In performing all of the Work, the Company shall comply with all applicable law. The City shall also comply with all applicable laws in fulfilling its obligations under the Agreement

10.8 No Third Party Rights Created. This Agreement is intended for the benefit of the City and the Company and not any other person.

10.9 Modifications; Entire Contract. A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City manager or a Deputy or Assistant City Manager signs it for the City. This Agreement contains the entire agreement between the

231 parties pertaining to the subject matter of this Agreement. With respect to that subject matter,
232 there are no promises, contracts, conditions, inducements, warranties, or understandings, written
233 or oral, expressed or implied, between the parties, other than as set forth or referenced in this
234 Agreement.

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236 **10.10 City’s Manager’s Authority.** To the extent, if any, the City has the power to
237 exercise the City’s rights and remedies under this Agreement that power may be exercised by the
238 City Manager or a Deputy or Assistant City Manager without City Council action.

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240 IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be
241 executed under seal themselves or by their respective duly authorized agents or officers.

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243 City:

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245 CITY OF DURHAM

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250 _____ By: _____

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255 preaudit certificate, if necessary:

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Liberty Arts, Inc.

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By: _____ (SEAL)

Title: _____

State of NORTH CAROLINA

ACKNOWLEDGMENT BY
LIBERTY ARTS, INC.

County of _____

I, a notary public in and for the aforesaid county and state, certify that
_____ personally appeared before
me this day and stated that he or she is (strike through the inapplicable:) chairperson/ president/
chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer
of LIBERTY ARTS, INC., a corporation, and that by authority duly given and as the act of the
corporation, he or she signed, under seal, the foregoing contract or agreement. This the _____
day of _____, 20_____.

My commission expires: _____

Notary Public

EXHIBIT A

“Photograph of ARTWORK”

