

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

BILLIE LAWLESS

4533 Payne Avenue
Cleveland, Ohio 44103

THE POLITICIAN, A TOY, INC.

4533 Payne Avenue
Cleveland, Ohio 44103

Plaintiffs,

v.

**CLEVELAND STATE
UNIVERSITY**

2121 Euclid Avenue,
Cleveland, Ohio 44115

JOHN DOE 1 & JOHN DOE 2,
unknown individuals associated with
Cleveland State University, in their
official and individual capacities
2121 Euclid Avenue,
Cleveland, Ohio 44115

Defendants.

Case No.:

Judge:

**VERIFIED COMPLAINT
FOR DAMAGES,
DECLARATORY RELIEF,
AND INJUNCTIVE RELIEF
WITH JURY DEMAND**

Preliminary Statement

1. This is an action brought by an artist against a public university, and individuals associated with that university, to vindicate the artist's First Amendment rights to free speech, his statutory rights to protect the integrity of his artwork, and for violation of the contract between the parties. This action seeks to

end continuing violations of federal law and the United States Constitution, and for other relief as described herein.

Nature of the Claims

2. This Complaint is brought pursuant to 42 U.S.C. § 1983, and seeks injunctive relief, declaratory relief, actual and/or statutory damages, attorneys' fees, and costs related to Defendant's violation of Plaintiffs' First Amendment rights, Plaintiff Billie Lawless's rights under the Visual Artists Rights Act of 1990 (17 U.S.C. § 106A), and the parties' contract.

Parties

3. Plaintiff is the author of a sculpture entitled *The Politician: A Toy* (the "Sculpture"), and owns all copyright interests in the Sculpture.

4. Plaintiff, The Politician, A Toy, Inc., is an Ohio corporation created by Mr. Lawless in order to manage business affairs related to the Sculpture.

5. Cleveland State University is, and at all relevant times, was a public educational institution with its principal campus and administrative offices in Cleveland, Ohio.

6. John Doe 1 is the individual associated with Cleveland State University who was ultimately responsible for censoring Plaintiff's Sculpture.

7. John Doe 2 is the individual associated with Cleveland State University who was ultimately responsible for terminating Plaintiffs' Contract.

8. The identities and capacities of defendants John Doe 1 and John Doe 2 are presently unknown to Plaintiffs, and have been named by fictitious names.

Plaintiffs will amend the Complaint to substitute the true names and capacities of the Doe defendants when ascertained. Plaintiffs are informed, believe, and thereon allege that John Doe 1 and John Doe 2 were at all times relevant herein employees and/or agents of Cleveland State University acting under the color of state law who are responsible for the acts and omissions that form the basis of this Complaint.

John Doe 1 & 2 are being sued in both heir official and individual capacities.

9. Plaintiff has a written agreement with Defendant, consisting of an original Agreement, and two Amendments extending the term (collectively, the “Contract”). True and accurate copies of the agreement and the extensions are attached as Exhibits 1-3.

Jurisdiction and Venue

10. This Court has subject-matter jurisdiction over Plaintiffs’ claims which arise under the United States Constitution and Federal Law under 28 U.S.C. § 1331. The Court has supplemental jurisdiction over Plaintiff’s state law claims under 28 U.S.C. § 1367 and the principles of pendent and/or ancillary jurisdiction.

11. This court has personal jurisdiction over Defendants because they own real estate and conduct operations in Cleveland, Ohio.

12. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events which give rise to the claims occurred within the Northern District of Ohio.

Factual Allegations

13. Plaintiff Billie Lawless is a renowned visual artist. He holds a Bachelors of Fine Arts from Rutgers University (1974) and Masters of Fine Arts from the State University of New York, Buffalo (1982).

Plaintiff's History of Political Commentary and Combating Censorship

14. Mr. Lawless is known for his controversial political works, and has spent much of his career combating censorship through the arts.

15. In 1985, Mr. Lawless's Sculpture, *Green Lighting*, was famously ordered to be removed by then-Mayor of Buffalo, New York, James Griffin. Mr. Lawless obtained an injunction from the New York Supreme Court in order to prevent its destruction.

16. Following the *Green Lightning* controversy, in 1987 Mr. Lawless came to Cleveland and SPACES Gallery for an exhibition entitled *Uncensored*, at which he exhibited his installation work \$...I KNOW IT WHEN I SEE IT...\$ (*Uncensored Einstein to Uncensored Bork*), a complex multimedia installation which utilized some of the images that Mayor Griffin found controversial, along with other references to art censorship.

17. In 1988, The City of Columbus, Ohio cited Mr. Lawless for violation of its signage ordinances for his work, *Didy Wah Didy*, a timed-sequence neon installation combining images of an animated mushroom cloud with text, including "ATOMIC PLAYGROUND AHEAD." Mr. Lawless obtained a TRO to remove a black tarp from *Didy Wah Didy* in the Franklin County Court of Common Pleas.

The Politician: A Toy

18. *The Politician: A Toy* is a forty-foot tall piece composed of ten tons of steel, epoxy paints, two tons of polypropylene rope, a steel armature structure, fiberglass, cedar, LEXAN, honeycomb aluminum, a transmission with motor and speed reducer, over 30 bearings, drive belts/chains, televisions and other electronics, surrounded by a forty-foot by fifty-foot wrought iron fence with double entendres of political clichés, such as “A THOUSAND POINTS OF SLIGHT,” “READ MY HIPS,” “AFFIRMATIVE FRICTION,” “CONTRADICTION IN AMERICA,” and “LAW & BORDERS.”

19. Plaintiff began *The Politician: A Toy* in 1976, and it remains a work in progress to this day.

20. Parts of the Sculpture are kinetic: the mouth and wheels are mechanized, and are designed to turn eighteen hours per day with the help of a motor, transmission, and various electrical and other engineering design processes.

21. The electrical and mechanical parts of the Sculpture require regular service, refurbishment, replacement parts, and other maintenance.

22. Along with the regular maintenance of the moving parts, Plaintiff periodically updates the text on the Sculpture with words or phrases that comment on contemporary political dialogue.

23. *The Politician: A Toy* was originally exhibited to the public on private property near the intersection of Chester Avenue and East 66th Street in Cleveland.

The Contract

24. On April 16, 2008, Plaintiff met with Cleveland State University officials to discuss moving *The Politician: A Toy* to Cleveland State University.

25. On July 25, 2008, Plaintiffs entered into a written contract with Defendant Cleveland State University (the “Contract”), under which CSU paid Plaintiffs \$120.00 per year to relocate the Sculpture to CSU’s campus and “to provide for the ongoing operation, maintenance and repair of the Sculpture.”

26. The parties agreed that Mr. Lawless would maintain ownership of the Sculpture over the life of the Contract. Contract at ¶30 (“title to the Sculpture shall at all times remain with the Artist...”).

27. Under the Contract, Mr. Lawless warranted that he owned all applicable copyrights in the Sculpture, and authorized CSU “to generate publicity regarding the Sculpture with proper attribution to the Artist.” Contract at ¶18. CSU also agreed that it would invite Mr. Lawless to participate in any publicity regarding the sculpture’s relocation to CSU. Id. at ¶9.

28. In the Contract, CSU agreed to reimburse Plaintiff for his ongoing maintenance and repair of the sculpture. Contract at ¶10.

29. The Contract states “CSU shall have no right or power to modify, disassemble or demolish the Sculpture, or to materially alter the area including within the fence surrounding the Sculpture without the prior written consent of the artist.” Contract at ¶15.

30. In the Contract, the parties agreed to comply with all applicable laws, including federal laws, during the course of the Contract. Contract at ¶32.

Display and Censorship

31. In and around November 2008, Mr. Lawless began transporting *The Politician: A Toy* to Cleveland State University's property, while simultaneously servicing and refurbishing various parts, including the fence, handle, tail, and mouth mechanism in his studio.

32. From November 2008 through June 2009, Mr. Lawless re-assembled *The Politician: A Toy* at Cleveland State University.

33. In May and June 2009, Mr. Lawless installed the fencing portion of *The Politician: A Toy* over the course of several days.

34. When Mr. Lawless installed the fencing portion on *The Politician: A Toy* after relocating it to CSU, there were several differences from its prior display: the text was painted white, and there was now text on all four sides of the fencing, instead of just two sides.

35. CSU never covered, complained, or mentioned the additional textual elements.

36. The Sculpture was dedicated at CSU on November 13, 2009.

37. On February 8, 2012, Mr. Lawless installed a textual sculptural element on the Northwest corner of the fence which said "OBAMA SCARE."

38. "OBAMA SCARE" remained on the Sculpture until Mr. Lawless removed it on June 3, 2013.

39. CSU never covered, complained, or mentioned the OBAMA SCARE textual element to Plaintiff.

40. In or around November 2012, Plaintiff became aware that CSU intended to allow a vegetable garden on the property immediately surrounding the Sculpture. Following Plaintiff's objection, CSU decided to not allow the proposed garden to be constructed on the property.

41. The initial term of the Contract expired on or around August 31, 2013; CSU continued to display the Sculpture and pay rent to Plaintiff under the "Holdover" provision of the parties' Contract.

42. On or about January 30, 2015, the parties executed a First Amendment to the Contract, extending the term of the Contract through August 31, 2017, and maintaining the essential terms of the Contract. Exhibit 2.

43. On or about October 5, 2017, the parties executed a Second Amendment to the Agreement, extending the term of the Contract as amended through August 31, 2020. Exhibit 3.

44. On or about March 18, 2018, Plaintiff updated the Sculpture, adding an element which reads, "BUILD A WALL OF PUSSIE."

45. "BUILD A WALL OF PUSSIE" is a reference to President Donald Trump's political messaging regarding building a wall along the Southern border of the United States, as well as his history of misogynist sexualized language, particularly his recorded comments on *Access Hollywood*,¹ and also references the iconic 'pussy'

¹ See Daniel Victor, *'Access Hollywood' Reminds Trump: 'The Tape Is Very Real,' The*

hats worn by participants in the Women's march of 2017, which mocked Mr. Trump's comments.

46. "BUILD A WALL OF PUSSIE" remained on the Sculpture until Mr. Lawless removed it during the course of routine repairs on April 1, 2018.

47. Mr. Lawless re-installed "BUILD A WALL OF PUSSIE" on October 13, 2018.

48. Upon information and belief, on or about October 15, 2018, CSU and/or John Doe 1 covered, or caused to be covered, the "BUILD OF WALL OF PUSSIE" sculptural element with a re-used vinyl banner.

49. CSU's reused vinyl banner has a CSU logo, and reads, "Welcome Home Viking Alumni."

50. On October 17, 2018, CSU's Fiscal Manager, James Gross, requested that Plaintiff remove the "BUILD OF WALL OF PUSSIE" sculptural element from *The Politician: A Toy*.

51. On October 18, 2018, Plaintiff, through Counsel, asserted his First Amendment rights in his Sculpture, and demanded that CSU remove the covering of the censored text.

52. On November 28, 2018, CSU and/or John Doe 2, through CSU's General Counsel, terminated the Contract.

New York Times, Nov. 28, 2017, available at <https://www.nytimes.com/2017/11/28/us/politics/donald-trump-tape.html>.

COUNT 1:

Unlawful Deprivation of Free Speech

Under the First and Fourteenth Amendments to the U.S. Constitution

53. Plaintiffs reallege all of the above paragraphs as if fully rewritten herein.

54. Defendants' covering the "BUILD A WALL OF PUSSIE" element of the Sculpture violates Plaintiff's rights arising under the First Amendment of the U.S. Constitution by discriminating against Plaintiff's speech based solely on the Sculpture's viewpoint.

55. Defendants' covering the "BUILD A WALL OF PUSSIE" element of the Sculpture violates the First Amendment rights of Plaintiff and the public at large by unlawfully imposing a content-based restriction on speech that was not reasonable in consideration of CSU's invitation for Plaintiff to display his piece of political art.

COUNT 2:

Unlawful Retaliation for Protected Expression

Under the First and Fourteenth Amendments to the U.S. Constitution

56. Plaintiffs reallege all of the above paragraphs as if fully rewritten herein.

57. Plaintiffs had a valid contract with Defendant.

58. Defendants purported to terminate the Contract based solely on Plaintiff's protected speech.

59. Defendants' retaliation for Plaintiff's protected speech violates Plaintiff's First Amendment rights.

COUNT 3:

Visual Artists Rights Act (17 U.S.C. § 106A(a)(2)) (Modification)

60. Plaintiffs reallege all of the above paragraphs as if fully rewritten herein.

61. Plaintiff created and owns all interest, including copyright interests, in the Sculpture.

62. Defendants' censorship distorted and mutilated the Sculpture.

63. As a result of Defendants' distortion and mutilation, Defendants have damaged Plaintiff's honor and reputation.

COUNT 4:

Visual Artists Rights Act (17 U.S.C. § 106A(a)(3)(A) (Misattribution)

64. Plaintiffs reallege all of the above paragraphs as if fully rewritten herein.

65. Defendants continue to use Plaintiff's name as the author of the modified work after their modification, distortion, and mutilation of the Sculpture.

66. As a result of Defendants' misattribution of the mutilated Sculpture to Plaintiff, Defendants have damaged Plaintiff's honor and reputation.

COUNT 5:

Breach of Contract

67. Plaintiffs reallege all of the above paragraphs as if fully rewritten herein.

68. Plaintiffs and Defendant had a valid contract under which CSU would pay Mr. Lawless for the right to display the Sculpture.

69. Plaintiffs performed under the Contract, delivering the Sculpture for display, and maintaining the Sculpture in working order.

70. By the explicit terms of the Contract, Defendant CSU was not permitted to modify the Sculpture in any way.

71. Defendants' covering of the "BUILD A WALL OF PUSSIE" was a modification of the Sculpture, and a breach of the parties' Contract.

72. As a result of Defendant's breach, Plaintiffs have been damaged in an amount to be proven at trial.

Declaratory Relief

73. Plaintiffs reallege all of the above paragraphs as if fully rewritten herein.

74. Defendants' violation of Plaintiff's First Amendment rights has created an actual controversy within this jurisdiction.

75. Mr. Lawless requests a declaration that Defendants' conduct as described herein are continuing violations of his constitutional rights.

Injunctive Relief

76. Plaintiffs reallege all of the above paragraphs as if fully rewritten herein.

77. As a direct and proximate result of Defendants' violation of Plaintiffs' First Amendment rights as described herein, Plaintiffs have been irreparably injured with no adequate remedy at law.

78. Injunctive relief is appropriate in this action because (a) Plaintiffs are likely to prevail on their claims; (b) Plaintiffs continue to suffer irreparable harm without immediate injunctive relief; (c) an injunction would cause no harm to anyone; and, (d) the public would benefit from an injunction.

Jury Demand

79. Plaintiffs hereby demand a trial by jury on all claims raised within this Complaint.

Prayer for Relief

WHEREFORE, Plaintiffs request that this Court:

- (1) Declare Defendants' censorship of the Sculpture unconstitutional;
- (2) Declare Defendants' termination of Plaintiffs' Contract unconstitutional;
- (3) Preliminarily and permanently enjoin Defendant from continuing its censorship of the Sculpture.
- (4) Award Plaintiffs judgment against Defendants in an amount in excess of seventy-five thousand dollars (\$75,000.00), together with statutory damages, punitive and exemplary damages, attorneys' fees, costs, expenses, and any other relief to which the Plaintiffs may be entitled or that the Court finds is appropriate or equitable.

Dated: January 24, 2019

Respectfully Submitted,

/s/ Andrew C. Geronimo

Andrew C. Geronimo (OH #0086630)

Peter Pattakos (OH # 0082884)

THE PATTAKOS LAW FIRM LLC

101 Ghent Road

Fairlawn, OH 44333

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VERIFICATION

I, Billie Lawless, declare as follows:

1. I am a Plaintiff in the present case, a citizen of the United States of America and a resident of the State of Ohio.
2. I have personal knowledge of the facts as set forth in the foregoing Verified Complaint for Damages, Declaratory Relief, and Injunctive Relief, and if called on to testify I would competently testify to the matters stated herein.
3. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on 23 JAN 2019.


Billie Lawless

FINAL

AGREEMENT

THIS AGREEMENT is made this 25th day July, 2008, by and between Cleveland State University, a state-supported university and instrumentality of the State of Ohio established pursuant to Ohio law acting by and through its Board of Trustees with a principal business address at 2121 Euclid Ave., Cleveland, OH 44115 (hereinafter "CSU"); Billie Lawless, a professional artist and sculptor, having his principal studio at 3615 Superior Avenue, Building 14A, Cleveland, OH 44114 (hereinafter the "Artist"); and The Politician: A Toy, Inc., an Ohio not-for-profit corporation, with its principal business address c/o Douglas P. Whipple, 26600 Detroit Road, Cleveland, OH 44145-2397 (hereinafter "The Politician, Inc.").

WITNESSETH

WHEREAS the Artist has created a sculpture entitled "The Politician, A Toy," consisting primarily of an abstract-like character made of steel, wood, fibers and lights, with moving wheels and mouth, and including the surrounding ironwork fence (hereinafter the "Sculpture," a photo of which is attached hereto as EXHIBIT A), and

WHEREAS the Sculpture is presently located at or near 1930 E. 66th Street, Cleveland, OH, and

WHEREAS CSU, the Artist and The Politician, Inc. (collectively the "Parties" and individually a "Party") mutually desire to relocate the Sculpture to the property of CSU, specifically to the southwest corner of E. 18th Street & Chester Avenue (PPN 102-24-019) (hereinafter the "Premises"), and to provide for the ongoing operation, maintenance and repair of the Sculpture.

NOW THEREFORE, in consideration of the premises and covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Lease of Sculpture. The Artist agrees to lease the Sculpture to CSU pursuant to the terms and conditions set forth in this Agreement. CSU shall pay the Artist One Hundred Twenty

Dollars (\$120.00) per year at the end of each annual period covered by this Agreement. CSU shall pay the Artist, without notice or demand, at the office of the Artist or any other place that the Artist may designate in writing.

2. Term. The Initial Term of this Agreement shall be for five (5) years ("Term"), commencing on completion of the installation and ending on August 31, 2013, unless terminated for any reason as set forth in this Agreement. After the Initial Term, the Parties may agree in writing to extend the Agreement for additional Terms of five (5) years each.

3. Termination of Agreement. During the Initial Term of this Agreement, the Artist may terminate this Agreement at any time and for any reason, upon six (6) months written notice to all Parties, provided that the Artist reimburse CSU for the unamortized portion of the relocation and restoration expenses paid to the Artist pursuant to this Agreement. The amortization shall be based on a straight-line basis over five (5) years, beginning with the effective date of the Initial Term of this Agreement. During the Initial Term of this Agreement, CSU may terminate this Agreement at any time and for any reason, upon six (6) months written notice to all Parties. During subsequent Terms of this Agreement any Party may terminate this Agreement at any time and for any reason upon six (6) months written notice to all Parties.

4. Holdover. If CSU retains possession of the Sculpture on the Premises after the expiration of any Term of this Agreement and continues to pay rent without objection from the Artist, then CSU's right to possess the Sculpture shall be from month to month and governed by all terms and conditions of this Agreement. Any such Holdover Period shall not exceed a total of twelve (12) months at which time this Agreement shall terminate unless at such time all Parties agree in writing to extend the Agreement.

5. Relocation of the Sculpture to the Premises. The Artist and/or The Politician, Inc. shall be responsible for restoring and transporting the Sculpture to the Premises. CSU shall reimburse the Artist for any actual and reasonable engineering, materials, and labor costs as may be

necessary to restore, transport and install the Sculpture on the Premises. In no event shall the total cost of such engineering, materials and labor costs exceed Forty Thousand Dollars (\$40,000.00). The Artist and/or The Politician, Inc. shall transport the Sculpture to the Premises as promptly as practicable, but in any event no later than three (3) months after the date this Agreement is executed.

6. Foundation and Electrical. All structural and foundation work as may be necessary to install the Sculpture on the Premises shall be performed by CSU in accordance with the plans generated by I.A. Lewin, P.E. and Associates, mechanical work in accordance with the plans of Joseph Phai, and electrical work in accordance with the plans of Gedeon Frederick and Co. Such plans will be provided at the sole expense of the Artist and be subject to the approval and acceptance of CSU's Director or Capital Planning. CSU reserves the right to alter any such plans to comply with all applicable zoning and construction codes and and/or safety requirements; or, as may be required to accommodate the topography or other unique site characteristics of the Premises; however no such alteration will interfere in a substantial manner with the appearance or operation of the Sculpture.

7. Permits. CSU shall be responsible for applying for any zoning changes or variances, use permits, or any and all other permits necessary for the Sculpture's installation on the Premises.

8. Recent Restoration Expenses. Within thirty (30) days of the execution of this Agreement, CSU will reimburse the Artist in the amount of Four Thousand Five Hundred Forty-Nine and Dollars and Sixteen Cents (~~\$4,549.16~~ ^{\$6,239.84} *8/1/19* *10/1/19* *BS*) for recent restoration expenses as itemized in EXHIBIT B.

9. Publicity. CSU will extend an invitation to the Artist and The Politician, Inc. to participate in any publicity pertaining to the relocation, restoration, installation and/or rededication of the Sculpture, and will give reasonable prior notice of same.

10. Ongoing Maintenance and Repair of the Sculpture. CSU agrees to reimburse the Artist for the ongoing maintenance and repair of the sculpture. Prior to incurring any maintenance

and repair costs, The Artist shall provide CSU with a detailed estimate of proposed costs, which will be subject to the review and approval of CSU. The proposed maintenance schedule is attached hereto as EXHIBIT C.

11. Sculpture Operation & Lighting. CSU will consult with the Artist concerning the design of the lighting of the Sculpture and the operation and lighting schedule. CSU agrees to provide the utilities required by the operation and lighting schedule. The proposed operation and lighting schedule is attached hereto as EXHIBIT D. CSU agrees to be responsible for the upkeep of the Premises.

12. Insurance. During the Term of this Agreement, the Artist and/or The Politician, Inc. shall maintain insurance covering the Sculpture against loss or damage by fire, vandalism, malicious mischief, terrorism, windstorm, hail, smoke, explosion, riot, civil commotion, vehicles, aircraft, flood or earthquake. The insurance shall be carried by insurance companies authorized to transact business in Ohio. In addition, the policy or policies shall meet the following conditions:

- a. The insurance shall be in an amount no less than One Hundred Percent (100%) of the replacement cost of the Sculpture.
- b. The insurance shall be maintained for the protection of the Artist, The Politician, Inc. and CSU and shall name all Parties as insureds.
- c. Any and all insurance proceeds that become payable at any time during the Term of this Agreement because of damage to or destruction of the Sculpture shall be payable to CSU and applied to CSU's cost of repairing, restoring and replacing the damaged or destroyed portions of the Sculpture in the manner required by Paragraph 16 of this Agreement. However, if CSU elects to exercise the option provided under Paragraph 16 of this Agreement to terminate this Agreement because of damage to or destruction of the Sculpture, then any and all insurance proceeds that become payable as a

result of that damage or destruction shall be paid to the Artist to compensate the Artist for such damage to or destruction of the Sculpture, except for any unamortized portion of the relocation and restoration expenses paid to the Artist pursuant to this Agreement and/or to the extent that such insurance proceeds are paid to compensate for damages to the Premises.

- d. During the Term of this Agreement, CSU shall reimburse the Artist and/or The Politician, Inc. for the cost of the premium for the insurance described in this Section.

13. **Liability Insurance.** During the Term of this Agreement, Artist and/or the Politician, Inc. shall maintain commercial general liability insurance including premises and completed operations liability coverage and insuring against all claims and liability for personal injury, death and property damage, arising from the Sculpture. The insurance shall be carried by insurance companies authorized to transact business in Ohio. In addition, the policy or policies shall meet the following conditions:

- a. The insurance shall be in an amount no less than. One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage
- b. The insurance shall be maintained for the protection of the Artist and The Politician, Inc. and CSU and shall name all Parties as insureds.
- c. During the Term of this Agreement, CSU shall reimburse the Artist and/or The Politician, Inc. for the cost of the premium for the insurance as described in this Section.

14. **Certificates of Insurance.** The Artist and/or The Politician, Inc. shall furnish CSU with certificates of all insurance required by this Agreement and, at CSU's request, shall furnish copies of the insurance policies. The certificates shall evidence a notice of at least thirty (30) days to CSU of cancellation of or material change to any policy. If the Artist and/or The Politician, Inc. does not keep

such insurance in full force and effect, the Artist and/or The Politician, Inc. must notify CSU of this failure immediately. Within ten (10) days following such notice, CSU may, at its option, acquire and pay the premiums on the insurance needed to fulfill the Artist's obligations under this Agreement or terminate the Agreement.

15. Alteration or Modification of the Sculpture. CSU shall have no right or power to alter, modify, disassemble or demolish the Sculpture, or to materially alter the area included within the fence surrounding the Sculpture without the prior written consent of the Artist.

16. Damage or Destruction; Option to Terminate or Repair. In the event that the Sculpture is damaged or destroyed by any cause whatsoever, CSU may elect either of the following options:

- a. Within sixty (60) days, CSU shall commence and diligently pursue to completion the repair, restoration, or replacement of the damaged or destroyed portions of the Sculpture, and this Agreement shall remain in full force and effect, with no abatement in rent.
- b. CSU shall terminate this Agreement on sixty (60) days written notice to the Artist, and shall quit and surrender the Sculpture to the Artist, in which case CSU shall pay for all costs incurred in the demolition and removal of the Sculpture from the Premises.

17. Consultation. As provided in this Agreement, and as otherwise reasonably necessary throughout the Term of this Agreement, The Artist and The Politician, Inc. shall reasonably make himself and themselves available to CSU for consultation and promotional purposes at no additional cost to CSU.

18. Copyright. The Artist warrants and certifies that he has asserted and owns a copyright in the design, name and other artistic and copyrightable features of the Sculpture. The Artist hereby gives CSU permission to generate publicity regarding the Sculpture with proper

attribution to the Artist. The Artist and The Politician, Inc., jointly and severally, agree to defend, indemnify and hold CSU harmless from and against any and all claims, demands, and causes of action that the Sculpture infringes any patent, copyright, utility model, industrial design, trade secret, trademark or other similar proprietary right of any third party. The Artist and The Politician, Inc., jointly and severally, agree to pay all costs of such defense and settlement and any and all penalties, costs, damages and attorneys' fees.

19. Entry and Inspection of the Sculpture. The Artist, or his agents or designees, shall have the right to enter upon the Premises with reasonable notice during business hours to inspect, or to complete any work that may be necessary because of CSU's breach of any of the terms and conditions of this Agreement, or to show the Sculpture to potential buyers and agents.

20. Right of First Refusal. In the event that the Artist receives a bona fide written offer to sell the Sculpture during the Term of this Agreement, the Artist will notify CSU within two (2) business days. Upon receipt of notification of such a bona fide written offer, CSU will have thirty (30) days to inform the Artist in writing of its intent to exercise an unrestricted right of first refusal to purchase the Sculpture.

21. Delivery of Possession upon Termination. On or before the expiration or termination of this Agreement, CSU shall promptly surrender the Sculpture to the Artist in good order, condition and repair. The Artist, at his sole expense, is responsible for removing the Sculpture from the Premises as promptly as practicable, but in any event no later than three (3) months after the effective date of such expiration or termination of this Agreement.

22. Liability. Each Party to this Agreement agrees to be responsible for any negligent acts or negligent omissions by or through itself or its agents, employees and contracted servants and each Party further agrees to defend itself and themselves and pay any judgments and costs arising out of such negligent acts or negligent omissions, and nothing in the Agreement shall impute or transfer any such responsibility from one to the other.

23. Remedies. In the event of a breach and/or default of any of the provisions, obligations or duties embodied in this Agreement, the Parties may exercise any administrative, contractual, equitable or legal remedies available. Any action or proceeding against any of the Parties to this Agreement or the subject matter hereof shall be brought and enforced exclusively in the competent courts of Ohio, and the Parties to this Agreement consent to the exclusive jurisdiction of such courts with respect to any such action or proceeding.

24. Assignment. No Party may assign its rights and/or responsibilities pursuant to this Agreement without the prior written consent of the other Parties.

25. Notices. All notices and demands of any kind that a Party may be required or may desire to give to another Party in connection with this Agreement must be given at the Party's address as set forth above. A Party may change the address to which notices to that Party are to be directed by written notice of the change to all Parties.

26. Severability. If any term, covenant or condition of this Agreement shall be invalid or unenforceable to any extent, the remainder of the terms, covenants and conditions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

27. Waiver. The failure of a Party to seek redress for violation of or to insist on strict performance of any covenant, agreement, term, provision or condition of this Agreement shall not constitute a waiver of the covenant, agreement, term, provision or condition. No provision of this Agreement shall be deemed to have been waived, unless the waiver is in writing and signed by the Party against whom enforcement is sought.

28. Beneficiaries. This Agreement shall inure to the benefit of and be binding on each Party and its respective personal representatives, executors, successors and assigns, except as specifically otherwise provided herein.

29. Construction. This Agreement was the result of mutual negotiations and shall not be construed as having been prepared by any one Party. The paragraph headings have been inserted solely for the purpose of simplified reference and shall not in any way control the construction of the language herein. All Exhibits attached hereto constitute an integral part of this Agreement and are hereby incorporated herein by reference.

30. The Artist and The Politician, Inc. The Parties agree that in the event that the Artist dies or is adjudicated legally incompetent during the Term of this Agreement and/or while the Sculpture is on the Premises, any reference in this Agreement to the Artist shall be amended by replacing such reference with The Politician, Inc. Notwithstanding anything in this Section, title to the Sculpture shall at all times remain with the Artist, his executors, successors and/or heirs during the Term of this Agreement and the terms and conditions of this Agreement shall be binding on the Artist's executors, successors and/or heirs, as applicable.

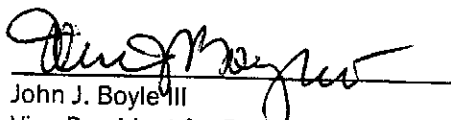
31. Governing Law. This Agreement is governed by the laws of the State of Ohio and the Parties to this Agreement consent to the exclusive jurisdiction of the competent courts of Ohio.

32. Compliance with all Laws. The Parties agree to comply with all applicable federal state and local laws, ordinances, rules and regulations, as they may be amended from time to time, and specifically with Ohio Ethics and Conflicts of Interest Laws and Executive Order 2007-01S, as applicable to this Agreement. If any part of this Agreement is determined to violate federal, state, or local laws, rules, or regulations, the Parties agree to attempt, in good faith, to negotiate revisions to any such provisions. If the Parties fail to agree within a reasonable time to the revisions required to bring the entire Agreement into compliance, either Party may terminate this Agreement upon sixty (60) days prior written notice to the other Parties.

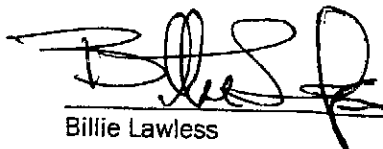
33. Entire Agreement. This Agreement represents the entire agreement between the Parties hereto with respect to the subject matter hereof, and may amended or modified only through a writing executed by all Parties.

IN WITNESS WHEREOF, the Parties hereto have set their hands to this Agreement, as of the day and year first written above.

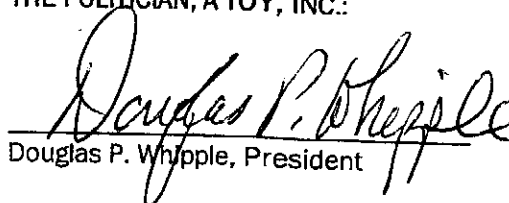
CLEVELAND STATE UNIVERSITY:


John J. Boyle III
Vice President for Business Affairs & Finance

ARTIST:


Billie Lawless

THE POLITICIAN, A TOY, INC.:


Douglas P. Whipple, President

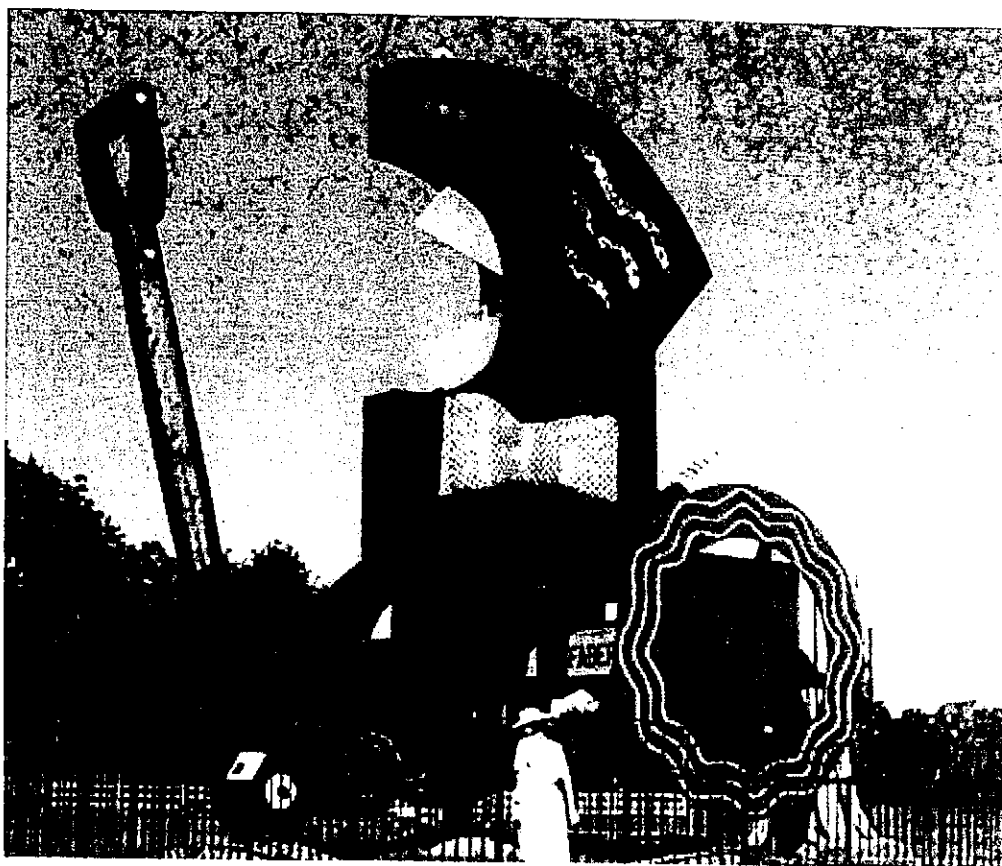


EXHIBIT B: REIMBURSABLE EXPENSES		
<u>Invoice</u>	<u>Date</u>	<u>Amount</u>
Applied Industrial Technologies	04/26/07	\$375.47
Ced-Leader Electrical Supply	06/21/07	\$4.64
Dayton Freight	04/30/07	\$0.00
McMaster-Carr	08/16/07	\$186.28
Grainger	01/11/07	\$1,331.19
Ohio Pipe, Valves & Fittings	06/15/07	\$13.65
Plascore	05/01/07	\$470.79
Spee-D-Metals	06/19/07	\$15.00
Spee-D-Metals	06/22/07	\$60.00
Tru-Trac Services	02/19/07	\$1,614.82
The Politician, A Toy	misc	\$2,168.00
		<u>\$6,239.84</u>

EXHIBIT C: MAINTENANCE SCHEDULE

1. Change transmission oil once a year.
2. Change wheel bearings every three to four years.
3. Replace 13-inch black and white televisions as needed.
4. Repainting every three to five years as needed.
5. Refinish and seal handle every ten years.
6. Replace drive belt for mouth every ten years.
7. Repaint/repair fence every ten years.
8. Replace motor every five to eight years as needed.
9. Replace Flex-dyne inter-transmission to motor coupler every three to five years.
10. Rebuild transmission every ten years.
11. Cosmetically refurbish tail as needed.

EXHIBIT D: OPERATING AND LIGHTING SCHEDULE

Operating schedule: 6 AM to midnight.

Lighting schedule: Dusk to midnight.

FIRST AMENDMENT TO AGREEMENT

This First Amendment to Agreement (the "Amendment") is made this 30th day of January, 2015, by and between Billie Lawless ("Artist"), and CLEVELAND STATE UNIVERSITY ("CSU").

WHEREAS, CSU and Artist entered into that certain Agreement dated July 25, 2008 (the "Agreement"), whereby CSU leased from Artist a sculpture entitled "The Politician, A Toy", consisting primarily of an abstract character made of steel, wood, fibers and lights, with moving wheels and mouth; and,

WHEREAS, the Agreement which was originally for five years expired on August 31, 2013; and,

WHEREAS, CSU has continued to pay rent for the sculpture during a one-year holdover period which ended August 31, 2014; and,

WHEREAS, CSU and Artist mutually desire to extend the term of this Agreement for an additional three (3) years, and CSU and Artist have agreed to such extension subject to the terms and conditions set forth herein;

NOW, THEREFORE, CSU and Artist agree as follows:

1. The term of this Amendment shall commence on September 1, 2014 and terminate on August 31, 2017.
2. Upon the expiration of the term, the parties may agree in writing to extend the Amendment and the underlying Agreement for an additional term of three (3) years. This mutual option shall repeat at the end of each agreed extension of the term.
3. Section 10 of the Agreement, Ongoing Maintenance and Repair of the Sculpture, shall be amended as follows:

Ongoing Maintenance and Repair of Sculpture. CSU agrees to reimburse the Artist for the ongoing maintenance and repair of the sculpture, provided that the Artist shall adhere to the CSU Purchasing Policy in all respects, including without limitation competitive bids for goods and services, and purchase orders. Any person or company, including the Artist, performing work on the sculpture or site must comply with CSU's contractor rules regarding safety and access. Prior to incurring any maintenance or repair costs, the Artist shall provide CSU a detailed estimate of proposed costs, and the estimate shall be subject to review and approval of CSU. The proposed maintenance schedule is attached and incorporated by this reference as Exhibit C.

4. Exhibit C: Maintenance Schedule shall be amended as follows; change items #5 and #7 from "every ten years" to "every seven years" and item #11 to "cosmetically refurbish or replace tail as needed"
5. Except as modified and amended hereby, CSU and Artist each ratifies and affirms the terms of the Agreement, which is attached and incorporated by this reference as though fully rewritten here.

STATE OF OHIO

)

) SS:

COUNTY OF CUYAHOGA

)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named CLEVELAND STATE UNIVERSITY by Stephanie McHenry its CFO, who acknowledged that he/she did execute the foregoing instrument and that the same is the free act and deed of said institution and his/her free act and deed as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affix my official seal at Cleveland, Ohio, this 30th day of January, 2015

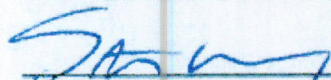


HEIDI SZELTNER
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES 11-1-18


Heidi Szeltner
Notary Public

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day and year first above written.

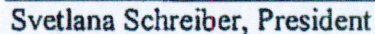
CLEVELAND STATE UNIVERSITY


Stephanie McHenry
Vice President for Business Affairs and Finance

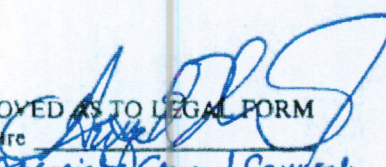
ARTIST


Billie Lawless
Artist

THE POLITICIAN, A TOY, INC.:


Svetlana Schreiber, President

APPROVED AS TO LEGAL FORM

Signature 

Title Associate General Counsel

Office of General Counsel

Cleveland State University

Date 27 January 2015

STATE OF OHIO

)

) SS:

COUNTY OF CUYAHOGA

)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named, Artist did execute the foregoing instrument and that the same is the free act and deed of said Artist.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affix my official seal at Cleveland, Ohio, this _____ day of _____, 2014.

Notary Public

SECOND AMENDMENT TO AGREEMENT

This Second Amendment to Agreement (the "Amendment") is made this ____ day of September, 2017, by and between Billie Lawless ("Artist"), and CLEVELAND STATE UNIVERSITY ("CSU").

WHEREAS, CSU and Artist entered into that certain Agreement dated July 25, 2008 (the "Agreement"), whereby CSU leased from Artist a sculpture entitled "The Politician, A Toy", consisting primarily of an abstract character made of steel, wood, fibers and lights, with moving wheels and mouth; and

WHEREAS, the Agreement which was originally for five years expired on August 31, 2013; and,

WHEREAS, CSU continued to pay rent for the sculpture during a one-year holdover period which ended August 31, 2014; and,

WHEREAS, CSU and Artist mutually revised this Agreement by terms of a First Amendment dated January 30, 2015 extending this Agreement for an additional three (3) years ended August 31, 2017; and

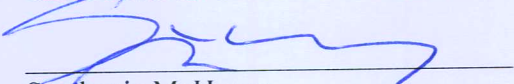
WHEREAS, CSU and Artist mutually agree to extend the First Amendment and the underlying Agreement for an additional term of three (3) years, amend the terms and conditions of the Agreement by this Amendment.

NOW, THEREFORE, CSU and Artist agree as follows:

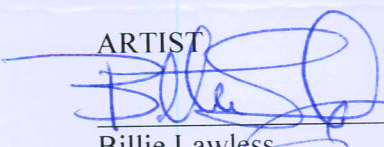
1. The term of this Amendment shall commence on September 1, 2017 and terminate on August 31, 2020.
2. Except as modified amended hereby, CSU and Artist each ratifies and affirms the terms of the Agreement and First Amendment, which are attached and incorporated by this reference as though fully rewritten here.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day and year first above written.

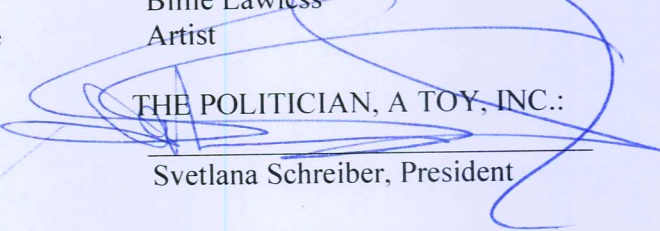
CLEVELAND STATE UNIVERSITY


Stephanie McHenry
Vice President for Business Affairs and Finance

ARTIST


Billie Lawless
Artist

THE POLITICIAN, A TOY, INC.:


Svetlana Schreiber, President

APPROVED AS TO LEGAL FORM

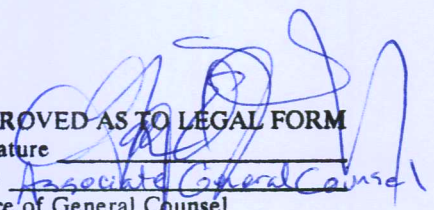
Signature

Title

Office of General Counsel

Cleveland State University

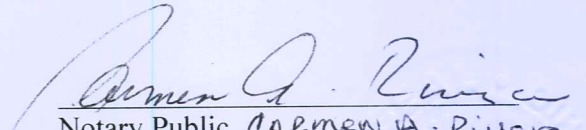
Date


22 September 2017

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named, Artist did execute the foregoing instrument and that the same is the free act and deed of said Artist.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affix my official seal at Cleveland, Ohio, this 19 day of Sept., 2017.


Notary Public CARMEN A. Rivera
Expire day
Aug 11, 2021

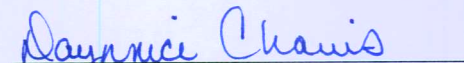
STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named CLEVELAND STATE UNIVERSITY by Stephanie McKenry its CFO, who acknowledged that he/she did execute the foregoing instrument and that the same is the free act and deed of said institution and his/her free act and deed as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affix my official seal at Cleveland, Ohio, this 28th day of September, 2017.



DAYRNICE CHAVIS
Notary Public, State of Ohio
My commission expires
August 4, 2020


Notary Public



Cleveland State University

Facilities Administration

October 5, 2017

Mr. Billie Lawless
c/o Svetlana Schreiber & Associates
2510 St. Clair Ave.
Cleveland, OH 44114

Dear Billie,

Enclosed is a fully executed copy of the second amendment to the agreement for use of the sculpture – The Politician, A Toy.

Sincerely,

James E. Gross CPA
Director, Facilities Administration & Fiscal Operations