

# **City of Pompano Beach**

## **AGREEMENT FOR COMMISSIONED ARTWORK**

**with**

**Beth Dubow**

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## **INDEX OF EXHIBITS**

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## AGREEMENT

**THIS AGREEMENT** for commissioned artwork entered into this 25<sup>th</sup> day of SEPTEMBER, 2017, by and between

**CITY OF POMPANO BEACH**, a municipal corporation organized in the state of Florida whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060 (hereinafter "CITY")

and

**BETH DUBOW**, individual whose address 420 Southeast 6th Street, Dania Beach, Florida 33004 (hereinafter "ARTIST").

**WHEREAS**, on February 21, 2017, the CITY issued a Call To Artists (Exhibit 1) which sought to commission twelve (12) artists to participate in a second round of the Painted Pompano Fish Series whereby each artist would adorn a prefabricated fish sculpture provided by the CITY in a style and finish representative of periods of art history (the "Artwork") for installation at various locations throughout the CITY (the "Project"); and

**WHEREAS**, the CITY received 62 Design Proposals in response to the foregoing Call To Artists, one of which was submitted by Beth Dubow and is attached hereto and made a part hereof as Exhibit 2; and

**WHEREAS**, on May 18, 2017, the City's Public Art Committee ("PAC") reviewed the 62 Design Proposals and selected Beth Dubow as one of the twelve (12) artists to be recommended to the City Commission of Pompano Beach for participation in the Project; and

**WHEREAS**, in accordance with the terms and conditions set forth herein, ARTIST is able and prepared to provide the services and insurance described in the Call To Artists, this Agreement and the Scope of Services attached hereto and made a part hereof as Exhibit 3 (collectively the "Work"); and

**WHEREAS**, the CITY and ARTIST desire to enter into this Agreement setting forth the parties' mutual understandings and undertakings.

**WHEREAS**, the City Commission for the CITY has determined entering into this Agreement with ARTIST is in the best interest of the public; and

**NOW, THEREFORE**, in consideration of the conditions, covenants and mutual promises herein contained, the CITY and ARTIST agree as follows.

## DEFINITIONS

**Agreement** - This document and other terms and conditions included in the exhibits and documents that are expressly incorporated by reference.

**Artwork** - The final physical artistic expression resulting from fabrication of the foam fish sculpture in accordance with the Design Proposal attached as Exhibit 2 which has been approved by the City Commission pursuant to this Agreement.

**Contract Administrator**- The primary responsibilities of the Contract Administrators are to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the CITY's Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

**Contract Price** - The amount established in Article 10 of this Agreement.

**Final Acceptance** – The CITY's Contract Administrator's written acceptance of the Artwork installed at the Site in its final form.

**Project** - The Scope of Services described in the Call to Artists, this Agreement and Exhibit 3 attached hereto.

**Site** - The location selected by CITY where the Artwork is to be installed.

**Work** - The Work includes all labor, materials, equipment, insurance and services provided or to be provided by ARTIST to fulfill ARTIST's obligations under this Agreement.

## **ARTICLE 1** **REPRESENTATIONS**

1.1 **Representations of CITY.** CITY makes the following representations to ARTIST, which CITY acknowledges ARTIST has relied upon in entering into this Agreement.

1.1.1 This Agreement is a valid, binding and permissible activity within the power and authority of the CITY and does not violate any CITY Code, Charter provision, rule, resolution, ordinance, policy or agreement of the CITY or constitute a default of any agreement or contract to which the CITY is a party.

1.1.2. The individuals executing the Agreement on behalf of the CITY are duly authorized to take such action, which action shall be, and is, binding upon the CITY.

1.1.3. ARTIST shall be entitled to rely upon the accuracy and completeness of any information or reports supplied by CITY or by others authorized by the CITY'S Public Art Program Manager.

1.2 **Representations of ARTIST.** ARTIST makes the following representations to CITY which CITY relies upon in entering into this Agreement.

1.2.1 ARTIST'S execution, delivery, consummation and performance under this Agreement will not violate or cause ARTIST to be in default of any covenants, rules and

regulations (as applicable) or any other agreement to which ARTIST is a party or constitute a default thereunder or cause acceleration of any obligation of ARTIST thereunder.

1.2.2 The individual executing this Agreement and related documents on behalf of ARTIST is duly authorized to take such action which action shall be, and is, binding on ARTIST.

1.2.3. There are no legal actions, suits or proceedings pending or threatened against or affecting ARTIST that ARTIST is aware of which would have any material effect on ARTIST'S ability to perform its obligations under this Agreement.

1.2.4. ARTIST represents it has the ability, skill and resources to complete its responsibilities under this Agreement and that the Artwork shall be designed, fabricated and installed to withstand the outdoor climate of South Florida for a minimum of three (3) years and require minimal routine maintenance.

1.2.5 ARTIST represents that CITY shall be entitled to rely upon ARTIST's technical skills because ARTIST is sufficiently experienced and qualified to perform the Work hereunder. ARTIST further agrees that all Work under this Agreement shall be performed in a skillful and respectful manner and that the quality of all Work shall be comparable to the best local and national standards for such services.

## **ARTICLE 2** **SCOPE OF SERVICES**

ARTIST shall perform all Work specified in the Call To Artists and this Agreement, inclusive of the exhibits, particularly Exhibit 3 entitled, "Scope of Services." Unless stated otherwise in this Agreement, the Work required of ARTIST includes all services, labor, insurance, materials and tasks, whether or not enumerated herein, that are such an inseparable part of the Scope of Services that exclusion thereof would render ARTIST's performance impractical, illogical, or unconscionable.

## **ARTICLE 3** **CONTRACT ADMINISTRATOR**

The CITY's Development Services Director or his/her written designee shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

Beth Dubow shall serve as ARTIST's Contract Administrator during the performance of Work under this Agreement.

## **ARTICLE 4** **RESPONSIBILITIES OF ARTIST**

### **4.1 General**

4.1.1 ARTIST shall complete the Artwork in compliance with the Design Proposal attached as Exhibit 2 which sets forth in detail the artistic expression, scope, design, color, size,

material and texture of the Artwork. The CITY's Contract Administrator may require ARTIST to make such revisions to the design as are necessary for the Artwork to comply with applicable laws and conservation standards and may also request revisions for other practical and/or non-aesthetic reasons.

4.1.2 ARTIST shall perform all services and furnish all supplies, materials, and equipment necessary to complete the Work required hereunder, including, but not limited to, payment for all necessary taxes, insurance, supplies, materials, tools, equipment and all other items incidental to completing the Artwork in accordance with the Design Proposal.

4.1.3 In the event that ARTIST is unable to perform duties within the specified time period due to the death, physical, other incapacity or circumstances beyond ARTIST's control, CITY may either proceed with completion and installation of the Artwork by ARTIST pursuant to the terms of this Agreement or terminate this Agreement for cause. All Work performed by ARTIST prior to death, incapacity or other circumstances beyond the ARTIST's control will be compensated as provided in this Agreement. In the event CITY exercises its right to terminate for cause, CITY may retain another artist to complete the Work or elect to implement ARTIST's design by a third party.

4.1.4 The personal skill, judgment, and creativity of ARTIST is an essential element of this Agreement. Therefore, ARTIST shall not assign, transfer or subcontract the creative and artistic portions of the Work to another party. Failure to conform to this provision may be cause for termination at the sole option of the CITY.

4.1.5 ARTIST shall be responsible for the quality and timely completion of the Work. ARTIST shall, upon written request of the CITY's Contract Administrator and without additional compensation, correct or revise any errors, omissions, or other deficiencies in the Work, including any minor damage occasioned as a result of the CITY's transportation of the Artwork to, and installation at, the Site.

4.1.6 ARTIST shall faithfully perform the Work with the standards of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature, the quality of which shall be comparable to the best local and national standards.

4.1.7 ARTIST shall not make any public information release in connection with services performed pursuant to this Agreement without prior written permission of the CITY's Contract Administrator but shall be allowed to otherwise display and promote the Artwork.

4.1.8. ARTIST agrees that all Work performed under this Agreement shall comply with all applicable laws, ordinances, codes and regulations as may be amended from time to time.

## 4.2 Fabrication and Installation or Integration.

4.2.1. ARTIST shall complete fabrication of the Artwork in compliance with the Design Proposal attached as Exhibit 2 which has been approved by both the PAC and City Commission of Pompano Beach. ARTIST shall be responsible for the quality and timely completion of the Work and shall, without additional compensation, correct any errors, omissions, minor damage



or other deficiencies in the Artwork prior to CITY's Final Acceptance of the Artwork after its installation at the Site.

To the extent applicable, ARTIST shall cooperate with CITY's Contract Administrator or other agents as well as any third parties at the Site and remedy any damage occasioned by the City's delivery of the Artwork to, or installation at, the Site. Further, ARTIST agrees that the CITY's Contract Administrator shall have the authority to resolve any scheduling conflicts between the CITY and ARTIST and such resolution shall be binding on the parties.

4.2.2 The Artwork shall not be installed until the CITY's Contract Administrator has provided written approval that the Artwork has been completed in substantial compliance with the Design Proposal and is ready to be delivered to, and installed at, the Site.

4.2.3. If ARTIST chooses to fabricate the Artwork at the Citi Centre location provided by CITY (the "Space") as opposed to another location of ARTIST's choice, ARTIST shall fabricate the foam fish sculpture at the Space subject to the provisions of the License Agreement attached hereto and made a part hereof as Exhibit 4. ARTIST shall, when working at the Space, keep the premises free from waste materials and rubbish. At the completion of the Artwork, ARTIST shall, at ARTIST's sole expense, remove any waste materials, rubbish, tools, equipment, machinery, and surplus materials from the Space attributable to ARTIST or the Artwork. The CITY's Contract Administrator may withhold final compensation until receipt of any necessary clean-up payment from ARTIST, deduct the clean-up charge from final payment to ARTIST, or charge the applicable cost of the cleanup to ARTIST.

4.2.5 Post Installation: Title; Risk of Loss. Prior to Final Acceptance, all risk of destruction or damage to the Artwork or any part thereof from any cause whatsoever shall be borne by ARTIST unless the Artwork is substantially damaged by the CITY's actions in transporting it to, and/or installing it at the Site, in which case the CITY shall bear any related costs to replace or repair the damaged Artwork. ARTIST understands and agrees that the CITY's Contract Administrator has sole discretion to determine whether the damage to the Artwork was substantial or minor as well as whether said damage was occasioned as a result of the CITY's actions. Title to the Artwork passes to the CITY upon the CITY's written Final Acceptance of the complete, installed Artwork. Upon transfer of title, CITY shall be responsible for any and all subsequent damage to the Artwork except damage caused by ARTIST or other agents of the ARTIST.

4.3 Upon CITY's Final Acceptance of the Artwork, ARTIST shall provide CITY a fully-executed original Copyright Assignment of Artwork, a copy of the form for which is attached hereto and made a part hereof as Exhibit 5.

## **ARTICLE 5** **RESPONSIBILITIES OF CITY**

5.1. The CITY's Contract Administrator shall be responsible for enforcement of this Agreement. In the event any violation is reported, the CITY's Contract Administrator shall investigate same and report the findings to the City Manager who has sole discretion to take

action and make recommendations as deemed necessary. The City Manager's actions and recommendations pursuant to this Article shall be final and binding on ARTIST.

5.2 The CITY shall be responsible to maintain the Artwork after Final Acceptance by the CITY's Contract Administrator.

5.3 CITY shall give prompt written notice to ARTIST whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of ARTIST's Work.

5.4 The CITY shall be responsible to select the location where the Artwork is to be installed as well as delivering it to the Site.

5.5 The CITY's Contract Administrator shall provide ARTIST written notice when the foam fish sculpture is ready to be fabricated by the ARTIST.

#### **ARTICLE 6** **NON-ASSIGNABILITY AND SUBCONTRACTING**

6.1 This Agreement is not assignable and ARTIST agrees it shall not sell, assign, transfer, merge or otherwise convey any of its interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity. Any attempt by ARTIST to assign or transfer any of its rights or obligations under this Agreement without first obtaining the CITY'S written approval shall provide CITY the right, in CITY's sole discretion, to immediately or otherwise terminate this Agreement. Specifically, no assignment of any right or obligation under this Agreement shall be binding on CITY without written consent of the City Commission.

6.2 This Agreement and the rights and obligations herein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership. In the event of ARTIST'S insolvency or bankruptcy, CITY may at its option terminate and cancel this Agreement without any notice of any kind whatsoever, in which event all rights of ARTIST hereunder shall immediately cease and terminate.

6.3 Nothing herein shall be construed to create any personal liability on the part of the CITY or its agent(s) nor shall it be construed as granting any rights or benefits hereunder to anyone other than CITY and ARTIST.

#### **ARTICLE 7** **TERM, RENEWAL AND TIME OF PERFORMANCE**

7.1 **Term and Renewal.** The term of this Agreement shall be for thirty (30) days and commence/expire as set forth below.

(a) If the ARTIST has chosen to fabricate the foam fish sculpture at the Citi Centre location provided by CITY, this Agreement shall commence on the first day the ARTIST begins fabrication at the Space but, in no case, commence any later than six (6) business days after the CITY's Contract Administrator has provided ARTIST written notice that the sculpture is ready

for fabrication by the ARTIST and expire thirty (30) days thereafter unless terminated earlier as herein provided.

(b) If the ARTIST has chosen to fabricate the foam fish sculpture at a location other than the Citi Centre Space, this Agreement shall commence on the day the ARTIST picks up the sculpture from the CITY but, in no case commence any later than six (6) business days after the CITY's Contract Administrator has provided ARTIST written notice that the sculpture is ready to be picked up and expire thirty (30) days thereafter unless terminated earlier as herein provided. If the ARTIST does not pick-up the foam fish sculpture within five (5) business days after being notified by CITY that the sculpture is ready to be picked-up, then the term shall commence six (6) business days after the aforesaid written notice by the CITY's Contract Administrator and expire thirty (30) days thereafter unless terminated earlier as herein provided.

(c) The CITY's Contract Administrator reserves the right to extend this Agreement for up to another thirty (30) day term provided both parties agree in writing to said extension.

7.2 Delay. ARTIST shall notify CITY in writing whenever a delay is anticipated or experienced and set forth all facts and details related to the delay. The CITY's Contract Administrator may grant ARTIST an extension of time if he/she deems it appropriate in his/her sole discretion.

7.3 Time is of the Essence. Time is of the essence in performing the duties, obligations, and responsibilities required by this Agreement. All duties, obligations and responsibilities of ARTIST required hereunder shall be substantially completed no later than the deadline(s) set forth in this Article.

7.3.1 In the event ARTIST is unable to timely complete the Work because of delays which are not the fault of ARTIST, the CITY's Contract Administrator may grant a reasonable extension of time for completion. The determination of whether a delay is the fault of ARTIST shall be made by the CITY's Contract Administrator and the ARTIST agrees to abide by such decision. It shall be the responsibility of ARTIST to notify CITY promptly in writing whenever a delay is anticipated or experienced and to inform CITY of all facts and details related to the delay.

7.3.2 The CITY's Contract Administrator may grant ARTIST a reasonable extension of time if there is a delay caused by CITY, third parties and conditions beyond ARTIST's control or Acts of God render timely performance of ARTIST's services impossible or unduly burdensome; however, the term of this Agreement may only be changed by written amendment approved by Resolution of the City Commission. Failure to fulfill contractual obligations due to conditions beyond either party's control will not be considered a breach of this Agreement provided that such obligations shall be suspended only for the duration of such conditions.

## **ARTICLE 8** **DESIGN AND MODIFICATION**

ARTIST understands and agrees that the Artwork to be created for the Project shall substantially conform with the Design Proposal attached as Exhibit 2.

In terms of the Design Proposal, major modification shall mean more than a 25% overall change from the Design Proposal approved by the City Commission and is prohibited without

the formal approval of both the PAC and the City Commission. Minor modifications may be submitted and approved by the CITY's Contract Administrator only when necessary to facilitate the Work. ARTIST understands and agrees that CITY's Contract Administrator has sole discretion to approve the modification "as is," require formal review and approval by both the PAC and City Commission and to determine whether said modification is necessary to facilitate the Work.

**ARTICLE 9**  
**INSPECTIONS BY CITY**

The CITY's Contract Administrator shall inspect the fabrication of the Work at the four (4) completion phases described below to ensure compliance with the Design Proposal approved by the City Commission. Said inspection may occur in person or through digital images at the discretion of the CITY's Contract Administrator.

- 1st Inspection - 20% completion (beginning phases of Artwork fabrication)
- 2nd Inspection - 50 % completion (Artwork fabrication is 50% complete)
- 3<sup>rd</sup> Inspection -- 95% completion (Artwork fabrication is 95% complete)
- 4th Inspection - 100% completion (Artwork installed at the Site)

ARTIST shall notify the CITY's Contract Administrator in writing when each of the completion phases has been reached. ARTIST understands and agrees that the CITY's Contract Administrator has sole discretion to determine whether ARTIST's fabrication is in compliance with the Design Proposal and has reached the requisite completion phase.

**ARTICLE 10**  
**COMPENSATION, RECORDKEEPING, INSPECTION,**  
**AUDIT, BACKGROUND CHECK AND**  
**PUBLIC RECORDS PROCEDURES**

10.1 Compensation. For and in consideration of the mutual covenants and obligations herein as well as other good and valuable consideration received, ARTIST agrees to provide the Work required hereunder for CITY and CITY agrees to pay ARTIST a maximum not-to-exceed total amount of Fifteen Hundred Dollars (\$1,500.00) payable in one (1) installment within ten (10) days of the CITY's receipt of ARTIST's final invoice and satisfactory completion of the Catalogue Form attached as Exhibit 5.

10.1.2 All payment shall be made only for Work actually performed, completed and accepted by CITY pursuant to this Agreement and in accordance with the foregoing payment schedule which shall be accepted by the ARTIST as full compensation for all such Work. This maximum amount does not constitute a limitation of any sort upon ARTIST's obligation to perform all Work required hereunder and CITY shall not be obligated to reimburse ARTIST for its expenses unless specifically agreed to in this Agreement.

10.1.3 ARTIST shall submit a final invoice for compensation within ten (10) business days of the CITY's Final Acceptance of the Artwork. The invoice shall state the nature of the services performed and/or the expenses incurred. CITY shall pay ARTIST within ten (10)

business days of receipt of ARTIST's proper invoice. To be deemed proper, an invoice must comply with all requirements set forth in this Agreement and must be submitted pursuant to any instructions prescribed by the CITY's Contract Administrator.

10.1.4 Notwithstanding any provision of this Agreement to the contrary, CITY may withhold, in whole or in part, payment to the extent necessary to protect itself from ARTIST's failure to comply with any term, condition, or requirement of this Agreement or from loss on account of inadequate, defective or otherwise unacceptable Work that has not been remedied or loss due to fraud or reasonable evidence indicating fraud by ARTIST. When the reasons for withholding payment are removed or resolved in a manner satisfactory to the CITY's Contract Administrator, payment may be made to ARTIST. The amount withheld pursuant to this provision shall not be subject to payment of interest by CITY.

10.2 Recordkeeping, Inspection and Audit Procedures. CITY shall have the right to audit the books, records, and accounts of ARTIST that are related to this Agreement. ARTIST shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement. All books, records, and accounts of ARTIST shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, ARTIST shall make same available at no cost to CITY in written form.

ARTIST shall be required to record, preserve and make available at all reasonable times for CITY'S local inspection, examination and audit, complete and accurate records for all activities and revenues generated under this Agreement for a period of five (5) years after its termination or as otherwise required by applicable law(s), including the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as amended from time to time if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of five (5) years after termination or expiration of this Agreement. However, if an audit has been initiated and audit findings have not been resolved, the records shall be retained until resolution of the audit findings.

10.3 Background Check Procedures. Prior to commencing any Work hereunder ARTIST shall provide the CITY'S Contract Administrator a completed and fully-executed Release so that CITY, at its sole cost, can conduct a background check on ARTIST. CITY reserves the right to refuse to permit ARTIST to provide services hereunder should the background check, in CITY's sole discretion, reveal information about ARTIST's character, integrity, reputation or judgment that disqualifies ARTIST from participating in the Project.

10.4. Public Records. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The ARTIST shall comply with Florida's Public Records Law, as amended. Specifically, the ARTIST shall:

10.4.1. Keep and maintain public records required by the CITY in order to perform the service.

10.4.2. Upon request from the CITY'S custodian of public records, provide the CITY with a copy of requested records or allow the records to be inspected or copied within a

reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

10.4.3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if the ARTIST does not transfer the records to the CITY.

10.4.4. Upon completion of the Agreement, transfer, at no cost to the CITY, all public records in possession of the ARTIST, or keep and maintain public records required by the CITY to perform the service. If the ARTIST transfers all public records to the CITY upon completion of the Agreement, the ARTIST shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the ARTIST keeps and maintains public records upon completion of the Agreement, the ARTIST shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY'S custodian of public records in a format that is compatible with the information technology systems of the CITY.

Failure of the ARTIST to provide the above described public records to the CITY within a reasonable time may subject ARTIST to penalties under 119.10, Florida Statutes, as amended.

**PUBLIC RECORDS CUSTODIAN  
IF THE ARTIST HAS QUESTIONS  
REGARDING THE APPLICATION OF  
CHAPTER 119, FLORIDA STATUTES,  
TO THE ARTIST'S DUTY TO  
PROVIDE PUBLIC RECORDS  
RELATING TO THIS AGREEMENT,  
CONTACT THE CUSTODIAN OF  
PUBLIC RECORDS AT:**

**CITY CLERK  
100 W. Atlantic Blvd., Suite 253  
Pompano Beach, Florida 33060  
(954) 786-4611  
RecordsCustodian@copbfl.com**

**ARTICLE 11  
NOTICES AND DEMANDS**

Whenever it is provided herein that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing, sent by certified United States mail with return receipt requested, addressed to the party to whom it is intended at the places designated below until changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following respective places for giving of notice, to-wit:

**For CITY**  
City Manager  
P.O. Drawer 1300  
Pompano Beach, Florida 33060  
[Greg.Harrison@copbfl.com](mailto:Greg.Harrison@copbfl.com)  
(954) 786-4601 office  
(954) 786-4504 fax

**With a copy to:**  
Laura Atria, Public Art Program Manager  
100 West Atlantic Boulevard  
Pompano Beach, Florida 33060  
[Laura.Atria@copbfl.com](mailto:Laura.Atria@copbfl.com)  
(954) 786-4310 office  
(954) 786-4666 fax

**For ARTIST**  
Beth Dubow  
420 SE 6<sup>th</sup> Street  
Dania Beach, FL 33004  
[BGDubow@gmail.com](mailto:BGDubow@gmail.com)  
C: (954) 295-3687  
H: (954) 920-9013

## **ARTICLE 12** **GOVERNING LAW AND VENUE**

The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and ARTIST submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

## **ARTICLE 13** **INDEPENDENT CONTRACTOR**

It is expressly understood between the parties that ARTIST'S relationship to CITY hereunder is that of an independent contractor. Work provided by ARTIST hereunder shall be subject to supervision of ARTIST. No partnership, joint venture or other joint relationship is created by this Agreement. ARTIST and its agents shall have no authority to employ any person as an employee or agent on behalf of CITY for any purpose or otherwise bind CITY in any respect.

Neither ARTIST nor any of its agents engaging in any Work hereunder shall be deemed an employee or agent of CITY nor shall they represent themselves to others as an employee or agent of CITY. Should any person indicate by written or verbal communication that they believe ARTIST or one of its agents is an employee or agent of the CITY, ARTIST shall use its best efforts to correct said mistaken belief both verbally and in writing.

ARTIST shall be deemed an independent contractor for all purposes, and any of its agents, contractors, subcontractors and the employees thereof, shall not in any manner be deemed to be employees of the CITY. As such, the agents or employees of the ARTIST, its contractors or subcontractors, shall not be subject to any withholding for tax, Social Security or

other purposes by CITY, nor shall such person be entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, workers or unemployment compensation or the like from the CITY.

**ARTICLE 14**  
**ATTORNEY FEES AND COSTS**

In the event of any litigation involving the terms and conditions of this Agreement, it is understood and agreed that the prevailing party in such litigation shall be entitled to recover from the non-prevailing party reasonable attorney and paraprofessional fees as well as all out-of-pocket costs and expenses incurred thereby by the prevailing party in such litigation through all appellate levels. The provisions of this Article shall survive termination of this Agreement.

**ARTICLE 15**  
**ARTIST'S INDEMNIFICATION OF CITY**

15.1 ARTIST shall at all times indemnify, hold harmless and defend the CITY, its officials, employees and other authorized agents hereunder from and against any and all claims, losses, demands, suit, damages, attorneys' fees, fines, penalties, expenditures, defense costs, liabilities or causes of action of any nature whatsoever arising directly, indirectly or in connection with ARTIST or ARTIST's authorized agents actions, negligence, misconduct, omission or provision of Work hereunder without limitation, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification of CITY by ARTIST shall not be operative as to any claims by ARTIST for any causes of action ARTIST has or may have for breaches, defaults, negligence, gross negligence or willful misconduct of CITY or any of its officers, employees or authorized agents.

In the event any lawsuit or other proceeding is brought against CITY by reason of any such claim, cause of action or demand, ARTIST shall, upon written notice from CITY, resist and defend such claim(s) by counsel satisfactory to CITY or, at CITY's option, pay for an attorney selected by the City Attorney for the CITY and bear all costs and expenses related thereto to investigate, handle, respond to, and provide defense for any such claim(s) even if the claim(s) is/are groundless, false or fraudulent. The provisions and obligations of this Article shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by CITY's Contract Administrator or City Attorney, any sums due ARTIST hereunder may be retained by CITY until all of CITY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by COUNTY.

15.2 ARTIST acknowledges and agrees that CITY would not enter into this Agreement without this indemnification of CITY by ARTIST. The parties agree that one percent (1%) of the total compensation paid to ARTIST hereunder shall constitute specific consideration to ARTIST for the indemnification provided under this Article. The provisions and obligations of this Article shall survive expiration or early termination of this Agreement. To the extent considered necessary by the CITY's legal counsel, in his or her reasonable discretion, any sums due ARTIST hereunder may be retained by CITY until all claims subject to this indemnification obligation have been resolved. Any sums so withheld shall not be subject to the payment of interest by CITY.



15.3 ARTIST acknowledges and agrees that CITY assumes no responsibility whatsoever for any personal property, stock or inventory of ARTIST and that ARTIST is solely responsible for insuring same against damage or loss of any nature or kind. ARTIST further agrees that CITY is hereby expressly released and discharged from any and all liability for any loss, injury or damage to persons or property which may be sustained by reason of ARTIST'S performance of Work hereunder.

15.4 ARTIST expressly agrees that these indemnification provisions are intended to be as broad and inclusive as permitted by laws of the State of Florida, and that if any portion thereof is held invalid, it is agreed that the balance shall notwithstanding, continue in full force and effect.

15.5 The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

#### **ARTICLE 16** **GOVERNMENTAL IMMUNITY**

CITY is a political subdivision of the State of Florida and nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by CITY. Each party agrees to be fully responsible for the acts and omissions of its agents to the extent permitted by law. Nothing herein constitutes or shall be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract.

#### **ARTICLE 17** **PUBLIC ENTITY CRIMES ACT**

ARTIST represents that the execution of this Agreement will not violate the Public Entity Crimes Act set forth in Section 287.133, Florida Statutes, as may be amended from time to time. Violation of this Article shall result in termination of this Agreement and recovery of all monies paid by CITY hereunder and may result in debarment from the CITY'S competitive procurement activities.

ARTIST further represents that there has been no determination, based on an audit, that ARTIST committed a "public entity crime" as defined by Section 287.133, Florida Statutes, as may be amended from time to time, and that ARTIST has not been formally charged with committing a "public entity crime" regardless of the amount of money involved or whether ARTIST has been placed on the convicted vendor list.

#### **ARTICLE 18** **INSURANCE**

ARTIST shall maintain insurance in the amounts and subject to all conditions set forth in Exhibit 7. ARTIST shall not commence operations under this Agreement until certification or proof of insurance detailing terms and provisions of coverage has been received and approved by the CITY'S Risk Manager. In addition, the CITY shall be named as an additional insured on the Certificate of Insurance.

**ARTICLE 19**  
**DEFAULT AND DISPUTE RESOLUTION**

19.1 If either party claims the other is in default of this Agreement, the parties may, but are not required to, timely schedule a conference or meeting and make every reasonable effort to reach an amicable resolution. Both parties shall be entitled to have representatives present at any such meeting or conference.

19.2 If there is a default of any covenant or obligation under this Agreement, the defaulting party shall be given ten (10) calendar days to cure said default after written notice to the other in accordance with Article 11 herein.

19.3 If the party receiving written notice of default provides written notice denying same within ten (10) calendar days of receipt or the alleged default has not been remedied within ten (10) calendar days after receipt of written notice and is continuing, either party may appeal in writing to the City Manager for the CITY in accordance with Article 11 herein.

Upon receipt of said written appeal or demand, the City Manager for the CITY may request additional information relating to the dispute from either or both parties which shall be provided within a reasonable time. Upon the City Manager's receipt and timely review of the disputed matter, the City Manager may make a decision regarding the alleged default as he/she deems appropriate under the circumstances. If the City Manager's decision is not implemented within the deadline set forth therein, the forty-five (45) day advance written notice provision set forth in Article 11 herein shall not apply and it shall be lawful for CITY to immediately terminate this Agreement and in addition to any other remedies provided by law, CITY may possess itself of all rights and privileges heretofore enjoyed by ARTIST.

**ARTICLE 20**  
**TERMINATION**

20.1 Termination for Cause. Breach or default of any of the covenants, duties, or provisions hereunder shall be cause for termination of this Agreement, including, but not limited to, ARTIST'S repeated negligent or intentional submission for payment of false or incorrect bills or invoices; failure to suitably perform the Work; or failure to continuously perform the Work in a manner calculated to meet or accomplish the Project's objectives.

In the event of a breach or default, the defaulting party shall be given written notice which describes in reasonable detail the alleged breach or default and ten (10) calendar days to cure same, and either party may avail itself of the informal Default and Dispute Resolution Procedures set forth in Article 11 above or seek other remedies as provided hereunder or by law. The parties agree that if CITY erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience.

20.2 Notice of termination shall be provided in accordance with Article 11 above except that notice of termination by the CITY's City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with Article 11 herein.

20.3 In the event this Agreement is terminated for any reason, any amounts due ARTIST shall be withheld by CITY until all documents are provided to CITY pursuant to the "Rights In Documents and Work" section in Article 29.

**ARTICLE 21**  
**NO DISCRIMINATION AND AMERICAN WITH DISABILITIES ACT**

21.1. No Discrimination. In the performance of this Agreement, ARTIST and its agents shall not discriminate against any person or entity because of race, age, color, religion, sex, gender identity or expression, national origin, age, disability, familial status, marital status or sexual orientation, political affiliation or any other factor which cannot lawfully or appropriately be used as a basis for service delivery.

21.2. American with Disabilities Act ("ADA"). ARTIST shall affirmatively comply with all applicable provisions of the ADA, including Titles I and II regarding nondiscrimination on the basis of disability and all applicable regulations, guidelines and standards. ARTIST shall also comply with Title I of the ADA regarding nondiscrimination on the basis of disability in employment and shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability.

21.3 ARTIST's compliance with the foregoing non-discrimination provisions are express conditions hereof and any failure by ARTIST to so comply shall be a breach of this Agreement and CITY may exercise any right as provided herein or otherwise provided by law.

**ARTICLE 22**  
**NO CONTINGENT FEE**

ARTIST warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for ARTIST, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for ARTIST any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

In the event of ARTIST'S breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability and, at CITY'S sole discretion, to recover the full amount of such fee, commission, percentage, gift or consideration.

**ARTICLE 23**  
**FORCE MAJEURE**

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of God or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of Force Majeure.

If CITY or ARTIST are unable to perform, or are delayed in their performance of any obligations under this Agreement by reason of any event of Force Majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure.

In order to be entitled to the benefit of this Article, a party claiming an event of force majeure shall be required to give prompt written notice to the other party specifying in detail the event of force majeure and also diligently proceed to correct the adverse effect of any force majeure. The parties agree that, as to this Article, time is of the essence.

**ARTICLE 24**  
**WAIVER AND MODIFICATION**

CITY and ARTIST agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and is therefore a material term hereof. Failure to insist upon strict compliance with any term, covenant or condition of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach. Further, the acceptance of a single or repeated payment(s) by CITY after it falls due or after knowledge of any breach by ARTIST shall not be construed as a waiver of any of the CITY's rights hereunder.

CITY and ARTIST may request changes to modify certain provisions of this Agreement, including increasing or decreasing the scope of services to be provided. However, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

**ARTICLE 25**  
**RELATIONSHIP BETWEEN THE PARTIES**

ARTIST is being contracted by CITY for the purposes and to the extent set forth in this Agreement and, as such, shall be free to dispose of such other portion of ARTIST's time and skill as does not interfere with ARTIST'S obligations hereunder.

**ARTICLE 26**  
**SEVERABILITY**

Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect unless CITY elects to terminate this Agreement.

**ARTICLE 27**  
**APPROVALS**

Whenever CITY approval(s) shall be required for any action under this Agreement, said approval(s) shall not be unreasonably withheld.

**ARTICLE 28**  
**ABSENCE OF CONFLICTS OF INTEREST**

28.1 Neither ARTIST nor any of its agents hereunder shall have or acquire any interest, either direct or indirect or continuing or frequently recurring employment or contractual relationship, that is substantially antagonistic or incompatible with ARTIST's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

28.2 During the term of this Agreement, ARTIST agrees that neither ARTIST nor any of ARTIST's agents hereunder shall serve as an expert witness against CITY in any legal or administrative proceeding in which he, she, or ARTIST is not a party unless compelled by court process. Further, ARTIST agrees that such persons shall not give sworn testimony or issue a report or writing as an expression of his or her expert opinion which is adverse or prejudicial to the CITY's interests in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this Article shall not preclude ARTIST or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

**ARTICLE 29**  
**MISCELLANEOUS TERMS AND CONDITIONS**

29.1 In case there is conflict between the terms of the Call To Artists (Exhibit 1), ARTIST's Design Proposal (Exhibit 2), and this Agreement, the terms of this Agreement shall prevail.

29.2 The Artwork designed, fabricated and installed by ARTIST hereunder is a work for hire and shall be permanent Artwork created solely for CITY. Pursuant to the Copyright Assignment attached as Exhibit 5, CITY has exclusive property rights to the Artwork. In addition, ARTIST understands and agrees that CITY has the right to deaccession the Artwork three (3) years after CITY's Final Acceptance of same.

29.3 ARTIST understands and agrees the Artwork shall be fabricated and installed to withstand the outdoor climate of South Florida for a minimum of three (3) years after CITY's Final Acceptance of same. Further, ARTIST understands and agrees that CITY is entitled to rely upon the foregoing durability provision such that if any part(s) of the Artwork substantially deteriorates or is otherwise found to be defective, as determined solely by the CITY's Contract Administrator, ARTIST shall be responsible to repair or replace same at ARTIST's sole cost. However, CITY (not ARTIST) shall be solely responsible to bear all costs associated with the repair of any damage to the Artwork caused by vandalism after CITY's Final Acceptance.

29.4 Neither CITY nor ARTIST intend to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree there are no third party beneficiaries to this Agreement and that no party shall be entitled to assert a claim against either of them based upon this Agreement.

29.5 Joint Preparation. Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and ARTIST acknowledge they

have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of all rights and obligations herein and that preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

29.6 Truth-In-Negotiation Representation. ARTIST's compensation under this Agreement is based upon representations ARTIST supplied to CITY. ARTIST certifies that the information supplied is accurate, complete and current at the time of contracting. CITY shall be entitled to recover any damages it incurs to the extent any representation is untrue.

29.7 Rights In Documents And Work. Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement shall be and remain the CITY's property. In the event of termination or expiration of this Agreement, any reports, photographs, surveys, and other data and documents prepared by ARTIST, whether finished or unfinished, shall become the CITY's property and ARTIST shall deliver same to the CITY's Contract Administrator within seven (7) days of said termination or expiration by either party. Any compensation due ARTIST shall be withheld until all documents are received as provided herein.

29.8 Incorporation By Reference. The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

### **ARTICLE 30** **BINDING EFFECT**

The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the parties hereto.

### **ARTICLE 31** **WARRANTIES AND STANDARDS**

31.1 Original Art. ARTIST warrants that the Artwork being commissioned is the original product of its own creative efforts, and, unless otherwise expressly stated herein, the Artwork is original and a single edition that ARTIST shall not sell or reproduce, or allow others to do so, without CITY's prior written consent.

31.2 Warranty of Quality. ARTIST warrants the Artwork shall be free of defects in material and workmanship, including without limitation any defects consisting of "inherent vice" or qualities accelerating deterioration of the Artwork, and that ARTIST shall correct, at ARTIST's sole expense, any such defects which appear within a period of three (3) years from CITY's Final Acceptance. Should the Artwork deteriorate to the point that it no longer represents ARTIST's intent during ARTIST's lifetime and/or poses a safety hazard due to its deteriorated state and CITY choose to have the Artwork restored rather than deaccession ARTIST shall be given the first right of refusal to perform the restoration. If funds for such restoration are not available, CITY shall have the right to destroy the Artwork upon notifying ARTIST in writing by certified mail, return receipt requested, sent to ARTIST's last known address, that ARTIST

has the right of consultation regarding the Artwork's removal or destruction. "Restore" means to effect repairs to the Artwork necessitated by extensive damage or deterioration which require ARTIST's artistic talents to ensure the restored Artwork reflects the qualities and artistic integrity of the Artwork at Final Acceptance by the CITY.

31.3 Sale or Reproduction. ARTIST represents and warrants that ARTIST shall not sell or reproduce the Artwork or allow others to do so without the prior written approval of CITY. For purposes of this Agreement, the Artwork is considered "reproduced" if the dimensions of another work exceed seventy-five percent (75%) of the dimensions of the Artwork commissioned hereunder. For purposes of this section, "dimensions" shall include, but not be limited to, sound, light, and other expressions not captured in a two or three dimensional physical object. This covenant shall continue in effect for a period consisting of ARTIST's life plus fifty (50) years and shall be binding on ARTIST's successors, heirs and assigns.

31.4 Materials and Delivery of Artwork Free and Clear of Liens. ARTIST warrants to CITY that all materials used will be of high quality and that all Work will conform in all ways with this Agreement. Unless the CITY's Contract Administrator provides written authority to the contrary, ARTIST shall be required to apply a UV resistant sealant to the Artwork. ARTIST shall deliver the Artwork to CITY free and clear of any liens.

31.5 Intellectual Property Warranty. ARTIST warrants the Artwork shall not infringe upon or violate any license; copyright, patent, trade secret, trademark, moral rights, semiconductor chip protection or unfair competition law; proprietary information, non-disclosure, intellectual property or other right of any third party; any right of privacy or contain libelous material. ARTIST warrants that the Artwork complies with all applicable patent, trademark and copyright laws, rules, regulations, and codes. ARTIST further agrees that the Artwork shall not utilize any protected patent, trademark or copyright unless ARTIST has obtained all necessary permission and authority and provides documentation of same to CITY. If ARTIST uses any protected material, process or procedure in connection with the Artwork, ARTIST shall disclose such patent, trademark or copyright in the construction drawings and technical specifications.

31.6 Warranty of Authorization. ARTIST represents that ARTIST possesses full power to enter into this Agreement and to convey the rights herein granted to CITY without the consent of any third party.

31.7 ARTIST'S Rights and Waiver. CITY agrees that all references to the Artwork and all reproductions of the Artwork shall credit ARTIST and that ARTIST may sign and date the Artwork upon written approval of the City's Contract Administrator. If the Artwork becomes significantly modified after Final Acceptance by CITY, ARTIST may request removal of the ARTIST's name from the Artwork. Any such request shall be provided to CITY in accordance with the requirements of Article 11.

31.7.1 CITY may reasonably assure that the Artwork is properly maintained and protected, taking into account the recommendations of ARTIST.

31.7.2 ARTIST shall/may be given the right of first refusal to perform repairs after the CITY's Final Acceptance of the Artwork and shall be paid a reasonable fee for such services. ARTIST and CITY shall agree in writing upon the fee before commencement of such services. If

the parties cannot come to agreement for repair services, ARTIST is unable or unwilling to perform any necessary repairs, or the CITY cannot locate ARTIST, CITY will cause such work to be performed at the CITY's expense in accordance with recognized principles of conservation.

31.7.3 In the event the Artwork cannot be successfully restored in accordance with Article 31.2 above as determined by CITY or CITY chooses to deaccession the Artwork, CITY shall notify ARTIST in writing by certified mail, return receipt requested, sent to the ARTIST's last known address.

31.7.4 ARTIST understands and agrees that the provisions of this Agreement shall control to the exclusion of the provisions of the European Union law or other domestic or international law and shall constitute a waiver by the ARTIST of any rights in the Artwork set out in or otherwise granted by laws of other jurisdictions addressing ARTIST's rights in the Artwork.

31.7.5 Warranty of Authorization and Non-Infringement. ARTIST warrants to ARTIST's best knowledge, the Work provided under this Agreement will not infringe upon or violate any license; copyright, patent, trade secret, trademark, moral rights, semiconductor chip protection or unfair competition law; proprietary information, non-disclosure; intellectual property or other right of any third party; any right of privacy; or contain libelous material and the ARTIST possesses full power to enter into this Agreement and to convey the rights herein granted to CITY without the consent of any third party.

## **ARTICLE 32** **RIGHTS IN ARTWORK**

32.1 ARTIST's Waiver For Integrated Artwork. The provisions of this Agreement shall control over the provisions of 17 B.SC. § 106A and shall constitute a waiver by ARTIST of any rights in the Artwork set out in or otherwise granted by the Visual Artists Rights Act of 1990, 17 B.SC. § 106A. If there is a conflict or inconsistency between any provision contained in this Agreement and any provision contained in any provision of domestic or international law, including without limitation the European Union law, ARTIST understands and agrees the provisions of this Agreement shall control and constitute a waiver by ARTIST of any rights in the Artwork set out in or otherwise granted by laws of other jurisdictions addressing ARTIST's rights in the Artwork.

32.1.1 The Artwork may become an integral part to the architecture of the applicable building, structure, or site, and installation and integration of the Artwork may subject the Artwork to future removal, destruction, or other modifications including, without limitation, in connection with the renovation, destruction, or redevelopment of the applicable building, structure, or site or change of use. ARTIST consents to the incorporation of the Artwork into the building or structure or at the Site and waives any rights in the Artwork granted by 17 B.SC. § 106A or any other applicable law.

32.1.2 All other rights in and to the Artwork relating to the continuing interest ARTIST may have in the Artwork's maintenance and modification are expressly waived by ARTIST and, insofar as such rights are transferable, are assigned to CITY.



32.1.3 CITY shall make a reasonable effort to notify ARTIST of any proposed action that will remove, destroy, or otherwise modify the Artwork by providing notice to ARTIST in accordance with the "Notices" section of this Agreement, including, if applicable, notice of any planned deaccession. Any lack of notice to ARTIST shall not impede CITY's ability to proceed with any modification, repair or removal. CITY has an unlimited, perpetual, and irrevocable right to use or reproduce the Artwork in any non-commercial manner or media whatsoever, including without limitation to prepare derivative works based upon the Artwork and to distribute copies of the Artwork.

32.2 Copyrights. ARTIST agrees that all Work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations, and codes. ARTIST further agrees the Work will not utilize any protected patent, trademark or copyright unless ARTIST has obtained proper permission and all releases and other necessary documents. If ARTIST uses any protected material, process or procedure, ARTIST shall disclose such patent, trademark or copyright in the Design Proposal and technical specifications.

### **ARTICLE 33** **SURVIVAL**

The following provisions shall survive the expiration or earlier termination of this Agreement: Article 10B, "Recordkeeping, Inspection and Audit Procedures"; Article 12, "Governing Law and Venue"; Article 15, "ARTIST's Indemnification of City"; Article 29, Paragraph 10, "Rights in Documents and Work"; Article 29, Paragraph 11, regarding Artwork repair and restoration; Article 31, "Warranties and Standards"; Article 32, "Rights in Artwork"; and this Article 33, "Survival".

The following provisions shall survive the expiration or earlier termination of this Agreement for at least a period of five (5) years after such expiration or termination or longer if required by the Florida Public Records Act as may be amended from time to time; Article 10, "Audit Right and Retention of Records," and Article 11, "Notices and Demands."

### **ARTICLE 34** **ENTIRE AGREEMENT AND INTERPRETATION**

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

**"CITY":**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
LAMAR FISHER, MAYOR

\_\_\_\_\_

By: \_\_\_\_\_  
GREGORY P. HARRISON, CITY MANAGER

Attest:

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

\_\_\_\_\_  
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

"ARTIST"

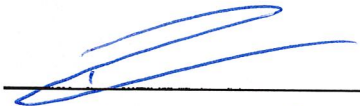
**BETH DUBOW**

Witnesses:

  
\_\_\_\_\_

JASON DUBOW

Print Name

  
\_\_\_\_\_

David Wallace

Print Name

BY:


  
\_\_\_\_\_

Beth Dubow

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 25 day of September, 2017, by **Beth Dubow** who is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:

  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA



DAVID J. WALLACE  
MY COMMISSION # FF 950884  
EXPIRES: March 13, 2020  
Bonded Thru Budget Notary Services

\_\_\_\_\_  
Name of Acknowledger Typed, Printed or Stamped

\_\_\_\_\_  
Commission Number

8/31/17  
L.agr/devser/2017-1050f

# **EXHIBIT 1**

## **Call to Artists: Schools of Art: Painted Pompano Round 2**

**BUDGET:** \$1,500.00 per fish  
**DEADLINE:** April 4, 2017

### **INTRODUCTION**

Due to the original project's success, the City has decided to have a second round of Painted Pompano fish. The pompano fish is the City's namesake and a symbol of the identity of Pompano residents. The project will again consist of 12 five foot tall fish sculptures which will be placed at various locations throughout the City. Each of the Painted Pompano sculptures will be individualized by artists in a variety of styles and finishes focusing on themes of periods of art history.

### **OVERALL PROJECT**

Twelve artists will be selected. Each artist selected for exhibition will be provided with a prefabricated fish. The City will provide a workspace for the selected artists to create their fish in. If the artist chooses to work at a separate location, the artist will be required to pay for shipping the fish mold to and from their location. The artists will have one month to complete the sculpture. Each selected artist will be paid \$1,500 upon completion and approval of their painted fish. (This honorarium must cover all materials for design execution.)

Artists may submit up to three designs for consideration. Only one design will be selected per artist.

### **THEME**

The theme for round 2 of Painted Pompano is Schools of Art. Artists must select a particular period in art history and create a design inspired by it. Periods of art history include, but are not limited to: the Renaissance, Baroque, Neoclassical, Romanticism, Realism, Impressionism, Post-Impressionism, Cubism, Dada, Surrealism, Postmodernism, Abstract Expressionism, Classical, Contemporary, etc.... Bright colors are preferred.

### **FISH MOLD**

The design of the fish is modeled after the City of Pompano Beach logo and is an enlarged and stylized representation of the pompano fish jumping out of the water. The fish is 5' tall and approximately 3' wide, proportional oblong shape, sitting on a 5'-6' diameter integrated base. The fish is constructed out of foam with three coats of polyurethane.

The fish will be shop primed flat white to be able to receive a multitude of finishes. In the event the artist's design calls for a medium other than paint, please indicate on your application the type of finish that the fish would need to be primed with.

### **PROJECT LOCATION**

The twelve locations are George Brummer Park, Herb Skolnick Community Center, Hillsboro Inlet Park, Highlands Park, Community Park, the Dog Park, Aldorf Park, Civic Park, McNair Park, Apollo Park, corner of Copans Road and NE 5<sup>th</sup> Ave., and the Air Park.

In creating a design, consider carefully the weather and other elements of nature, including sun, rain, wind and dirt. The fish will be displayed in key outdoor locations accessible by the general public. As such,

designs should be created with durability and public safety concerns in mind. Although objects may be attached to the fish, artists should be aware that vandalism can and unfortunately does occur. Any objects added to a Fish must be attached in such a way that it cannot be easily removed. Treatments shall be flat or flush with no sharp edges.

The surface of each fish mold is primed by the manufacturer so it is not necessary to reapply a primer. Acrylic paint, artificial resin paint or two-component paint can be used to paint the fish.

Should the artist choose to paint the fish, a minimum of three coats of varnish is required using a two-part, hard gloss clean non-yellowing varnish. The artist is required to apply a sealant to the fish. If a different medium is selected, proper finishing will be required.

#### **INSTALLATION AND REPAIR OF FISH**

Artists will not be required to install the fish to its location, the City will manage this process. Artists should, however, be available for any possible touch-up work that may be required once the exhibit is underway.

#### **PROHIBITED CONTENT STANDARDS**

Artists should bear in mind that the audience will be broad-based and of all ages, and designs should be appropriate for public display. Designs that are religious, political or sexual in nature will not be accepted. The structure may not display messages with text or contain any words or alpha-numeric characters. Additionally, neither corporate logos nor advertising is allowed. Designs will be evaluated to ensure they conform to these standards. The City of Pompano Beach may reject any design that, in its sole discretion, does not adhere to these standards.

#### **APPROXIMATE SCHEDULE**

Call to Artists is Posted February 21, 2017

Deadline April 4, 2017

Tentative Mold Delivery April 2017

Artist Begins Application of Design May 2017

Application of Design is Completed June 2017

#### **ELIGABILITY**

This project is open to all artists, professional to amateur. Artists are NOT eligible who are immediate family or business partners of members of the Public Art Committee or program staff.

#### **SUBMITTAL REQUIREMENTS**

All submissions should be submitted through CaFE. Submissions received after 5:00 pm on April 4, 2017 will not be accepted. Submissions must include:

- Artist statement – a brief description of yourself and the design;
- Examples of previous artwork (minimum 1; maximum 3); and
- Design – complete your proposed design on one of the outlines provided. A maximum of three designs can be submitted per artist. Please feel free to enlarge these shapes if desired. Additional pages may be used as necessary to illustrate the design. List the medium you will be using. Note the more complete your design, the easier it will be for the Committee to review your submission.

#### **PROPOSAL SELECTION CRITERIA**

The artist will be selected based on the following criteria:

- Design;
- Statement;
- Examples of previous artwork; and
- Materials to be used.

#### **ARTIST SELECTION PROCESS**

The selection process is managed by the City of Pompano Beach. The Pompano Beach Public Art Committee will create a subcommittee that will serve as the selection committee. The City Commission will have final approval of the selected artist and design. Final purchase approval is contingent upon inspection ensuring long-term conservation of the artwork.

##### Other Selection Issues:

- a. Florida "Sunshine Laws": All meetings of the Public Art Committee are open to the public, are publicly advertised and are documented through written minutes.
- b. Conflicts of Interest: Artists with immediate family or business partners on the selection committee are not eligible to apply. A selection committee member may choose to withdraw from discussion and voting for any apparent conflict of interest.
- c. Public Art Committee Contacts: Artist applicants should not contact Public Art Committee members between the release of the Call to Artists and the completion of the selection process. Contact the City of Pompano Beach for all questions and information.

#### **QUESTIONS**

Contact: Laura Atria, Public Art Program Manager  
 Phone: 954-786-4310  
 E-mail: [Laura.Atria@copbfl.com](mailto:Laura.Atria@copbfl.com)

#### **BACKGROUND ON POMPANO BEACH**

Pompano Beach is a city located in Broward County along the coast of the Atlantic Ocean, just north of Ft. Lauderdale. The nearby Hillsboro Inlet forms part of the Atlantic Intracoastal Waterway. In 2013, the City adopted the Pompano Beach Cultural Arts Master Plan. Pompano Beach is a Cultural Arts destination in north Broward County, featuring innovative arts programming. The City's and CRA's cultural facilities include the Ali Cultural Arts, Bailey Contemporary Arts, the Cultural Center of Pompano Beach and the Pompano Beach Amphitheater.

#### **BACKGROUND ON POMPANO BEACH PUBLIC ART PROGRAM**

In 2012, the Pompano Beach City Commission adopted a public art ordinance to "enhance the aesthetic and cultural value of the city by including works of art on public properties within the city." The City Commission seeks "benefits of public art that are both aesthetic and economic." For more information on what is planned over the next ten year period, please refer to the Public Art Masterplan that is located at <http://pbpublicart.com/>



# Exhibit 2

**Beth Dubow**  
**Theme: Cubism**  
**Medium: Paint**  
**Score: 2.1429**

My design is an homage to Joan Miro, who is known for several styles including cubism, fauvism and surrealism. The style of my design represents Miro's work in cubism.

'BGDubow@gmail.com'



## **Exhibit 3**

### **Scope of Services**

The City is providing the Artist a fish mold sculpture for fabrication in accordance with the Design Proposal approved by PAC and the City Commission and subsequent installation at a location selected by the City.

If the Artist is painting the fish mold, a minimum of three coats of varnish is required using a two-part, hard gloss clean non-yellowing varnish. If a different medium is selected, proper finishing as pre-approved in writing by the City's Contract Administrator shall be required. The Artist is required to apply a UV Resistant sealant to the fish and otherwise render the Artwork weather-resistant and suitable for outdoor display.

If the Artist chooses to fabricate the Artwork at the space provided by the City (the "Space" located at the Pompano Beach Citi Centre, 1955 N. Federal Hwy, Pompano Beach, FL 33062) as opposed to another location of Artist's choice, the Artist shall perform all Work subject to the provisions of Artist's Agreement with the City and the City's License Agreement with SVAP Citi Centre, L.P., the latter of which is attached as Exhibit 4 to Artist's Agreement with the City. The Artist will have access to the Space seven (7) days a week between the hours of 9 am to 9 pm and shall contact Citi Centre Security at 954 288 0159 to open the door to the Space unlock the doors upon arrival and lock the doors upon departing the Space.

If the Artist chooses to complete the Artwork at a location different than the Space provided by City, Artist, at Artist's sole cost, shall be responsible to pick up the foam fish sculpture from 1190 NE 3<sup>rd</sup> Avenue in Pompano Beach, FL 33060 and return it to that same location no more than thirty days thereafter.



# Exhibit 4

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 2017, is between SVAP POMPANO CITI CENTRE, L.P., a Delaware limited partnership, having an address at 340 Royal Poinciana, Suite 316, Palm Beach, FL 33480 ("Licensor"), and the CITY OF POMPANO BEACH, having an address at 100 W. Atlantic Boulevard, Pompano Beach, Florida 33060 ("Licensee").

### Recitals

A. Licensor is the owner of Pompano Citi Centre Shopping Center (the "Center"), located in Pompano Beach, Florida.

B. Licensee desires to license from Licensor and Licensor is willing to license to Licensee that portion of the Center marked on Exhibit A attached hereto and made a part hereof (the "Space").

C. Therefore, in consideration of Ten and 00/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

### Agreement

1. Grant of Use License; Condition of Space.

1.1 Licensor hereby grants to Licensee and Licensee hereby accepts from Licensor, a license to use the Space, upon and subject to all of the terms, covenants, fees and conditions herein- after set forth.

1.2 Licensee will accept the Space in the condition and state of repair on the date hereof, "as is", and Licensee expressly acknowledges and agrees that Licensor has made no representations with respect to the Space and is not obligated to make repairs to, or to perform any work at, the Space.

2. Term. The term (the "Term") of this Agreement will commence on the date on which possession of the space is tendered by Licensor to Licensee (the "Commencement Date") and will expire forty five (45) days following the Commencement Date (the "Expiration Date"), unless sooner terminated as hereinafter provided.

3. License Fee. Licensee shall not be obligated to pay to Licensor a license fee from the Commencement Date through the Expiration Date.

4. Permitted Use. Licensee will use the Space solely for painting Artwork and for no other purpose.

5. Licensee's Obligations.

5.1 Rules and Regulations. The rules and regulations attached hereto and made a part hereof as Exhibit B are hereby made a part hereof (the "Rules and Regulations"). Licensee hereby agrees to comply with and observe all of the Rules and Regulations. Licensee acknowledges that Licensee's failure to keep and observe the Rules and Regulations will constitute a breach of the terms of this Agreement. Licensor reserves the right from time to time to amend or supplement the Rules and Regulations and to adopt and promulgate additional rules and regulations applicable to the Space or as may be required by management of the Center. Notice of such additional rules and regulations, and amendments and supplements, if any, will be given to the Licensee, whereupon the same will be deemed incorporated herein and Licensee will be bound thereby.

5.2 Conduct of Business. Licensee covenants and agrees to operate and conduct within the Space the business it is permitted to operate and conduct under the provisions of this Agreement. Licensee agrees to (a) conduct Licensee's business at all times in a first-class manner consistent with reputable business standards and practices; and (b) keep and maintain the Space in a neat, safe, clean and orderly condition.

5.3 Care and Restoration of the Space.

5.3.1 Without limiting any other provision of this Agreement, Licensee will take good care of the Space, suffer no waste or injury thereto and will comply with all laws, orders and regulations applicable to the Space and the tenants of the Center and Licensee's use or manner of use thereof.

5.3.2 Licensee will not make any alteration, addition or improvement in or to the Space of any kind or nature without Licensor's prior written consent in each instance.

5.3.3 Upon the Expiration Date or earlier termination of the Term, (i) Licensee will no longer have a license to use the Space, (ii) the Space must be broom clean, in good order and condition, ordinary wear and tear excepted, and (iii) Licensee will remove all of its property therefrom.

5.4 Utilities. Licensor will be responsible for all utility services that exclusively serve the Space irrespective of whether the utility services are located inside or outside the Space. However, Licensor will not be liable for any damage to the Space or property therein, loss of business, or otherwise because of any interruption or cessation of such utility services.

## 5.5 Insurance.

5.5.1 Licensee agrees to carry, during the term hereof, Workers' Compensation Insurance, if not exempted by law, Employer's Liability Insurance and Commercial General Liability Insurance on the Space. Licensee agrees to name Licensor and Sterling Retail Services, Inc. on Licensee's Commercial General Liability Insurance, which insurance will be with companies licensed to do business in the State of Florida for limits of not less than \$2,000,000 Combined Single Limit for Personal Injury including Bodily Injury and Death or Property Damage Liability and containing a Contractual Liability endorsement. Such policy will contain a provision that Licensor and Licensee will be given a minimum of thirty (30) days written notice by registered mail by the insurance company prior to cancellation, termination or change in such insurance. Licensee further agrees to carry "All Risk" Insurance (as understood in the insurance industry) including sprinkler leakage coverage for the full replacement value covering all Licensee's good and merchandise, and all other items and personal property of Licensee located on or within the Space. Replacement value is understood to mean the cost to replace without deduction for depreciation. A deductible of not more than \$1,000 will be permitted for such "All Risk Insurance". Licensee also agrees to carry business automobile liability insurance covering owned, non-owned and leased vehicles for limits of not less than \$500,000. Whenever, in Licensor's reasonable judgment, good business practice or change in conditions indicate a need for additional or different types of insurance, Licensee will upon request obtain such insurance at its own expense. Licensee will provide Licensor with copies of the insurance policies or certificates evidencing that such insurance is in full force and effect and stating the terms thereof.

5.5.2 Licensee further agrees to obtain certificates of insurance evidencing Commercial General Liability Insurance, including Workers' Compensation Insurance and Employer's Liability Insurance from any Contractor or Subcontractor engaged for repairs or maintenance during the term hereof. Such Liability Insurance must be for minimum limits of \$1,000,000 Combined Single Limit for Bodily Injury including Death and Property Damage Liability.

5.5.3 Licensee hereby, on behalf of its insurance companies insuring the Space, its contents, Licensee's other property or other portions of the Center, waives any claims which Licensee may have against the Licensor to the extent covered by Licensee's insurance companies. Licensee will secure an appropriate clause in, or an endorsement from such insurance policies, pursuant to which the respective insurance companies waive subrogation against Licensor.

5.5.4 All Licensee policies provided for herein will be issued by insurance companies acceptable to Licensor in its sole and absolute discretion. Evidence of all insurance required to be obtained by Licensee pursuant to this Agreement must be on file with Licensor before the Commencement Date. Evidence of all such insurance must be kept current at all times. All Licensee policies will contain a provision that the policy and the coverage evidenced thereby will be primary and non-contributing with respect to any policy carried by Licensor and that any policy carried by Licensor will be excess insurance.

## 5.6 Environmental Matters.

5.6.1 During the Term, Licensee will comply with all Environmental Laws and Environmental Permits (as such terms are defined below) applicable to the operation or use of the Space, will cause all other persons using the Space to comply with all such Environmental Laws and Environmental Permits, will immediately pay all costs and expenses incurred by reason of such compliance, and will obtain and renew all Environmental Permits required for operation or use of the Space. Licensee will not generate, use, treat, store, handle, release or dispose of, or permit the generation, use, treatment, storage, handling, release or disposal, of Hazardous Materials (as such term is defined below) on the Space or the Center or transport or permit the transportation of Hazardous Materials to or from the Space or the Center.

5.6.2 Licensee will immediately advise Licensor in writing of any of the following: (a) any pending or threatened Environmental Claim (as defined below) against Licensee relating to the Space; (b) any condition or occurrence on the Space that (i) results in noncompliance by Licensee with any applicable Environmental Law, or (ii) could reasonably be anticipated to form the basis of an Environmental Claim against Licensee or Licensor, and (c) the actual or anticipated taking of any removal or remedial action in response to the actual or alleged presence of any Hazardous Material on the Space.

5.6.3 For purposes hereof, (a) "Environmental Law" means any federal, state or local statute, law, rule, regulation, ordinance, code, policy or rule of common law, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, health, safety or any Hazardous Materials; (b) "Environmental Permits" means all permits, approvals, identification numbers, licenses and other authorizations required under any Environmental Law; (c) "Hazardous Materials" means (i) petroleum or petroleum products, natural or synthetic gas, asbestos in any form, urea formaldehyde foam insulation and radon gas, (ii) any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants" or words of similar import, under any applicable Environmental Law, and (iii) any other substance exposure which is regulated by any governmental authority; and (d) "Environmental Claim" means (x) any administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations, proceedings, consent orders or consent agreements relating in any way to any Environmental Law or any Environmental Permits (y) any claims by any governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, or (z) any claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

6. Representations and Warranties of Licensee. Licensee represents and warrants to Licensor, which representations and warranties will survive the Expiration Date or earlier termination of this Agreement, that: (a) Licensee has the power and authority to enter into this

Agreement; (b) this Agreement is binding and enforceable by Licensor against Licensee in accordance with its terms; and (c) Licensee has obtained all permits and licenses required by state or local law to conduct the business of Licensee in the Space.

7. Indemnification of Licensor. Subject to Licensee's rights, privilege, immunities and limits, all as set forth in Section 768.28, Florida Statutes, Licensee agrees to indemnify, protect, defend and hold Licensor free and harmless from and against all liabilities, losses, obligations, damages and penalties, claims, costs and expenses attributable to the negligence or actions of Licensee, its officials, officers, employees or agents and such obligations shall survive the expiration or sooner termination of this Agreement.

8. Events of Default; Remedies.

8.1 Events of Default. If Licensee will default in the performance of or compliance with any of the provisions of this Agreement (including the Rules and Regulations) to be performed by Licensee (other than any default curable by the payment of money), and, unless expressly provided elsewhere in this Agreement that no notice or opportunity to cure such default is to be afforded Licensee, such default will continue for a period of fifteen (15) days after notice thereof is given by Licensor to Licensee then such will be deemed an "Event of Default".

8.2 Remedies upon Default.

8.2.1 Upon the occurrence of any Event of Default, Licensor will have the option to pursue any one or more of the following remedies without notice or demand whatsoever, in addition to, or in lieu of, any and all remedies available to Licensor under the laws of the State of Florida:

(a) Licensor may give Licensee notice of its election to terminate this Agreement, effective on the date specified in the notice, whereupon Licensee's right to use of the Space will cease and this Agreement, except as to Licensee's liability determined in accordance with Section 8.2.2, will be terminated.

(b) Licensor and its agents may immediately enter the Space and, by any lawful means, remove Licensee and those claiming by, through or under Licensee and, thereafter, allow any other person or entity to use the Space. In addition, Licensor may, by any lawful means, take possession of all equipment and fixtures of Licensee situated in or about the Space and may sell all or any part thereof at public or private sale. Licensee agrees that ten (10) days' prior notice of any public sale and ten (10) days' prior notice of any private sale will constitute reasonable notice. The proceeds of any such sale will be applied in the manner designated by Licensor in its sole discretion. Licensor will not be liable for any loss or damages (including consequential damages) incurred by Licensee, and Licensor will not be liable for trespass or conversion, on account of any actions taken pursuant to this Section 8.2.1(b).

(c) Licensor may perform, on behalf of Licensee, any obligation of Licensee under this Agreement which Licensee has failed to perform, the cost of which performance by Licensor, together with interest at the rate of twelve percent (12%) thereon from the date of such expenditure to the date of repayment in full, will be payable by Licensee to Licensor upon demand.

8.2.2 No payments of money by Licensee to Licensor after the expiration or other termination of this Agreement after the giving of any notice by Licensor to Licensee will reinstate or extend the Term, or make ineffective any notice given to Licensee prior to the payment of such money. After the service of notice or the commencement of a suit, or after final judgment terminating Licensee's right to use the Space, Licensor may receive and collect any sums due under this Agreement and the payment thereof will not make ineffective any notice, or in any manner affect any pending suit or any judgment previously obtained.

8.3 Remedies Cumulative. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder will preclude any other or further exercise thereof.

9. Assignment. Notwithstanding anything to the contrary contained herein, Licensee, for itself, its successors and assigns, expressly covenants that it will not assign (whether by operation of law or otherwise), pledge or otherwise encumber this Agreement, or permit any other person or entity to use all or any portion of the Space. Licensor reserves the right to transfer and assign its interest in and to this Agreement to any entity or person who will succeed to Licensor's interest in and to the Lease. If the Licensee is a corporation or a partnership, the provisions of this Section will apply to a transfer (by one or more transfers) of a majority of the stock of, or interests in, Licensee, as the case may be, as if such transfer of a majority of the stock of, or interests in, Licensee were an assignment of this Agreement.

10. Relocation of Space. Licensor expressly reserves the right (but will in no event be obligated) prior to and/or during the Term, at its expense, to remove Licensee from the Space and relocate Licensee in another comparable space, of Licensor's choosing, of approximately the same dimensions and size within the Center. Licensee agrees to fully cooperate with Licensor and its agents and employees in all aspects of the relocation. During the relocation period Licensor will use reasonable efforts not to unduly interfere with Licensee's business activities, and Licensor agrees to substantially complete the relocation within a reasonable time under all then-existing circumstances. This Agreement and each of its terms, covenants and conditions will remain in full force and effect and be applicable to any such new space, and such new space will be deemed to be the Space demised hereunder and a new Exhibit A showing the new space as the "Space" will be added to the Agreement. Upon request, Licensee will execute and deliver to Licensor any documents which may be called for to evidence and confirm the relocation and Licensee agrees that Licensor's exercise of its election to remove and relocate Licensee will not release Licensee in whole or in part from its obligations hereunder for the full Term.

11. No Lease. This Agreement does not and will not be deemed to constitute a lease or a conveyance of the Space by Licensor to Licensee or to confer upon Licensee any right, title, estate or interest in or to the Space. This Agreement grants to Licensee only a personal privilege to use the Space for the Term hereof, and only on the terms and conditions set forth herein. Licensee hereby expressly acknowledges that (a) the provisions of this Agreement, including the benefits and the burdens, do not run with the land and (b) this Agreement will not be deemed coupled with an interest under any circumstances.

12. General Provisions.

12.1 Use After Term. If Licensee continues to use the Space after the expiration or other termination of the Term, then, at Licensor's option, Licensee will be deemed to be using the Space as a day-to-day licensee only, at a daily license fee equal to Twenty Five and 00/100 Dollars (\$25.00) per day. Such day-to-day license may be terminated by Licensor or Licensee by delivery to the other of notice of such termination.

12.2 Limitation of Licensor Liability. In no event will Licensor be liable to Licensee for any failure of other licensees in the Space to operate their businesses, or for any loss or damage that may be occasioned by or through the acts or omissions of other licensees. Notwithstanding anything to the contrary provided in this Agreement, neither Licensor, any officers, shareholders, principals, directors, employees, partners, or agents of Licensor, nor any of their successors and assigns, will have any personal liability with respect to any of the provisions of this Agreement and, if Licensor is in breach or default with respect to its obligations or otherwise, Licensee will look solely to Licensor's interest in the Space for the satisfaction of Licensee's remedies.

12.3 No Broker. As part of the consideration for the granting of this Agreement, Licensee represents and warrants to Licensor that no broker or agent negotiated or was instrumental in negotiating or consummating this Agreement other than Sterling Retail Services, Inc.

12.4 Amendments. The provisions of this Agreement may not be amended, supplemented, waived or changed orally, except by a writing making specific reference to this Agreement which is signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought.

12.5 Binding Effect. All of the terms and provisions of this Agreement, whether so expressed or not, will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective administrators, executors, legal representatives, heirs, successors and permitted assigns.

12.6 Severability. If any part of this Agreement or any other Agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision will be inapplicable and deemed omitted to the extent so contrary,

prohibited or invalid, but the remainder hereof will not be invalidated thereby and will be given full force and effect so far as possible.

12.7 Waivers. The failure or delay of Licensor at any time to require performance by Licensee of any provision of this Agreement, even if known, will not affect the right of Licensor to require performance of that provision or to exercise any right, power or remedy hereunder, and any waiver by Licensor of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on Licensee in any case will, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.

12.8 Notices. All notices, requests, consents and other communications required or permitted under this Agreement will be in writing (including facsimile communications) and will be (as elected by the person giving such notice) hand delivered by messenger or courier service, telecommunicated, or mailed (airmail if international) by registered or certified mail (postage prepaid), return receipt requested, to the addresses listed above or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice will be deemed delivered (a) on the date delivered if by personal delivery, (b) on the date of transmission with confirmed answer back if by facsimile, and (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

12.9 Governing Law. The provisions of this Agreement will be governed and interpreted in accordance with the laws of the State of Florida.

12.10 Jurisdiction and Venue. The parties acknowledge that a substantial portion of negotiations, anticipated performance and execution of this Agreement occurred or will occur in Broward County, Florida, and that, therefore, without limiting the jurisdiction or venue of any other federal or state courts, each of the parties irrevocably and unconditionally (a) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement may be brought in the courts of record of the State of Florida in Broward County or the court of the United States, Southern District of Florida; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts; and (d) agrees that service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws or court rules in said state.

12.11 Waiver of Trial By Jury. It is mutually agreed by and between Licensor and Licensee that the respective parties hereto will and hereby do WAIVE TRIAL BY JURY in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters arising out of or in any way connected with this Agreement. This waiver is made without duress and only after each of the parties hereto has had the benefit of advice from legal counsel as to this Agreement. Licensee further agrees that it will not interpose any counterclaim or counterclaims in any summary proceeding or in any action based upon non-payment of any fees.



12.12 No Offer. This Agreement does not constitute an offer to license the Space to Licensee and Licensee will have no rights with respect to the Space unless and until Licensor, in its sole and absolute discretion, elects to be bound hereby by executing and unconditionally delivering to Licensee an original counterpart hereof.

12.13 Public Records. Licensee is a public agency subject to Chapter 119, Florida Statutes. Licensor shall comply with Florida's Public Records Law, as amended. Specifically, Licensor shall:

(a) Keep and maintain public records required by the Licensee in order to perform the service.

(b) Upon request from the Licensee's custodian of public records, provide the Licensee with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the license term and following completion of the license if the Licensor does not transfer the records to the Licensee.

(d) Upon completion of the license, transfer, at no cost to the Licensee, all public records in possession of the Licensor, or keep and maintain public records required by the Licensee to perform the service. If the Licensor transfers all public records to the Licensee upon completion of the contract, the Licensor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Licensor keeps and maintains public records upon completion of the contract, the Licensor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Licensee, upon request from the Licensee's custodian of public records in a format that is compatible with the information technology systems of the Licensee.

Failure of the Licensor to provide the above described public records to Licensee within a reasonable time may subject Licensor to penalties under 119.10, Florida Statutes, as amended.

## **PUBLIC RECORDS CUSTODIAN**

**IF THE LICENSOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LICENSOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK**  
**100 W. Atlantic Blvd., Suite 253**  
**Pompano Beach, Florida 33060**  
**(954) 786-4611**  
**[RecordsCustodian@copbfl.com](mailto:RecordsCustodian@copbfl.com)**

12.14 Governmental Immunity. The Licensee is a political subdivision of the State of Florida and nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by the Licensee. Each party agrees to be fully responsible for the acts and omissions of its agents to the extent permitted by law. Nothing herein constitutes or shall be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract.

12.15 Entire Agreement. This Agreement, including the Rules and Regulations attached hereto and made a part hereof as Exhibit B, represent the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings and representations (if any) made by and between such parties.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

THE PARTIES have executed and delivered this Agreement as of the day and year first above written.

**LICENSOR:**

Witnesses:

Kristi Wright

Kristi Wright  
Print Name

Karen Lynch

Karen Lynch  
Print Name

SVAP POMPANO CITI CENTRE, L.P., a Delaware limited partnership

BY: SVAP Pompano Citi Centre GP, LLC, a Delaware limited liability company, its general partner

BY: SVAP GP, LLC, a Delaware limited liability Company, its manager

By: [Signature]  
Signature

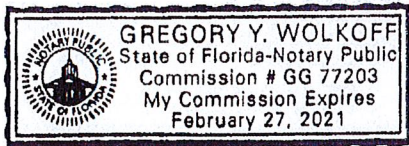
Gregory Moross  
Print Name

Vice President  
Title

STATE OF Florida  
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 30 day of October, 2017, by Gregory Moross as manager of SVAP GP, LLC, a Delaware limited company, who is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:



[Signature]  
NOTARY PUBLIC, STATE OF Florida

Gregory Wolkoff  
Name of Acknowledger Typed, Printed or Stamped

GG 77203  
Commission Number

**LICENSEE:**

Witnesses:

**LICENSEE OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
LAMAR FISHER, MAYOR

Print Name

\_\_\_\_\_

By: \_\_\_\_\_  
GREGORY P. HARRISON, LICENSEE MANAGER

Print Name

\_\_\_\_\_

Attest:

(SEAL)

\_\_\_\_\_  
ASCELETA HAMMOND, LICENSEE CLERK

Approved As To Form:

\_\_\_\_\_  
MARK E. BERMAN, LICENSEE ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** as Licensee Manager and **ASCELETA HAMMOND** as Licensee Clerk of the Licensee of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

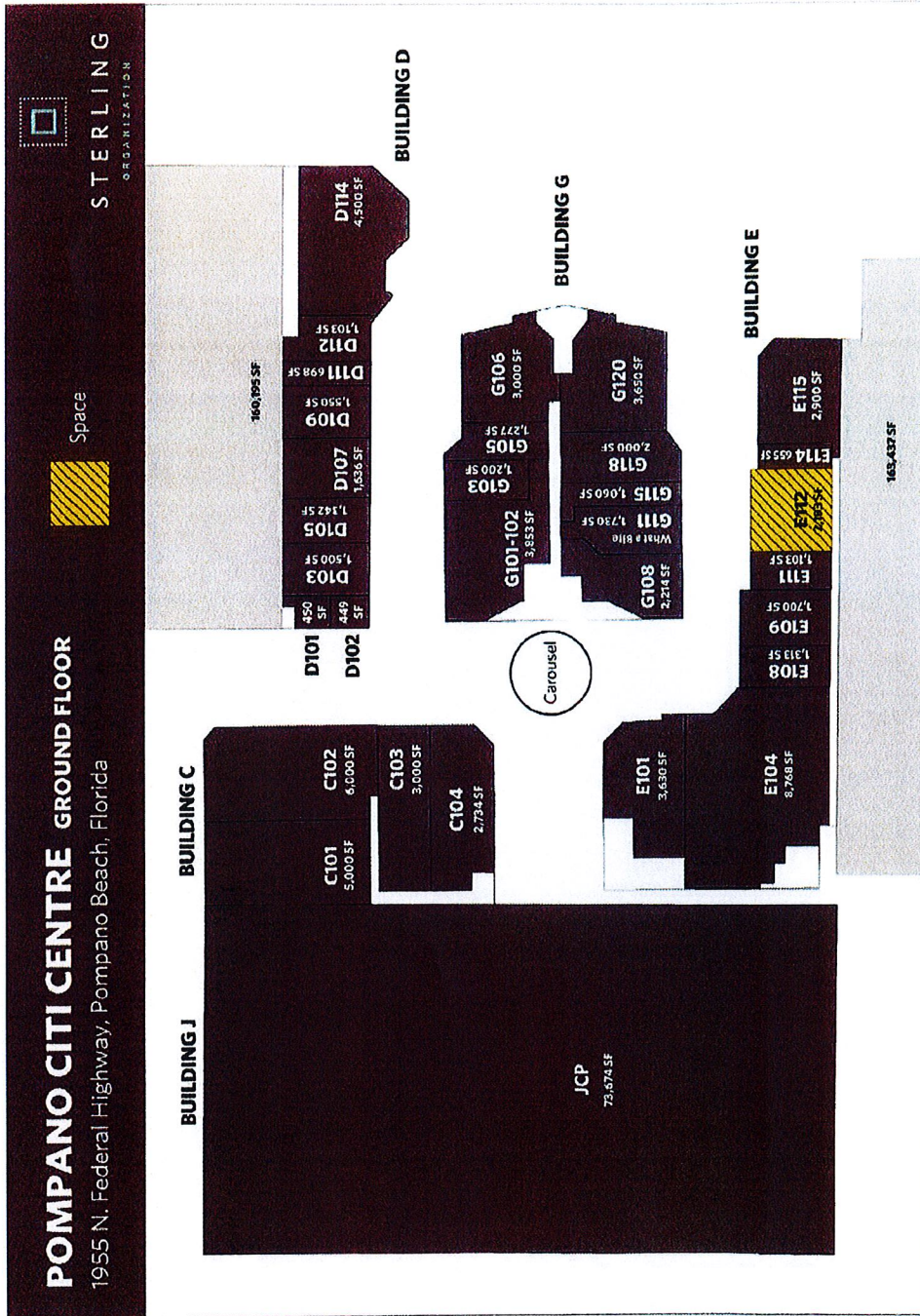
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

EXHIBIT A

Site Plan



Not to scale. This site plan is for informational purposes only. It is not intended to be used as a legal document. The information contained herein is subject to change without notice. The information contained herein is not intended to be used as a legal document. The information contained herein is not intended to be used as a legal document.



## EXHIBIT B

### Rules and Regulations

Licensee covenants and agrees that Licensee will comply with the rules and regulations set by Licensor from time to time for the operation of the Center, including but not limited to the following:

1. Licensee shall use the Space in a careful, safe and proper manner and shall keep the Space in a clean and safe condition in accordance with this License and local ordinances and the lawful direction of proper public officers.

2. All signage located in and upon the Space, if any, must be approved by Licensor prior to installation or placement. All signs, placards, banners, pennants or other advertising matter shall be prepared in a professional manner. NO HANDWRITTEN OR NON PROFESSIONALLY PRODUCED SIGNS SHALL BE ALLOWED.

3. Licensee shall not display merchandise outside the Space, but only in, upon and from the Space.

4. All loading and unloading of goods shall be done only at such times, in the areas and through the entrances designated for such purpose by Licensor.

5. All garbage and refuse shall be kept in the kind of container specified by Licensor, and shall be placed and prepared for collection in the manner and at the times and places specified by Licensor. Licensor reserves the right to require Licensee not to maintain any garbage or refuse container about the Space, but instead to use the mall-supplied refuse containers elsewhere in common areas (or in areas designated by Licensor).

6. No radio or television aerial shall be erected on or within the Space. Any aerial so installed shall be subject to removal without notice at any time.

7. No loudspeakers, televisions, phonographs, radios, flashing lights or other devices shall be used in or within the Space except as may be specifically permitted from time to time by Licensor, in Licensor's sole discretion.

8. No auction, fire, bankruptcy, going out of business, or selling-out sales shall be conducted on or about the Space.

9. Licensee shall not place nor permit any obstructions, garbage, refuse, vending machines, merchandise, racks, or displays in such areas or any areas other than in or upon the Space in the manner permitted or required herein or in the License to which these rules are attached.

10. Licensee shall not carry on any trade or occupation or operate any instrument or apparatus or equipment which emits an odor or causes a noise and which may be deemed offensive in nature.

11. Licensee, its employees and/or its agents, shall not distribute any handbills or other advertising matter in the Center or on automobiles parked in the parking areas.

12. Licensee and Licensee's employees shall not park their motor vehicles in those portions of the parking area designed for customer parking by Licensor. Licensee shall furnish Licensor the state automobile license numbers assigned to Licensee's motor vehicle or vehicles and the vehicles of Licensee's employees within five (5) days after the request therefore by Licensor, and Licensee shall thereafter notify Licensor of any changes of the same within five (5) days after such changes occur. If Licensee or Licensee's employees shall park in portions of the parking area designated for customer parking, and such vehicle or vehicles continue to be parked in said customer parking after such notice of such violation is given to Licensee or is given to Licensee's employees by Licensor, Licensor may at any time thereafter, in addition to any other remedies Licensor may have, (i) charge Licensee, at a minimum Twenty Five and NO/100 Dollars (\$25.00) per day for each day or partial day per car parked in any areas other than those designated, (ii) attach violation stickers or notices to such cars and (iii) have any such vehicle removed at Licensee's expense.

13. All construction work shall be performed during non-business hours, and shall conform to building code requirements. Licensee may not perform any construction work within the Space without the prior written consent of Licensor in each instance.

14. Licensee shall at all times offer customers a satisfactory return and/or exchange policy on all purchases. In the event Licensee cannot satisfy customer with an exchange, Licensee shall be required to fully refund the customer the complete purchase price in the form of payment made to Licensee. This policy shall not apply if the complaint primarily arises out of customer negligence or wrongful act.

## EXHIBIT 5

### COPYRIGHT ASSIGNMENT OF ARTWORK TO THE CITY OF POMPANO BEACH

This Copyright Assignment (the "Assignment") is made and effective as of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date") pursuant to an Agreement For Commissioned Artwork dated SEPTEMBER 25, 2017 (the "Agreement") between Beth Dubow ("Artist") and the City of Pompano Beach, a Florida municipal corporation ("City") concerning a public art project identified as Round Two of the Painted Pompano Series.

#### RECITALS

**WHEREAS**, pursuant to the aforesaid Agreement, the City commissioned Artist to adorn a prefabricated fish sculpture in accordance with the Design Proposal approved therein (the "Artwork") which City would subsequently install in the City at a location of its choice; and

**WHEREAS**, the Artwork Artist created pursuant to the Agreement between the Parties is depicted and more particularly described in Exhibit 1 attached hereto and made a part hereof; and

**WHEREAS**, it is ARTIST's intention to assign and transfer to City all of ARTIST's right, title and interest in and to the Artwork; and

**NOW, THEREFORE**, in consideration of the covenants and premises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Artist represents and warrants as follows:

#### **1. Assignment of the Artwork**

As of the Effective Date stated above, Artist does hereby forever grant exclusively to City for its use and disposition without reservation, all ownership rights, physical custody and control of said Artwork, including, but not limited to, all rights to reproduce, publish, adapt, modify, distribute, display, publicize, and transmit (digitally or otherwise) the Artwork; all income, royalties and damages hereafter due or payable with respect to the Artwork; create derivative works based on the Artwork; use the copyright or assign it to a third party; and to sue a third party for past, present or future infringement or misappropriation of the Artwork.

#### **2. Consideration**

As consideration for assignment of the Artwork and Artist's representation and warranties in this Assignment, City has promised to pay Artist a maximum not-to-exceed total amount of Fifteen Hundred Dollars (\$1,500.00) payable in one installment within ten (10) business days of the City's Final Acceptance of the Artwork.

#### **3. Artist's Representations, Warranties and Waiver**

Artist hereby represents and warrants to City that:

- (a) Artist is the sole owner of all right<sup>1</sup>, title, and interest in and to the Artwork;



- (b) The Artwork is original, not in the public domain, not plagiarized, and does not contain anything that is libelous or obscene;
- (c) Artist has not assigned, transferred, licensed, pledged, sold or otherwise encumbered the Artwork or agreed to do so thereby warranting the ARTWORK is free and clear of all encumbrances and there are no other permissions that need to be obtained in order for this Assignment to be completed;
- (d) Artist has full power and authority to enter into this Assignment and to make the assignment as provided in Paragraph 1 above;
- (e) As the original creator/owner of the Artwork to be given to the City for public display, Artist has not copied or reproduced in any way, anyone's original work in this final submitted product given to City and therefore Artist is not aware of any violation, infringement, or misappropriation of any third party's rights or any claims of rights, including existing intellectual property rights, rights of privacy and any other rights;
- (f) Artist is not aware of any third-party consents, assignments, or licenses that are necessary to perform under this Assignment;
- (g) Artist was not acting within the scope of employment of any third party when conceiving, creating, or otherwise performing any activity with respect to the Artwork assigned in Paragraph 1 above;
- (h) Artist understands and agrees the provisions of this Assignment shall control over the provisions of 17 U.S.C. Section 106 (A)(a) and shall constitute a waiver by Artist of any rights in the Artwork set out on or otherwise granted by 17 U.S.C. Section 106 (A)(a), Visual Artists Rights Act of 1990;
- (i) Artist agrees to agree to release and hold harmless the City, its officers, agents and employees, from any and all liability, including claims which arise from any negligence, omission, copyright or statutory violation, and for any loss, damage or misuse of the Artwork which occurs while it is depicted on the City's display;
- (j) Artist shall provide prompt assistance and cooperation in the prosecution of legal proceedings involving said Artwork or derivative works therefrom, said registrations granted thereon, including proceedings before the Copyright Office of the United States or any foreign country, and for court actions, provided however, that the expense which may be incurred by Artist lending such assistance and cooperation shall be paid by City; and
- (k) Artist understands and agrees the ARTWORK may become an integral part of the City's display and the depiction and/or copy of the Artwork may be integrated onto the City's display so that its image can be viewed by the public. Said integration

and use of the image of the Artwork may subject it to future removal or other modification by reason of its integration onto the City's display. Notwithstanding the foregoing, Artist does hereby consent to incorporation of the Artwork onto the City's display and waives any rights in the Artwork granted by 17 U.S.C. Section 106 (A)(a), Visual Artists Rights Act of 1990.

Artist agrees to immediately notify City in writing of any facts or circumstances arise that would make any of the representations in this Assignment inaccurate.

#### **4. Documentation**

Artist warrants that as soon as is reasonably possible following a request from City, Artist shall provide City with a complete copy of all documentation in Artist's possession that relates to the Artwork for the City's own use, is needed to meet record-keeping requirements of the City, or allows City to assert its rights granted pursuant to this Assignment.

Artist warrants that as soon as is reasonably possible following a request from City, Artist shall also:

- (a) promptly execute any and all additional documents, including any separate assignments of the Artwork which are deemed necessary or desirable by City to perfect in it, the right, title and interest herein conveyed;
- (b) generally do all other lawful acts reasonable and necessary to record the Assignment in the United States and throughout the world; and
- (c) promptly execute all documents reasonable and necessary for City to obtain a copyright on the Artwork and/or on any continuing, divisional, or reissue applications thereof.

#### **5. No Further Use of Artwork**

After the Effective Date, Artist agrees to make no further use of the Artwork or any derivatives thereof, except as authorized by the City's prior written consent and Artist agrees not to challenge the City's use or ownership, or validity of the Artwork provided, however, that Artist shall retain Artist's rights to be identified as the Artist whenever the Artwork is reproduced, published, distributed, or otherwise publicly displayed.

#### **6. Successors and Assigns**

All references in this Assignment to the Parties shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Assignment shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties.

#### **7. Notice**

Any notice or other communication provided for herein or given hereunder shall be in writing and given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return receipt requested) to the respective Party as follows:

**If to the Artist:**

Beth Dubow  
420 SE 6<sup>th</sup> St.  
Dania Beach, FL 33004

**If to City:**

City Manager  
P.O. Box Drawer 1300  
Pompano Beach, FL 33060

**8. Severability**

Whenever possible, each provision of this Assignment, will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Assignment is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Assignment will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

**9. Entire Assignment**

This Assignment, together with Exhibit 1, constitutes the final, complete, and exclusive statement of the agreement between the Parties with respect to the subject matter hereof and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral.

**10. Severability**

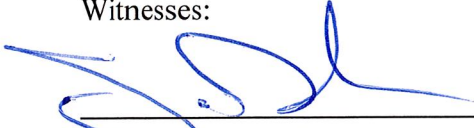
Whenever possible, each provision of this Assignment, will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Assignment is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Assignment will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

**11. Headings**


Headings used in this Assignment are provided for convenience only and shall not be used to construe meaning or intent.

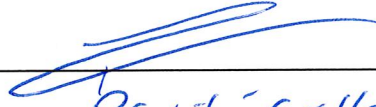
I represent that I have carefully read and understand the entire contents of this Copyright Assignment, that I have the authority, either on behalf of myself or as agent for the Artist/Owner of the Artwork to sign this Agreement, and that I have signed on my own free will.

Witnesses:

  
\_\_\_\_\_  
Jason DUBOW  
Print Name

ARTIST

BY:   
\_\_\_\_\_  
Signature of Artist  
BETH DUBOW  
Print Artist Name

  
\_\_\_\_\_  
David Wallace  
Print Name

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 25 day of September, 2017, by Beth DUBOW, who is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:

  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA



DAVID J. WALLACE  
MY COMMISSION # FF 950884  
EXPIRES: March 13, 2020  
Bonded Thru Budget Notary Services

\_\_\_\_\_  
Name of Acknowledger Typed, Printed or Stamped

\_\_\_\_\_  
Commission Number

L: Agr/Dev Srvc/Copyright Assignment of Work

# EXHIBIT 6

## THE CITY OF POMPANO BEACH PUBLIC ART CATALOGUING FORM

**NOTE: Please add attachments to provide comprehensive information for the following:**

I. Artist Information

A. 1. Name:

2. Name you want to use to label and PR materials, if differs from above:

B. Date of Birth:

C. Place of Birth:

D. Address, e-mail, web-site:

E. Phone:

F. One paragraph biography of artist:

II. Work of Art

A. Title:

B. Description of materials:

C. Dimensions in inches:

D. Inscription marks:

E. Artwork with electronic components used:

-Name of item:

-Manufacturer info (address, telephone, e-mail):

-Supplier info (address, telephone, e-mail):

G. Artist's statement:

III. Fabrication Information

A. Material(s) used in Artwork:

B. Material Finish:

- C. Material Suppliers:
- D. Materials used in the presentation of the project (maquette):
- E. Fabricators (name, address, phone, e-mail, web site):
- F. Fabrication method (attach diagrams or drawings):
- G. Architect/Engineer (name, address, telephone, e-mail):

IV. Installation

- A. Installation executed by (name, address, phone, fax, e-mail, website):
  
- B. Installation method (attach diagram of substructure, footings, CD with documents and photographs):
  
- C. Date of Installation:

V. External Factors

- A. Describe physical positioning of the artwork:
  
- B. Describe existing environmental factors which may affect the condition of the artwork:
  
- C. If the Artwork is site-specific, describe the relationship of the Artwork to its site:

VI. Maintenance (attach schedule of maintenance for specific items: light bulb, electronics, etc.)

- A. Short-term:
  
- B. Long-term:
  
- C. Note desired appearance of the artwork:

VII. Digital copies for use in repair of sound art and graphic reproduction:

VIII. Documentation

- A. Artist has supplies two (2) identical CD's with a minimum of fifteen (15) professional quality digital format images illustrating all components of the Artwork with a minimum resolution of 300dpi.

**EXHIBIT 7**  
**INSURANCE REQUIREMENTS**

ARTIST shall not commence services under the terms of this Agreement until certification or proof of insurance detailing terms and provisions has been received and approved in writing by the CITY's Risk Manager. ARTIST shall direct all queries and proof of the requisite insurance coverage to the CITY's Contract Administrator who shall be responsible to provide the CITY's Risk Manager evidence that the insurance required hereunder is in full force and effect.

Throughout the term of this Agreement, CITY, by and through its Risk Manager, reserve the right to review, modify, reject or accept any insurance policies required by this Agreement, including limits, coverages or endorsements. CITY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

Failure to maintain the required insurance shall be considered an event of default. The requirements herein, as well as CITY's review or acceptance of insurance maintained by CONTRACTOR, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by CONTRACTOR under this Agreement.

Throughout the term of this Agreement, CONTRACTOR and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance coverage and limits described below, including endorsements.

<b>Type of Insurance</b>	<b>Limits of Liability</b>
<hr/>	
<b>AUTOMOBILE LIABILITY:</b>	Minimum \$10,000/\$20,000/\$10,000 Per Occurrence and Aggregate. Bodily injury (each person) bodily injury (each accident), property damage, bodily injury and property damage combined.

A. Policies: Whenever, under the provisions of this Agreement, insurance is required of the CONTRACTOR, the CONTRACTOR shall promptly provide the following:

- (1) Certificates of Insurance evidencing the required coverage;
- (2) Names and addresses of companies providing coverage;
- (3) Effective and expiration dates of policies; and

(4) A provision in all policies affording CITY thirty (30) days written notice by a carrier of any cancellation or material change in any policy.

B. Insurance Cancellation or Modification. Should the required insurance policy be canceled before the expiration date, or modified or substantially modified, ARTIST shall provide thirty (30) days written notice to the CITY.

C. Waiver of Subrogation. CONTRACTOR hereby waives any and all right of subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.