

IRREVOCABLE LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made this _____ day of _____, 2018,
by and between:

CITY OF POMPANO BEACH, a municipal corporation of the
State of Florida (hereinafter "CITY")

And

DENNIS FRIEL ART STUDIOS, LLC, a Florida Limited Liability Company and
DENNIS FRIEL (Hereinafter collectively referred to as "LICENSOR/ARTIST")

WITNESSETH

WHEREAS, LICENSOR/ARTIST is the creator and owner of certain artistic images
known as "ATLANTIC HARMONY" (hereinafter "Image"); and

WHEREAS, the CITY would like to use said image to be painted on the SR 814 Bridge
located over the Intracoastal Waterway at Atlantic Boulevard within the City of Pompano Beach
as part of the bridge improvement project; and

WHEREAS, on June 13, 2017, the Pompano Beach City Commission approved
Resolution 2017-258 and executed a Community Aesthetic Feature Agreement (CAFA) between
the CITY and Florida Department of Transportation (FDOT) which authorized the proposed
artwork to be completed on the existing SR 814 Bridge. Thereafter, FDOT approved and
executed CAFA # 2016-M-491-0001.

WHEREAS, LICENSOR is willing to grant this Irrevocable License to CITY in
consideration of and recognition of the receipt of \$22,800.00 provided by BURKHARDT
CONSTRUCTION, INC. who is assisting with the design and construction of the artwork in
addition to other construction elements of the bridge project; and

WHEREAS: the CITY and LICENSOR/ARTIST desire to enter into this Irrevocable License Agreement to provide the terms and conditions upon which the CITY shall use the Image described below.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants and conditions hereinafter contained, it is agreed by the parties hereto as follows:

1. **Right to Use Painted Image**

LICENSOR/ARTIST hereby grants an irrevocable license to CITY to use the created Image entitled "Atlantic Harmony", which is stand-alone artwork for the purpose of participating in the Pompano Beach Bridge Improvement Project.

2. **Term of License Agreement.**

The Term of this Agreement shall commence upon date this Agreement is fully executed by both parties (the "Effective Date") and shall continue in perpetuity after installation of the artwork at the design location is complete.

3. **Responsibilities of the CITY.**

A. The CITY agrees that the LICENSOR/ARTIST shall be paid by BURKHARDT CONSTRUCTION, INC. in the total amount of \$ 22,800.00. Said payment shall be made upon a mutually agreement upon payment schedule between the LICENSOR/ARTIST and BURKHARDT CONSTRUCTION, INC. The CITY shall not be responsible for any payment to the LICENSOR/ARTIST.

B. The CITY shall not sell or redistribute the images of this irrevocable license agreement to any third party without the expressed written approval of LICENSOR/ARTIST. The redistribution does not include the CITY'S use of the images of the

artwork for advertisement purposes of the project including, but not limited to, advertisements on the CITY'S website or publications and/or press releases.

4. **Responsibilities of LICENSOR/ARTIST.**

A. LICENSOR/ARTIST shall grant to the City a non-exclusive, non-transferable and non-assignable use of artwork created specifically for the SR 814 Bridge over the Intracoastal waterway on Atlantic Boulevard which shall include the following:

B. LICENSOR/ARTIST shall deliver a conceptual design no later than **March 15, 2018.**

C. LICENSOR/ARTIST shall provide the above image for the purpose of being painted on the SR 814 Bridge on Atlantic Boulevard as part of the Bridge Improvement project for the City of Pompano Beach.

D. LICENSOR/ARTIST further agrees that if the artwork design is not accepted by the CITY, the LICENSOR/ARTIST shall agree to provide any other artwork mutually agreed to by LICENSOR/ARTIST and the CITY to complete the Bridge Improvement art project.

E. The entire Artwork shall be completed in December, 2018, and shall be subject to the CITY'S final approval.

5. **LICENSOR/ARTIST'S Representations, Warranties and Waiver**

LICENSOR/ARTIST hereby represents and warrants to CITY that:

A. LICENSOR/ARTIST is the sole owner of all right, 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. LICENSOR/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. LICENSOR/ARTIST has full power and authority to enter into this Agreement and to make the irrevocable License as provided in Paragraph 1 above;

E. As the original creator/owner of the Artwork to be given to the CITY for public display, LICENSOR/ARTIST has not copied or reproduced in any way, anyone's original work in this final submitted product given to CITY and therefore LICENSOR/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. LICENSOR/ARTIST is not aware of any third-party consents, assignments, or licenses that are necessary to perform under this Agreement;

G. LICENSOR/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. LICENSOR/ARTIST understands and agrees the provisions of this Agreement 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. LICENSOR/ARTIST agrees to agree to release and hold harmless the CITY, its official, 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. LICENSOR/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. LICENSOR/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.

LICENSOR/ARTIST agrees to immediately notify CITY in writing of any facts or circumstances arise that would make any of the representations in this Agreement inaccurate.

6. **CITY'S Representations.** CITY represents and warrants to LICENSOR/ARTIST that it holds all such rights and interests as required to permit CITY to enter into this Agreement and it is duly authorized to enter into this Agreement.

7. **Image Ownership.** Nothing in this Agreement should be construed to mean that a transfer of ownership of the Official Artwork will occur. LICENSOR/ARTIST retains complete ownership of the Official Artwork. All uses of the Images, other than those specified in this Agreement must be approved by LICENSOR/ARTIST.

8. **Notice.** Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal services, (ii) delivery

by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by written notice to the other party:

CITY: CITY OF POMPANO BEACH
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Attention: Horacio Danovich, CIP Manager
Horacio.Danovich@copbfl.com

LICENSOR/ARTIST: Dennis Friel Art Studios, LLC
1515 North University Drive
Suite 105
Coral Springs, FL 33071
Attn: Dennis Friel
(954) 778-8983
info@dennisfriel.com

9. **Maintenance.** CITY agrees to at all times maintain and repair the artwork at its sole cost and expense. LICENSOR/ARTIST agrees that what constitutes reasonable maintenance and repair of the mural Project shall be determined by CITY, in CITY'S sole discretion.

10. **Interpretation.** Each party had the full opportunity to participate in the drafting of this Agreement and, therefore, the Agreement shall not be interpreted against any party on the ground that the party drafted the Agreement or caused it to be prepared.

11. **Authority to Enter Into Agreement.** Each person signing below personally warrants and represents to Artist that the City has approved this License, intends to be bound by its terms and that they are duly authorized to execute this License Agreement on behalf of the City.

12. **Copyrights.** LICENSOR/ARTIST retains (1) copyright of the design(s) created; (2) all rights to the Artwork under the Copyright Act of 1976, 17 U.S.C. '101, et seq., as amended by the Visual Artists Rights Act of 1990, and any successor act, except that the Artist hereby waives the rights under 17 U.S.C. •106A(a); and (3) all rights expressly granted in this Agreement. The LICENSOR/ARTIST grants to CITY a revocable license to graphically depict the Artwork in any non-commercial manner or media whatsoever to promote the City or the City's cultural programs.

13. **Warranty of Authorization and Non-Infringement.** LICENSOR/ARTIST warrants that the Work provided under this Agreement, to the best knowledge of the LICENSOR/ARTIST, will not infringe upon or violate any license, copyright law, patent law, trade secret law, trademark law, moral rights law, semiconductor chip protection Jaw, unfair competition law, proprietary information, non-disclosure, intellectual property or other right of any third party; infringe upon or violate any right of privacy, or contain libelous material; and the LICENSOR/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.

14. **Indemnification and Sovereign Immunity.** LICENSOR/ARTIST shall indemnify, defend and hold harmless the CITY and its officials, officers, agents and employees from and against any and all claims, loss, suit actions, damages, liabilities, expenditures, or causes of action, including accidents and injuries to person or property and attorney fees, of any kind arising from this Agreement without limitation, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification of CITY by LICENSOR/ARTIST shall not be operative as to any claims by LICENSOR/ARTIST for any causes of action LICENSOR/ARTIST has or may have for breaches, defaults, negligence, gross negligence or

willful misconduct of CITY or any of its officials, officers, employees or other authorized agents. LICENSOR/ARTIST acknowledges and agrees that one percent (1%) of the License fee paid as heretofore described shall serve as consideration for such indemnification. The provisions and obligations of this Section shall survive the expiration or earlier termination of this License. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by the CITY as provided for in § 768.28, Florida Statutes.

15. **Insurance.** During the term of this Agreement, LICENSOR/ARTIST, at its sole cost, shall maintain insurance in the amounts and subject to all conditions set forth in Exhibit "B."

16. **Amendments.** No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith.

17. **Surrender upon termination.** CITY shall peaceably surrender this license and, at CITY'S sole cost, restore the Design Location to its original condition upon written notice as provided for in Section 8 herein.

18. **Waiver.** Failure of either party to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this Agreement shall be waived or modified except by the parties hereto in writing.

19. **Termination.** CITY may cancel this Agreement for convenience or cause at any time during the term thereof upon sixty (60) days written notice to LICENSOR/ARTIST.

20. **Miscellaneous Provision.** It is expressly understood and agreed that no real or personal property is leased to CITY and that CITY is a licensee not a lessee.

21. **Laws and Ordinances.** CITY shall observe all laws and ordinances of the CITY, county, state and Federal agencies directly relating its use of the Property.

22. **Recordation of Agreement.** This Agreement shall be recorded in the Public Records of Broward County, Florida, at the expense of CITY, with a copy given to LICENSOR/ARTIST.

23. **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 LICENSOR/ARTIST submit to the jurisdiction of Florida courts and federal courts located in Florida with respect to claims under this Agreement. 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. Both parties agree to waive all rights to sue or collect from the other any damages other than direct damages and they expressly waive benefit of the bargain, punitive, special, exemplary, treble or consequential damages.

24. **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intends to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this

Agreement and that no third party shall be entitled to assert a claim against any of the parties based on this Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

25. **Non-Discrimination.** Neither CITY nor LICENSOR/ARTIST shall discriminate against any Person in the performance of duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

26. **Continuity.** This Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

27. **Public Records.** Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to § 119.07, Florida Statutes, and any resultant award of attorney's fees of non-compliance with that law.

28. **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, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of LICENSOR/ARTIST be deemed Force Majeure.

29. **Entire Agreement.** This Agreement and any documents attached hereto or mentioned herein, contain all of the Agreements of the parties regarding the Subject Property, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

30. **Independent Contractor.** The relationship of the parties created by this Agreement shall be that of independent contractor. Nothing contained in this Agreement shall be construed or interpreted as creating a relationship of joint ventures, partners, principal and agent or employer and employee under any circumstances. Neither party shall have the power to obligate or bind the other party.

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement as of the date first above written.

"CITY":

Witnesses:

CITY OF POMPAÑO 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 _____, 2018 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 is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"LICENSOR/ARTIST":

Witnesses:

DENNIS FRIEL ART STUDIOS, LLC., a Florida
limited liability Company

By: _____
DENNIS FRIEL, CEO, Owner

Print Name: _____

By: _____
DENNIS FRIEL, Individually

Print Name: _____

(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by DENNIS FRIEL as CEO, Owner of DENNIS FRIEL ART STUDIOS, LLC, a Florida limited liability Company, on behalf of the company, and DENNIS FRIEL, Individually. He is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

Name of Acknowledger Typed, Printed or Stamped

Commission Number

/TAL:jmm
2/13/2018
L:Agr/CIP/2018-481