

CONTRACT TO PURCHASE ARTWORK

This Agreement is made as of August 22, 2024 by and between the City of Palm Desert, a municipal corporation ("CITY"), and Karen & Tony Barone, a partnership located in Rancho Mirage, California ("ARTIST") who agree as follows:

RECITALS

Section 1. As part of the City's Art in Public Places program, certain funds are available for the establishment of artworks in public places and for the purchase or commissioning of artworks and;

Section 2. History of Work. SWIRLY GIRL (Female Superhero) by Karen & Tony Barone has been and will be displayed on El Paseo as part of the 2023/2024 El Paseo Exhibition from November 2022 through October 2024. The Work was selected for purchase by CITY through review by the Cultural Arts Committee, and is therefore being purchased by CITY.

NOW, THEREFORE, the parties mutually agree as follows:

Section 1. Price. CITY shall pay ARTIST a firm fixed price of \$17,700.00 for the sculpture described as SWIRLY GIRL (Female Superhero) ("Work"). It is agreed that City has no obligations regarding commissions or any agreements with galleries or agents with whom ARTIST may have contracted.

Section 2. Warranty of Originality. ARTIST warrants that the performance, design, and Work being purchased is original and the product of ARTIST'S own creative efforts and does not infringe the right of any persons. ARTIST also warrants that, unless otherwise stipulated in writing and attached hereto, the Work is original, that it is an edition of one (1), and that ARTIST shall not sell, license, perform, or reproduce a substantially identical copy of the Work without the prior consent of CITY.

Section 3. Warranty on Workmanship. ARTIST shall warrant and maintain his/her Work free from all faults or defects arising from material and workmanship for a period of one (1) year after purchase.

Section 4. Alteration of Work. Pursuant to the provisions of the California Art Preservation Act, California Civil Code section 987 et seq., CITY agrees that it will not intentionally destroy, damage, alter, modify, or change the Work in any way. If an alteration should occur, either intentionally or unintentionally, then the Work will no longer be represented as the work of the ARTIST without his/her written permission. CITY agrees to reasonably assure that the Work is properly preserved, maintained, and protected. CITY shall, however, have the right to move or relocate the Work or remove it from display without the consent of ARTIST.

Section 5. Repair. Insofar as is practical, in the event repair of the Work is required, CITY shall give ARTIST, during his or her lifetime, the opportunity to do that work for a reasonable fee. In the case of disagreement between CITY and ARTIST as to what

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constitutes a reasonable fee, the fee determined by an independent conservator selected by CITY shall be considered a reasonable fee. In the event ARTIST refuses to make the repair for such fee, CITY may proceed to arrange for such repair by a person qualified to accomplish the restoration. When emergency repairs are necessary in order to prevent the loss of or further damage to the Work, such repairs shall be undertaken or arranged by CITY without advance notice to ARTIST, and such repairs shall not be deemed to constitute an artistic alteration.

Section 6. Authorship of Work. ARTIST shall retain the right to claim authorship of the Work. CITY shall assure that ARTIST'S name shall be publicly displayed on, at, or near the Work. In the event the Work is substantially damaged or artistically altered in a substantial manner, CITY shall no longer represent the Work to be the Work of ARTIST if ARTIST gives written notice to CITY that it is the position of ARTIST that ARTIST has the right to deny authorship on the grounds stated in this paragraph. In the event CITY disputes the right of ARTIST to deny authorship, the matter shall be submitted to the Arbitration Service of California Lawyers for the Arts which shall determine the issue of whether the Work is substantially damaged or artistically altered in a substantial manner. Such determination shall be binding upon CITY and ARTIST and neither shall have any further recourse or cause of action regarding the matters so determined.

Section 7. Indemnification. ARTIST shall assume the defense of, and indemnify and save harmless, the City, its officers, agents, employees and volunteers, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, and expenses of every type and description to which any or all of them may be subjected, by reason of, or resulting from, directly or indirectly, the performance of this Agreement by ARTIST, whether within or without the scope of this Agreement, whether or not it is caused in part by a party indemnified hereunder. The foregoing shall include, but not be limited to, any attorney fees reasonably incurred by CITY. The obligation to defend and indemnify the CITY shall terminate upon the completion of the one year warranty period.

Section 8. Copyright. Upon purchase of ARTIST'S Work, copyright of the Work will be owned jointly by CITY and ARTIST and no further use of the copyright will be made by ARTIST or CITY without the written consent of the other, which consent will not be unreasonably withheld.

CITY has the right to reproduce and distribute in printed form and on commercial documents and/or brochures or any other literature of CITY describing or dealing with its real estate holdings, photographs, realistic renderings, videotapes, or films of the Work. Such reproductions and use of the images of the Work for promotional purposes shall not constitute a breach of copyright and no royalty shall be due and payable by CITY to ARTIST for such use.

Section 9. Credit to the Artist. Such reproduction and images of the Work which feature the Work as art for publicity, promotion, and educational purposes shall, to the extent reasonably possible and appropriate, give reference to the artist. Reproduction and images of Work in which the purpose of the reproduction or image is predominantly unrelated to the Work shall not require reference to artist.

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Section 10. Artist Reproduction Rights. Pursuant to Section 8, CITY agrees that ARTIST shall have the right to reproduce and distribute in printed form and on non-commercial educational materials and brochures advertising or promoting ARTIST and ARTIST'S career, two-dimensional images such as photos, slides, or realistic renderings, video tapes, or films of the Work as installed. Such reproductions and use of the images of the Work for promotional and educational purposes shall be deemed to not constitute a breach of copyright in any way and no royalty fee shall be due and payable to ARTIST for such use. Such reproduction and images of the Work for publicity, promotion, and educational purposes shall, to the extent reasonably possible and appropriate, give reference to City of Palm Desert.

Section 11. Records. CITY agrees to maintain for a reasonable period of time a record of this Agreement and of the location and disposition of the Work.

Section 12. Breach of Agreement; Arbitration.

(a) In the event ARTIST or CITY believes that the other has failed to faithfully perform this Agreement, the aggrieved party shall notify the other in writing of such failure. Such notice shall specify in detail each and every failure and the reason such failure is a breach of the Agreement. In the event that the parties cannot resolve the dispute, the Arbitration Service of the California Lawyers for the Arts shall determine whether or not there has been a failure to perform this Agreement and such determination shall be final and binding upon both ARTIST and CITY.

(b) If any matter is to be submitted to a third party for resolution, all fees, expenses, and costs connected therewith shall be borne jointly and equally by CITY and ARTIST. Each and every obligation under this Agreement to submit any matter to a third party for resolution is conditioned upon the foregoing provision of this paragraph. If any matter is to be submitted to the Arbitration Service of the California Lawyers for the Arts for resolution pursuant to the Agreement, and if, at the time such submission is called for, the Arbitration Service of the California Lawyers for the Arts is not in existence or is not able or willing to provide such resolution service, then the matter shall be submitted for resolution to the American Arbitration Association in accordance with their procedures then in use.

Section 13. Artist's Rights; Notification of Change of Address. ARTIST shall notify the CITY of any change of address and failure to do so shall constitute a waiver of ARTIST'S rights pursuant to this Agreement during the time such omission prevails. Any waiver of a right pursuant to this Agreement for failure to maintain ARTIST'S current address so aforesaid may be cured prospectively only by notifying the CITY of ARTIST'S current address. All rights of ARTIST pursuant to this Agreement shall be personal to ARTIST and shall terminate upon either the legal disability or incompetence of ARTIST or upon the death of ARTIST, except as provided ARTIST under the Copyright Laws. No right of ARTIST pursuant to this Agreement may be assigned or transferred in any manner, including without limiting the generality of the foregoing any hypothecation or pledge or any grant of any security interest, except as provided by ARTIST under the Copyright laws.

Section 14. Notice. All notices shall be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

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City: City of Palm Desert
Erica Powell, Public Art Management Analyst
73-510 Fred Waring Drive
Palm Desert, CA 92260
(760) 346-0611

Artist: Karen & Tony Barone
37081 Ferber Dr.
Rancho Mirage, CA 92270
(760) 333-8953

Section 15. Entire Agreement; Amendment. This Agreement is the entire agreement of the parties and supersedes all prior negotiations and agreements whether written or oral. This Agreement may be amended only by written agreement and no purported oral amendment to this Agreement shall be valid.

CITY OF PALM DESERT, a municipal corporation:

L. Todd Hileman, City Manager

Date

ATTESTED TO:

Anthony J. Mejia, City Clerk

ARTIST:

Karen & Tony Barone

Date

APPROVED AS TO FORM:

Isra Shah, City Attorney

Date