

Meeting Date: 3/3/2015

Report Type: Review

Report ID: 2015-00192

Title: (Agreements/Contracts for Review and Information) Entertainment and Sports Center Art in Public Places Program

Location: Downtown Plaza, District 4

Recommendation: 1) Review a report recommending passage of a Resolution A) authorizing the City Manager or his designee to execute the following agreements: 1) Agreement to Purchase Artwork for the Sacramento Entertainment and Sports Center Project (“ESC”) with the Gagorian Gallery and Vivek Ranadive, Kevin Nagle, and Phil Oates (“Donors”) for the purchase of the sculpture “Coloring Book” for \$7.5 million (Exhibit A); 2) Contribution and Co-Ownership Agreement for Artwork for the ESC with the Donors (Exhibit B); 3) Lease of Artwork for the ESC with the Donors (Exhibit C); 4) Pledge to Gift Artwork for the ESC with the Donors (Exhibit D); 5) Pledge to Gift Funds for Artwork for the ESC with Marcy Friedman to accept her pledge of \$1,000,000 (Exhibit E); 6) an agreement, in a form approved by the City Attorney, with SG Downtown, LLC, concerning the placement, access, and maintenance of the sculpture; and 7) other agreements or other instruments necessary, in a form approved by the City Attorney, to implement the agreements described above; and B) authorizing the City Manager or his designee to establish projects and revenue and expenditure budgets for the acquisition, installation and ongoing maintenance of the public art for the ESC and accept the donations outlined above, to be used consistent with the governing agreements; and 2) continue to March 10, 2015 for approval.

Contact: Shelly Willis, Executive Director, 808-3971, Sacramento Metropolitan Arts Commission

Presenter: Shelly Willis, Executive Director, Sacramento Metropolitan Arts Commission, 808-3972; Mark Friedman, Sacramento Basketball Holdings LLC, 383-3333

Department: Convention & Cultural Services

Division: Metro Arts-APP

Dept ID: 17001821

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Resolution
- 4-Exhibit A (Gallery Purchase Agreement)
- 5-Exhibit B (Contribution & Co-Ownership Agreement)
- 6-Exhibit C (Lease of Donors Interest)
- 7-Exhibit D (Pledge Agreement)
- 8-Exhibit E (Pledge Agreement Marcy Friedman)

City Attorney Review

Approved as to Form
Kourtney Burdick
2/25/2015 10:53:32 AM

Approvals/Acknowledgements

Department Director or Designee: Jody Ulich - 2/24/2015 5:52:51 PM

Description/Analysis

Issue Detail: Staff is recommending the Council authorize the execution of various agreements to purchase the sculpture “Coloring Book,” by artist Jeff Koons, for a purchase price of \$7.5 million, for the City’s Entertainment and Sports Center (ESC). To fund this purchase, \$4.5 million would come from the ESC contribution to the Art in Public Places (APP) program and \$3 million would come from private donors—Vivek Ranadivé, Kevin Nagle, and Phil Oates. In addition, Marcy Friedman has pledged to donate \$1 million to the City to be used for the purchase of regionally-produced art for the ESC and other uses outlined in Ms. Friedman’s pledge agreement. The remaining \$1 million from the ESC APP contribution would be used for regional art, Sacramento Metropolitan Arts Commission (SMAC) administration, art maintenance, and the shipping, fabrication, and installation of “Coloring Book” as outlined below in the Financial Considerations section.

Under the City’s APP program (City Code Section 2.84), at least two percent of the construction costs of new public buildings funded in whole or in part by the City must be committed to public art at the site. The construction costs for the Entertainment and Sports Center (ESC) project, as set forth in the Guaranteed Maximum Price (GMP) contract, is approximately \$273 million. As a result, \$5.5 million has been set aside for the Art in Public Places Program to be used for the purchase, installation, and maintenance of public art at the ESC.

As set forth in City Code Chapter 2.84, the SMAC is charged with providing for the nature, selection, and placement of APP art, subject to the City’s execution of a purchase agreement. Purchase agreements must be approved by the City Manager or City Council, depending upon the purchase price. Here, the purchase price exceeds the City Manager’s authority; therefore, the contract is being presented to the City Council for its consideration.

SMAC has selected a sculpture named “Coloring Book” by internationally renowned sculptor Jeff Koons. The \$7.5 million cost of the sculpture exceeds the funding; private donors have offered to cover the gap. In total, the City has been offered \$3 million in donations to assist the City with the purchase of “Coloring Book” and an additional \$1 million for the purchase, installation, repair, maintenance, and administration of City-owned public art for the ESC as well as the removal, restoration, and relocation of artworks from the K Street Mall. The contributions from Vivek Ranadivé, Kevin Nagle, and Phil Oates—totaling \$3 million—will be secured by a bank-issued letter of credit.

The artwork is scheduled to be delivered by October 1, 2016, with a six-month grace period to April 1, 2017.

In addition, staff is recommending establishment of a Capital Improvement Project (CIP) Reimbursable Project for the ESC APP program. This is in accordance with the conditions of approval for the ESC project as set forth in Resolution 2014-0129 (Adopting Findings of Fact and Conditions of Approval for the Entertainment and Sports Center Project), which conditioned approval of the ESC project in part on its compliance with the City's APP program. Establishing a CIP Reimbursable project for this purpose will allow staff to administer and manage revenue and expenses over the life of the ESC APP project.

Policy Considerations: The City's APP ordinance requires at least two percent of the total construction costs for eligible projects be spent on public artwork. SMAC is charged with providing for the nature, selection, and placement of these artworks, subject to the City's approval of a purchase contract for the artwork. Establishment of a CIP Reimbursable Project with a budget of over \$100,000 requires Council approval.

Economic Impacts: Not applicable.

Environmental Considerations: The actions in this report do not have any potential for significant effect on the environment and are exempt under California Environmental Quality Act Guidelines section 15061(b)(3).

Sustainability: Not applicable.

Commission/Committee Action: On November 17, 2014 SMAC recommended the purchase of "Coloring Book" by Jeff Koons. At the time SMAC selected "Coloring Book," it was estimated \$1.24 million dollars would be available for the purchase of work by regional artists. Since SMAC considered the purchase, additional funding has been given and now approximately \$1.5 million will be allocated to the purchase of additional art and \$100,000 will be set aside to maintain "Coloring Book."

Rationale for Recommendation: It is recommended that the artwork purchase and execution of the various agreements be approved because of the high quality of the artwork, the unique opportunity to purchase a piece by renowned artist Jeff Koons, and the significant private donations for the purchase of artwork by regional artists for the ESC project and the maintenance, repair, and installation of all ESC artwork.

Financial Considerations: The ESC public art program budget is \$9.5 million dollars - \$4 million dollars from private donors, and \$5.5 million dollars from the APP program as shown in the following table. The \$5.5 million from the APP program is part of the overall ESC project budget. This represents a significant private investment in public artwork in the Downtown, above and beyond the original amount available through the APP program. No additional funds from the City are needed for the purchase of the artwork.

These funds will be allocated in the manner listed in the table below.

Sources		Uses	
ESC Art in Public Places (developer paid fees)	\$5,500,000	"Coloring Book" by Jeff Koons (City - \$4.5 million, donors - \$3 million)	\$7,500,000
Vivek Ranadivé	\$1,000,000	"Coloring Book" crating, shipping, installation, maintenance	\$400,000
Phil Oates	\$1,000,000	"Coloring Book" maintenance	\$100,000
Kevin Nagle	\$1,000,000	ESC APP regional art	\$1,500,000
Marcy Friedman	\$1,000,000		
Total	\$9,500,000	Total	\$9,500,000

It should be noted that under the agreement, the City would be required to pay its entire share of the of the purchase price (\$4.5 million) prior to completion and delivery of "Coloring Book."

Additionally it is recommended that the City Council authorize the City Manager to establish projects as well as revenue and expenditure budgets for the acquisition, installation, and ongoing maintenance of the public art for the Entertainment and Sports Center project.

Local Business Enterprise (LBE): The Gagosian Gallery is not a local enterprise. A waiver has been approved for this purchase.

Background

Artist: Jeff Koons is described as one of the most important and influential artists of the postwar era. His work is held in the collections of major art museums throughout the world, including the Museum of Contemporary Art in Chicago, the San Francisco Museum of Modern Art, and the Los Angeles County Museum of Art. Versions of “Coloring Book” have been installed at the New York Metropolitan Museum of Art and the London Royal Academy. In 2014, the Whitney Museum of American Art mounted a major retrospective of his work. This same exhibition opened in November 2014 in Paris at the Centre Pompidou, Musée National d’Art Moderne, and will continue on to the Guggenheim Museum Bilbao in the summer of 2015.

The artist’s artwork entitled “Balloon Dog (Orange)” is the most expensive work by a living artist sold at auction, having sold for \$58.4 million in 2013. The tall topiary sculpture by Jeff Koons, entitled “Puppy,” is one of the most important contemporary public artworks of the 20th Century and was purchased in 1997 by the Solomon R. Guggenheim Foundation to be exhibited at the Guggenheim Museum Bilbao and in New York City at the Rockefeller Center.

Art critics and historians have written about Koons’ work extensively in the *New York Times*, *Art News*, *Sculpture Magazine*, *The Guardian*, and *The New Yorker*. Koons is the recipient of the 2008 Wollaston Award from the Royal Academy of Arts in London, the 2013 U.S. State Department’s Medal of Arts, and the Skowhegan Medal for Sculpture. He was named an Officer of the French Legion of Honor in 2007. He is a pioneer of groundbreaking fabrication techniques and processes that are proprietary, including the process for creating “Coloring Book” and other works in the Celebration Series.

Artwork: “Coloring Book” by Jeff Koons is one in an edition of five unique versions of Koons’ Celebration Series to be fabricated (refer to first photo). Each of the sculptures is identical in scale and form, but varies in coloration. “Coloring Book” will be monumental in scale—approximately 223-1/16 x 133 x 14 inches in size, fabricated with high chromium stainless steel, and washed with a transparent color coating. The highly reflective and brightly colored sculpture is part of Koons’ critically acclaimed Celebration Series.

“Coloring Book” will be installed in the plaza at the main entrance to the ESC, providing a focal point and contrast to the ESC steel façade (refer to second photo rendering in this attachment).

Purchase Price: The purchase price of \$7.5 million will likely be split between the Gallery (the Gallery's commission) and the artist (the artist's fee). Staff does not know the exact split, but a 50/50 split between a gallery and artist is standard practice.

Maintenance of "Coloring Book" Sculpture: Regular maintenance of the sculpture is essential. According to the maintenance manual for "Coloring Book", the sculpture's surface is affected by environmental influences such as pollution, ultraviolet rays, atmospheric exposure, acid rain, bird and insect excrement, and residual water. When the sculpture is exposed to the elements, the surface may become lusterless and matte, stained, or may decompose if not maintained.

Regular maintenance includes twice-monthly wiping, semi-annually washing, and surface treatment every 18 – 36 months. Based on the manual and consultation with the fabricator, staff estimates these maintenance costs to be \$15,000 - \$25,000 annually. This estimate does not include damage due to vandalism. The Artist and the Gallery represent that the Artist's fabricator will apply a coating that would facilitate the cleaning of the Artwork in the event of tagging by graffiti, although no guarantee can be given regarding its effectiveness.

Furthermore, although the Gallery has certified that "Coloring Book" is suitable for outdoor display, it has also said it should not be touched in the regular course of display. As part of the installation process, the sculpture will be placed in a manner so as to minimize the potential for human contact.

Installation: Due to the layout of the plaza, the artwork may not be placed on City-owned property. Rather, it may be placed on the adjacent parcel in the plaza, which is owned by SG Downtown, LLC. Staff is working on an agreement with SG Downtown for permission to place the artwork as well as secure access to the artwork for maintenance and public viewing purposes. Securing this agreement is a condition precedent to the City's obligation to make payments towards the purchase price under the agreement with the Gallery — i.e., if the City can't reach agreement on this point, the City will not move forward with the purchase.

Private Donor Agreements: Private donors—Phil Oates, Kevin Nagle, and Vivek Ranadivé (the "Donors")—have agreed to fund 40% of the purchase price (\$3 million) in exchange for a 40% ownership interest in the piece for three years from the date of installation. At the end of the three years, the donors would relinquish all ownership rights to the City. In the interim, the City would lease the Donors' interest, giving the City the right to use, display, possess, and

control the Artwork. In addition, the Donors have agreed to make a lift available during the three-year period to assist with maintenance of the piece.

Regional Art: To further expand the art at the ESC and provide an opportunity for regional artists, private donor, Marcy Friedman, has agreed to give the City an historic donation of \$1 million to establish a fund for the purchase, installation, repair, maintenance, and administration of City-owned public art for the Sacramento Entertainment and Sports Center Project. These funds may also be used to remove existing artworks from the K Street Mall. The donation is a restricted gift to the City for these uses. All purchases of artwork from the donation are to be from artists based in any of the following counties: Sacramento, El Dorado, Placer, Sutter, Yolo, Amador, Calaveras, San Joaquin, Contra Costa, Solano, Butte, Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma. Regional art selection will be administered through SMAC.

"Coloring Book" Sculpture by Jeff Koons



“Coloring Book” Sculpture in Plaza



RESOLUTION NO. 2015-

Adopted by the Sacramento City Council

AUTHORIZING PURCHASE OF THE “COLORING BOOK” BY ARTIST JEFF KOONS, APPROVAL OF AGREEMENTS FOR THE ENTERTAINMENT AND SPORTS CENTER ART IN PUBLIC PLACES PROGRAM, AND ESTABLISHMENT OF THE ART IN PUBLIC PLACES PROGRAM BUDGET

- A. The City’s Art in Public Places Program, as set forth in Chapter 2.84 of the Sacramento City Code, requires at least two percent of the total construction costs for eligible projects be spent on public artwork. The Sacramento Metropolitan Arts Commission (SMAC) is charged with providing for the nature, selection, and placement of these artworks, subject to the City’s approval of a purchase contract for the artwork.
- B. The Entertainment and Sports Center (ESC), which will be owned by the City, is a major publicly-funded construction project; therefore, at least two percent of the ESC’s construction costs must be set aside for public art.
- C. SMAC has recommended that the City purchase the sculpture, “Coloring Book,” by Jeff Koons, from the Gagosian Gallery, as part of the City’s Art in Public Places expenditures associated with the construction of the ESC. “Coloring Book” is one of five unique versions, fabricated or to be fabricated by Koons, each approximately 223-1/16 x 133 x 14 inches in size and made from mirror-polished stainless steel with a transparent color coating.
- D. The sculpture will be placed outdoors at the ESC site. Due to the layout of the ESC plaza, the sculpture may not be placed on City-owned property; rather, it may be placed on the adjacent parcel in the plaza, which is owned by SG Downtown, LLC. Staff is working on an agreement with SG Downtown for permission to place the artwork as well as secure access to the artwork for maintenance and public viewing purposes. Securing this agreement is a condition precedent to the City’s obligation to make payments towards the purchase price under the agreement with the Gallery.
- E. The price of “Coloring Book” is \$7.5 million dollars. The City and three donors—Vivek Ranadivé, Kevin Nagle, and Phil Oates (together, the

“Donors”) — have agreed to purchase the sculpture jointly with the City (Exhibit A); the City will contribute \$4.5 million towards the purchase price and the Donors will contribute \$3 million towards the purchase price. Three years from the sculpture’s installation at the ESC site, the Donors will donate their 40% ownership interest in the sculpture to the City. These arrangements are memorialized in the following agreements with the Donors: Contribution and Co-Ownership Agreement for Artwork for the Sacramento Entertainment and Sports Center Project (Exhibit B), Lease of Artwork for the Sacramento Entertainment and Sports Center Project with the Donors (Exhibit C), and Pledge to Gift Artwork for the Sacramento Entertainment and Sports Center Project (Exhibit D).

- F. To provide for additional regionally-produced artwork at the ESC site and other art-related items, the City would like to accept the donation of \$1 million from Marcy Friedman.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager or his designee is authorized to execute the Agreement to Purchase Artwork for the Sacramento Entertainment and Sports Center Project with the Gagosian Gallery and Donors for the purchase of the sculpture “Coloring Book” for \$7.5 million (Exhibit A).
- Section 2. The City Manager or his designee is authorized to execute the Contribution and Co-Ownership Agreement for Artwork for the Sacramento Entertainment and Sports Center Project with the Donors (Exhibit B).
- Section 3. The City Manager or his designee is authorized to execute the Lease of Artwork for the Sacramento Entertainment and Sports Center Project with the Donors (Exhibit C).
- Section 4. The City Manager or his designee is authorized to execute the Pledge to Gift Artwork for the Sacramento Entertainment and Sports Center Project with the Donors (Exhibit D).
- Section 5. The City Manager or his designee is authorized to execute the Pledge to Gift Funds for Artwork for the Sacramento Entertainment and Sports Center Project with Marcy Friedman to accept her pledge of \$1,000,000 (Exhibit E).

- Section 6. The City Manager or his designee is authorized to execute an agreement, in a form approved by the City Attorney, with SG Downtown, LLC, concerning the placement, access, and maintenance of the sculpture.
- Section 7. The City Manager or his designee is authorized to execute other agreements or other instruments necessary, in a form approved by the City Attorney, to implement the agreements described above.
- Section 8. The City Manager or his designee is authorized to establish projects and revenue and expenditure budgets for the acquisition, installation, and ongoing maintenance of the public art for the ESC APP project and accept the donations outlined above, to be used consistent with the governing agreements.

Table of Contents:

- Exhibit A: Agreement to Purchase Artwork for the Sacramento Entertainment and Sports Center Project
- Exhibit B: Contribution and Co-Ownership Agreement for Artwork for the Sacramento Entertainment and Sports Center Project
- Exhibit C: Lease of Artwork for the Sacramento Entertainment and Sports Center Project
- Exhibit D: Pledge to Gift Artwork for the Sacramento Entertainment and Sports Center Project
- Exhibit E: Pledge to Gift Funds for Artwork for the Sacramento Entertainment and Sports Center Project

AGREEMENT TO PURCHASE ARTWORK FOR THE SACRAMENTO ENTERTAINMENT AND SPORTS CENTER PROJECT

This Agreement to Purchase Artwork for the Sacramento Entertainment and Sports Center Project (“**Agreement**”), dated _____, 2015 (the “**Effective Date**”), is among the Gagosian Gallery, Inc., a New York corporation (the “**Gallery**”), the City of Sacramento, a California municipal corporation (the “**City**”), and the following individuals: Phil Oates, Kevin Nagle, and Vivek Ranadive (collectively referred to as the “**Donors**”). The Gallery, the City, and the Donors are sometimes each referred to as “**Party**” and collectively as the “**Parties.**”

Background

The City’s Art in Public Places Program, as set forth in Chapter 2.84 of the Sacramento City Code, requires at least two percent of the total construction costs for eligible projects be spent on public artwork. The Sacramento Metropolitan Arts Commission (“**SMAC**”) is charged with providing for the nature, selection, and placement of these artworks, subject to the City’s approval of a purchase contract for the artwork.

The Gallery is acting on behalf of Jeff Koons LLC (the “**Artist**”), which is the legal owner of the artwork titled “Coloring Book.” Coloring Book is one of five unique versions, fabricated or to be fabricated by the Artist, each approximately 223-1/16 x 133 x 14 inches in size and made from mirror-polished stainless steel with transparent color coating (the “**Artwork**”). The Gallery is selling the Artwork and mounting feet to display the Artwork on behalf of the Artist.

SMAC has recommended that the City purchase the Artwork as part of the City’s Art in Public Places expenditures associated with the construction of the City’s Entertainment and Sports Center (“**ESC**”) in downtown Sacramento.

The City and the Donors (referred to together as the “**Buyers**”) would like to purchase the Artwork jointly, with the City contributing \$4.5 million towards the purchase price and the Donors contributing \$3 million towards the purchase price. The Artwork will be placed outdoors at the ESC site.

With these Background facts in mind, the Gallery (for and on behalf of the Artist), the City, and the Donors agree as follows:

- 1. Fabrication and Sale.** The Artist shall furnish all labor, supplies, materials, and equipment required to fabricate the Artwork, in substantial conformance with the Artist’s rendering (attached as Exhibit A) of the Artwork. The Artist shall also furnish all labor, supplies, materials and equipment required to fabricate the mounting feet that correspond to the Artwork. The Artist shall irrevocably, without condition or

reservation of any kind, sell, transfer, and convey to Buyers the Artwork and mounting feet and all right to possession and, except as set forth in Section 7 below, all legal and equitable ownership of the Artwork to Buyers, their successors and assigns, forever, in consideration of the **Purchase Price** stated in Section 4 below and in accordance with the terms and conditions stated in Section 4 below.

2. Gallery and Artist Warranties and Covenants. The Gallery, for and on behalf of the Artist, and, except as provided herein, for itself, represents, warrants and covenants the following:

2.1 Artist's Agent. The Gallery is acting on behalf of the Artist, which is the legal owner of the Artwork, and the Gallery has full right and legal authority to execute this Agreement for itself and for and on behalf of the Artist and bind the Artist to the obligations set forth herein including but not limited to Section 8.

2.2 Ability to Transfer the Artwork. The Gallery is able, subject to the Artist's reservation of rights in the Artwork as set forth in Section 7 herein, to transfer title to the physical Artwork to Buyers, free and clear of any and all rights or interests of others, claims, liens, security interests or other encumbrances held or claimed by any person and relating to the Artwork (collectively referred to as "**Art Claims**") and neither the Gallery nor the Artist has any knowledge of any Art Claims threatened or pending.

2.3 Originality of the Artwork. The Artwork is authentic; is original and does not infringe the rights of any person or entity. The Artwork is one of five unique versions, and the Artist shall not sell, license, or reproduce a substantially similar copy of the Artwork of the same scale, aside from the four other versions.

2.4 Artwork Free from Defects. The Gallery and the Artist shall warrant that the Artwork is free from all material faults and defects, including dents, cracks, chipping or peeling of paint or transparent color coating, blemishes, and rust, related to material or workmanship for a period of one year after the Artwork is delivered to the City. The Artist (but not the Gallery) shall correct any material defect at its cost and this shall be the sole remedy available to the Buyers. The Gallery shall be responsible for paying any packing and shipping costs to have the Artwork repaired during the warranty period.

2.5 Suitability of the Artwork for Outdoor Installation. The Gallery and the Artist understand and agree that the Artwork will be displayed outdoors and will be exposed to the elements and visible to the public at all times. The Gallery and the Artist represent and warrant that the Artwork is suitable for such outdoor

public display and the Artwork will be constructed in a manner so as reasonably to withstand the elements. There is no warranty that the Artwork can withstand vandalism or other abusive contact.

3. Gallery, Artist, and Buyers' Responsibilities

- 3.1 Construction of the Artwork.** The Artwork and corresponding mounting feet shall be designed and constructed in accordance with an engineering report and drawings of the internal structure supplied by the fabricator and certified by a qualified engineer (who is licensed by the State of California) that the Artwork and mounting feet comply with the 2013 California Building Code and the American Society of Civil Engineers Standards 7-10 (commonly referred to as "ASCE/SEI 7-10"); provided that the City acknowledges and agrees that details of the fabrication process will not be provided by the Artist.
- 3.2 Delivery of Artwork.** Subject to Section 4.5 and payment of the final installment of the Purchase Price in accordance with Section 4.1, the Gallery shall deliver the completed Artwork and the corresponding mounting feet to the City at a location and time designated by the City (which location shall not be in the State of New York). The Gallery and the Artist shall make all arrangements for the shipping (via common carrier registered with the United States Department of Transportation and/or the New York Department of Transportation), packing, crating, and, until installation, insuring of the Artwork and the mounting feet, provided that the City shall directly pay all shipping, packing, crating, and installation costs and any and all related insurance costs. For the avoidance of doubt, (i) the Artwork and the corresponding mounting feet will be delivered to the City outside of the State of New York, and (ii) the City shall make all arrangements for the installation of the Artwork.
- 3.3 Documentation and Maintenance of Artwork.** The City acknowledges that the Gallery has provided the City with the "Coloring Book Maintenance Booklet" and the information outlined in Exhibit B ("Artwork Description"). On or before the installation of the Artwork, (A) the Artist shall make the fabricator, Arnold AG, available to the City to discuss the installation, maintenance, and care of the Artwork, and (B) the Gallery shall use its commercially reasonable efforts to have such fabricator customize the "Coloring Book Maintenance Booklet" for the Artwork as such fabricator deems appropriate or to have such fabricator provide the City with additional written maintenance instructions for the Artwork (including, without limitation, how to apply the coating referenced in the immediately following sentence). The Artist and the Gallery represent that the

Artist's fabricator will apply a coating that will facilitate the cleaning of the Artwork in the event of tagging by graffiti, and that the fabricator has tested the coating and coating process and found them to be effective without damage to the art; however, no guarantee is made regarding their effectiveness. The Gallery will provide the City with information on how to purchase and how often to apply this coating.

- 3.4 Compliance with all Laws.** The Artist shall fabricate and the Gallery and Artist shall ship the Artwork and the corresponding mounting feet in conformance with all applicable laws.
- 3.5 Buyers' Obligations.** Buyers shall be responsible for the designation and preparation of a suitable site for installation of the Artwork and will (i) obtain all necessary permits regarding the installation of the Artwork on the selected installation site, and (ii) cause the City-selected, California licensed engineer to whom the structural engineering and construction drawings and specifications regarding the Artwork have been delivered to complete its review and/or certification process as soon as practicable, but in no event later than sixty (60) days after receipt of such drawings and specifications, such time period to be extended by the number of days taken by the Artist to respond to any formal comments delivered by such engineer. In addition, the City shall make its staff and contractors reasonably available to the Artist for consultation and assistance in order to achieve the purposes of this Agreement.
- 3.6 Time of Performance.** The Artist shall complete and be ready to deliver the Artwork and mounting feet to the shipper selected by the City no later than October 1, 2016. If the Artwork and mounting feet are not ready to be delivered by that date, the Artist and Gallery, at the City's request, shall deliver the Artist's proof of the Artwork and corresponding mounting feet to the shipper selected by the Artist and the Gallery for installation pursuant to the instructions of the Artist and display until the Artwork and corresponding mounting feet have been shipped and are ready for installation or, if earlier, until termination of this Agreement in accordance with the next paragraph of this Section 3.6. The shipping, packing, crating, installation and associated insurance costs related to the delivery and display of the Artist's proof shall be at the City's sole expense. The Artist's proof shall be substantially similar to the Artwork in design, materials used, and size. For the avoidance of doubt, the Artist's proof shall not be released to the shipper selected by the Artist and Gallery unless and until the first four installments of the Purchase Price (as set forth in Section 4.1(A)) have been paid in full.

The Artist's proof may be displayed while the Artist completes the Artwork. If the Artwork is not completed and delivered to the shipper selected by the Artist and Gallery by the date that is six months after the scheduled delivery date under this Section 3.6 (as may be extended in accordance with this Agreement), the City, at its option, may, at any time after the end of such six month period until such time as the Artist or the Gallery has notified Buyers that the Artwork and corresponding mounting feet are ready to be shipped to the City, terminate this Agreement. Upon termination of this Agreement in accordance with the preceding sentence, or upon receipt by Buyers of notice that the Artwork and the corresponding mounting feet are ready to be shipped to the City, as the case may be, the City shall de-install, remove, pack, crate and ship the Artist's proof to a location in the United States designated by the Artist (at the City's sole expense). Upon termination of this Agreement in accordance with the first sentence of this paragraph, the Gallery and the Artist shall refund the installments of the Purchase Price previously paid pursuant to Section 4.1(A) to the City.

Notwithstanding anything to the contrary contained in this Section 3.6 or elsewhere in the Agreement, should the planned opening of the ESC in October 2016 be postponed for any reason whatsoever, the October 1, 2016 date set forth in the first paragraph of this Section 3.6 shall be postponed commensurately.

If the City is not ready to take delivery of the Artwork and mounting feet at the time the Artwork is ready to be shipped, the Gallery shall store the Artwork and mounting feet at its cost (and not the Artist's cost) for a period of up to six months.

3.7 *Alteration, Damage, Relocation, or Destruction of the Artwork.* The Artist agrees that the City retains the right to relocate, sell, or destroy the Artwork and mounting feet at any time. If the Artwork is substantially damaged or altered, the City shall no longer represent the Artwork to be the work of the Artist, provided the Artist gives the City written notice that the Artist denies authorship of the Artwork. Any dispute as to whether the Artwork is "substantially damaged or altered" may be submitted to Arts Arbitration and Mediation Services ("**AAMS**") for mediation or arbitration. If the City and the Artist select arbitration, the determination by AAMS shall be binding upon the City and the Artist and neither shall have any further recourse or cause of action regarding the matters so determined. The Artist waives any and all claims against the Buyers, collectively and individually, related to any damage to the Artwork,

including any distortion or mutilation of the Artwork, but excluding any modification to the Artwork. Any unintentional or accidental damage, including that arising from the repair or maintenance of the Artwork, does not constitute modification to the Artwork. If the City destroys the Artwork, the Artist shall have the right to remake the Artwork, which remade Artwork will be owned by the Artist and in which remade Artwork the Buyers will not have any interest whatsoever.

4. Purchase Price

4.1 *Purchase Price.*

- (A) Upon fulfillment of the conditions precedent listed in Section 4.3 below, the City shall pay the Gallery \$7.5 million for the Artwork and mounting feet (the "Purchase Price"), with payments to be made as follows:
- (1) \$1.6 million upon the City's receipt of the structural engineering and construction drawings and specifications of the Artwork, and their certification by a qualified engineer, licensed by the State of California, that the drawings and specifications comply with those standards specified in Section 3.1;
 - (2) Subject to the satisfaction of the conditions in Section 4.1(A)(1) and Section 4.3, \$1.6 million on or before July 1, 2015;
 - (3) Subject to the satisfaction of the conditions in Section 4.1(A)(1) and Section 4.3, \$1.3 million on or before December 1, 2015;
 - (4) Subject to the satisfaction of the conditions in Section 4.1(A)(1) and Section 4.3, \$1.6 million on or before April 1, 2016; and
 - (5) \$1.4 million upon notice to the Buyers that the completed Artwork is ready to be shipped.
- (B) Prior to the disbursement of the second, third and fourth installments of the Purchase Price, the Gallery shall submit a written statement to the City providing that reasonable progress has been made by the Artist, in accordance with the Artist's schedule, toward completion of the Artwork and the corresponding mounting feet by the delivery date established in accordance with Section 3.6, and further providing a description of that progress.

- (C) The Purchase Price shall be paid by wire transfer to the Gallery's bank account, as designated in writing by the Gallery.

4.2 *Purchase Price is Inclusive.* The Purchase Price is inclusive of all commissions and other fees payable to any person and all taxes payable to any governmental entity outside of the United States and in New York, in each case, arising from the sale of the Artwork and the mounting feet; however, the Purchase Price is exclusive of any sales, use, and other taxes payable to any federal, state or local governmental entity in the United States (other than such governmental entities in New York) arising from the sale of the Artwork and mounting feet. For the avoidance of doubt, the City shall be responsible for the payment of any sales, use or other taxes payable to any federal, state or local governmental entity in the United States (other than any federal, state and local governmental entity in New York) arising from the sale of the Artwork and mounting feet.

4.3 *Conditions Precedent to Payment.* The following are conditions precedent to Buyers' obligations to make any payments towards the Purchase Price:

- (A) The City executing an agreement, in a form approved by the City Attorney, with the owner of the land on which the Artwork will be placed, concerning an easement for the placement of the Artwork as well as maintenance of the Artwork; and
- (B) The City and the Donors executing agreements, in a form approved by the City Attorney, memorializing the rights and responsibilities of the City and the Donors relating to their co-ownership of the Artwork and the Donors' intent to relinquish all ownership rights in the Artwork to the City within three years of the installation of the Artwork and further agreeing to indemnify and hold harmless the City for any losses incurred by the City as a result of the Donors' failure to perform under this Agreement.

The City will use its reasonable best efforts to satisfy the conditions set forth in Sections 4.3(A) and (B) (and the condition set forth in Section 4.1(A)(1)) on or before March 15, 2015). If the City cannot meet this condition satisfaction date, then the delivery date set forth in Section 3.6 shall be extended commensurately. Notwithstanding the foregoing, If the City cannot satisfy the conditions set forth in Section 4.1(A)(1) and Sections 4.3(A) and (B) within 90 days after the date of this Agreement, then the Artist and the Gallery shall have the option, within 10 business days after such date, to terminate this Agreement, by written notice to the City, without any liability to any party hereto.

- 4.4 Termination for Nonpayment.** If the City fails to make a payment as required under Section 4.1, the Gallery, for itself and the Artist, may terminate this Agreement upon 30 days' prior written notice to Buyers, during which 30 day period Buyers may cure such payment default by making payment to the Gallery. If such payment default is not cured by Buyers within such 30 day period, this Agreement will terminate automatically at the close of business on the thirtieth day after notice has been given in accordance with Section 10 below, in which event the Gallery shall retain, as liquidated damages and not as a penalty, any and all installments of the Purchase Price previously paid to date. The Buyers acknowledge and agree that such liquidated damages payment is fair and reasonable in light of the special and unique nature of the Artwork. The Artist shall then be free to cease fabrication or complete fabrication and sell the Artwork in its sole and absolute discretion. The remedies contained in this Section 4.4 are the exclusive remedies available to the Gallery and the Artist in the event of a default in payment by the City.
- 4.5 Shipping the Completed Artwork.** The City is responsible for the cost of packing, crating, and shipping the completed Artwork and the corresponding mounting feet. The Gallery, but not the Artist, warrants the cost of packing, crating, and shipping shall not exceed \$150,000. The Gallery and the Artist are not required to release the completed Artwork for shipping unless and until all installments of the Purchase Price set forth in Section 4.1(A) have been paid in full. The City shall be responsible for the cost of insuring the shipment of the completed Artwork and corresponding mounting feet.
- 4.6 Transfer of Title to the Physical Artwork.** Title to the physical Artwork remains in the Artist until all installments of the Purchase Price pursuant to Section 4.1(A) have been paid in full. The Artist bears all risk of loss of the Artwork until title to the physical Artwork has transferred to Buyers.
- 5. Inability to Perform.** If the Artist is unable to complete and deliver the Artwork due to illness, death, or injury of Jeff Koons, this Agreement shall be deemed to have terminated and the Gallery and the Artist shall refund to the City all amounts previously paid towards the Purchase Price not later than thirty (30) days after such deemed termination. If the Gallery and the Artist fail to pay such amounts by such date, such amounts shall thereafter bear interest at the maximum rate permitted by law. For the avoidance of doubt, if the Artist is able to complete and deliver the Artwork regardless of the illness, death or injury of Jeff Koons, then this Agreement remains in force.

- 6. Installation and Location of the Artwork.** The City is responsible for the installation of the Artwork and has discretion over its placement. The City will design and build an installation (e.g., hardscape, landscape, reflecting pool, etc.) that, to the extent practicable, will protect the Artwork from being touched. The City may deaccession the Artwork at any time.
- 7. Copyright.** The Artist retains all copyrights to the Artwork, the right to claim authorship of the Artwork, and every right available to Artist at common law or under the Federal Copyright Act to control the making and dissemination of copies or reproduction of the Artwork except as those rights are limited by this Agreement. Artist authorizes the City and its assigns to make photographs and other two-dimensional reproductions of the Artwork without the prior consent of the Artist if the reproductions are used solely by the City for the following noncommercial purposes: educational materials and promotional materials for the City or the ESC, including postings on the City’s website. All reproductions by the City must contain a copyright notice substantially in the following form: “© Jeff Koons, LLC, date,” in a manner and location as to comply with copyright law.
- 8. Indemnity.** The Artist shall defend, hold harmless and indemnify the City and the Donors, their officers and employees, and each and every one of them, from and against any and all out-of-pocket damages, costs, liabilities, losses, penalties and expenses of every type and description, including, but not limited to, any fees or costs reasonably incurred by City’s staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as “Losses”) arising out of or in connection with claims, actions, demands, judgments, settlements or awards made or received by third parties in respect of personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, that arise out of, pertain to or relate solely to any negligent act or omission, recklessness or willful misconduct of the Artist, its subcontractors or agents, and their respective officers and employees, solely in connection with the design and fabrication of the Artwork, whether or not such Losses are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property or the environment, or other Losses to the extent arising from the negligence or willful misconduct of the City or any of the Donors, their respective subcontractors or agents, and/or their respective officers and employees. The provisions of this section shall survive for a period of four (4) years after the delivery of the Artwork to Buyers.

9. **Term.** This Agreement becomes effective on the Effective Date and continues in effect until the Parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
10. **Notices.** Any notice required under this Agreement or by reason of the application of any law will be deemed to have been given by a Party on the business day immediately following the day of personal delivery to a recognized overnight courier or on the third business day after deposit in the U.S. mail, postage prepaid and addressed as follows:

If to the Gallery: Gagosian Gallery, Inc.
 980 Madison Avenue
 New York, NY 10075
 Telephone: 212-744-2313
 Fax: 212-710-3825

With a copy to:
Jeff Koons, LLC
601 West 29th Street
New York, NY 10001
Attention: Gary McCraw
Telephone: 212-226-2984
Fax: 212- 212-226-5916

and

Fredrick E. Sherman, Esq.
Jones Day
222 East 41st Street
New York, NY 10017
Telephone: 212-325-3905
Fax: 212-755-7306

If to the City: Shelly Willis
 Sacramento Metropolitan Arts Commission
 1030 15th Street, Suite 240
 Sacramento, CA 95814
 Telephone: 916-808-3971

with a copy to:

Matthew Ruyak
Office of the City Attorney
915 I Street, Fourth Floor
Sacramento, CA 95814
Tel: (916) 808-5346
Fax: (916) 808-7455
Email: mruyak@cityofsacramento.org

If to the Donors: Phil Oates
Kevin Nagle
Vivek Ranadive
c/o Mark Friedman
Fulcrum Property Corp.
1530 J Street, Suite 200
Sacramento, CA 95814
(916) 383-3333
Email: mark@fulcrumproperty.com

with a copy to:

Russell J. Austin
Murphy Austin Adams Schoenfeld LLP
304 S Street
Sacramento, CA 95811-6906
Tel: (916) 446-2300
Fax: (916) 329-3007
Email: raustin@murphyaustin.com

11. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the Parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to this Agreement is valid unless approved in writing by all Parties.
12. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
13. **No Waiver.** Neither the Buyers' acceptance of, or payment for, any work performed by the Gallery or the Artist, nor any waiver by either party of any default, breach or

condition precedent, constitutes a waiver of any provision of this Agreement, nor as a waiver of any other default, breach, condition precedent, or any other right hereunder.

- 14. Choice of Law; Venue.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the Parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
- 15. Assignment Prohibited.** The expertise and experience of the Gallery and the Artist are material considerations for this Agreement. The Gallery and the Artist shall not assign any right or obligation pursuant to this Agreement without the written consent of the City. Any attempted or purported assignment without the City's written consent is void and of no effect.
- 16. Binding Effect.** This Agreement is binding on the heirs, executors, administrators, successors and assigns of the Parties, subject to the provisions of Section 15, above.
- 17. Survival.** The representations and warranties contained in this Agreement and all other terms hereof, survive the delivery of this Agreement and transfer of the Artwork in accordance with the terms hereof.
- 18. Counterparts.** This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered to the other Parties shall be deemed an original, and all such counterparts together constitute one and the same instrument. Facsimile signatures or signatures transmitted by email or other electronic means shall be effective to bind each of the Parties hereto.
- 19. Further Assurances.** The Parties, at any time after the execution of this Agreement will execute, acknowledge and deliver any further assignments, conveyances, and other assurances, documents, and instruments reasonably requested by the other party for the purpose of performing the obligations created hereunder; provided, however, that the requesting party shall reimburse the other parties immediately upon demand for any and all reasonable third-party costs or expenses actually incurred by a party in complying with this section.

(Signature Page Follows)

CITY OF SACRAMENTO

GAGOSIAN GALLERY, INC., for itself and for and on behalf of Jeff Koons, LLC

By: _____

Jody Ulich, Director of Convention and Cultural Services

For: John F. Shirey, City Manager

Date: _____

By: _____

Title: _____

Date: _____

APPROVED TO AS FORM:

DONORS

By: _____

Matthew D. Ruyak, Assistant City Attorney

Phil Oates Date

ATTEST:

Kevin Nagle Date

By: _____

City Clerk

Vivek Ranadive Date

Attachment:

- Exhibit A (Artist Rendering)
- Exhibit B (Artwork Description)

Exhibit A (Artist Rendering)

Coloring Book is one of five unique versions, fabricated or to be fabricated by the Artist, each approximately 223-1/16 x 133 x 14 inches in size and made from mirror-polished stainless steel with transparent color coating (the “**Artwork**”).



JEFF KOONS *Coloring Book*, 1997-2005 High chromium stainless steel with transparent color coating, 222 x 131 1/4 x 9 inches, (563.9 x 333.4 x 22.9 cm)
KOONS 2006.0016

GAGOSIAN GALLERY

EXHIBIT B
ARTWORK DESCRIPTION

Artist: Jeff Koons

Address: 601 West 29th Street

New York, NY 10001

Home Phone: _____ Work Phone: 212-226-2894

Studio Phone: _____ Email Address: gary@jeffkoons.com

1. Title of the Artwork: Coloring Book

2. Medium or material: Mirror-polished stainless steel with transparent color coating

3. Edition information, if applicable: 1 of 5 unique versions

4. Date: 1997-2005

5. Collaborating artist(s), if applicable. _____

6. Maker(s) other than Artist (fabricators, technicians), if applicable. Include names, addresses, phone numbers and element worked on.

7. Location of signature and copyright mark, if it occurs.

Signed and dated underneath sculpture

8. Exhibitions pertaining only to the above-named work, if any.

Other versions have been exhibited at: (i) Metropolitan Museum of Art, New York, April 22-October 26, 2008; (ii) Royal Academy, London, June 7 – August 15, 2011; and (iii) Gagosian Gallery, Beverly Hills, December 7, 2012 – February 14, 2013.

9. Published reviews or articles concerning the above named work.

10. Dimensions (please measure in both inches and centimeters; record height first, then width, then depth if needed or diameter; if a work is irregular or circular in shape, state as such in parenthesis; if work involves multiple pieces, measure the significant parts as well as the whole; measure the work separately from the frame or pedestal; include the dimensions of the frame or pedestal.)

233-1/16 x 133 x 14", 563.9 x 334 x 35.5 cm

11. Materials used in the execution of the Artwork (be technical and specific).

See No. 2

12. Technique or construction methods used in the execution of the Artwork (Attach fabrication drawings, if necessary).

13. Material finish on the Artwork (glaze, paint color and type, sanding, grit, tool pattern, patina, surface sealer, etc.)

See No. 2

14. Foundation/installation structure (include armature bolt/pin size, grout, etc.).

15. Handling instructions.

See "Coloring Book Maintenance Booklet"

16. Artist’s statement about the Artwork (concept, message, relationship to site, etc.).

17. Describe recommended general routine maintenance and care for the Artwork (cleaning agent(s), procedure(s) timetable, etc.).

See “Coloring Book Maintenance Booklet”

18. Special handling and/or storage instructions.

See “Coloring Book Maintenance Booklet”

19. Special cautions or concerns regarding the Artwork.

20. Packing, shipping or storage instructions (should the need arise).

CONTRIBUTION AND CO-OWNERSHIP AGREEMENT FOR ARTWORK FOR THE SACRAMENTO ENTERTAINMENT AND SPORTS CENTER PROJECT

This CONTRIBUTION AND CO-OWNERSHIP AGREEMENT (“**Agreement**”), dated _____, 2015, for purposes of identification only, is by and between the CITY OF SACRAMENTO, a California municipal corporation (the “**City**”), on the one hand, and PHIL OATES, KEVIN NAGLE and VIVEK RANADIVE (collectively, the “**Donors**”), on the other hand.

Background

The City, Donors, and Gagosian Gallery, Inc., a New York corporation (the “**Gallery**”), have or will enter into that certain Agreement to Purchase Artwork for the Sacramento Entertainment and Sports Center Project of even date herewith (the “**Purchase Agreement**”), providing for the City and Donors, collectively as “**Buyers**” to purchase certain “**Artwork**” (as defined and more particularly described in the Purchase Agreement). The Artwork will be fabricated and installed at the City’s Entertainment and Sports Center being constructed in downtown Sacramento, for a purchase price of \$7,500,000 (the “**Purchase Price**”). The City will contribute \$4,500,000 towards the Purchase Price and the Donors will contribute \$3 million towards the Purchase Price (as to each the City and Donors, its “**Contribution Share**”).

Under the Purchase Agreement: (i) the City and the Donors have agreed to jointly purchase the Artwork; (ii) the City has agreed to pay all other costs for the acquisition of the Artwork including, without limitation, all shipping and installation costs; and (iii) upon completion of such acquisition, the City shall own an undivided 60% interest in the Artwork and the Donors shall collectively own an undivided 40% interest in the Artwork. For purposes of this Agreement, the term “Co-Owner” means: (A) the City, as to its 60% interest, on one hand as one of two Co-Owners under this Agreement, and (B) all Donors, as to their collective 40% interest, on the other hand as the second of the two Co-Owners.

The City and the Donors desire to enter into this Agreement to: (i) set forth their rights and obligations to complete the purchase of the Artwork as provided in the Purchase Agreement; (ii) set forth the terms and conditions of their co-ownership of the Artwork upon such acquisition; and (iii) provide for the donation by Donors to the City of all of Donors’ interest in the Artwork.

With these Background facts in mind, the City and Donors agree as follows:

1. Rights and Obligations under Purchase Agreement.

1.1 Required Payments; Allocation of Additional Costs and Expenses.

- (A) The City shall pay all installment payments, totaling \$7,500,000, when due to the Gallery under the Purchase Agreement. Any additional costs and expenses to be paid under the Purchase Agreement for the acquisition of the Artwork shall be paid by the City.
- (B) The Donors, not later than 45 days prior to the due date of the fourth installment payment, as set forth in the Purchase Agreement, shall deliver to the City their Contribution Share.

1.2 Donors' Letters of Credit.

- (A) To secure the Donors' obligation under Section 1.1, the Donors shall provide the City with three irrevocable standby letters of credit, each in the amount of \$1,000,000, containing terms substantially the same, in the exclusive judgment of the Sacramento City Attorney's Office, as those in the sample letter of credit attached to this Agreement as Exhibit C. The financial institution that issues the letters of credit must be a commercial bank lawfully operating within the United States and acceptable to the City in the exclusive judgment of the Sacramento City Treasurer's Office.
- (B) If the Donors fail to perform under Section 1.1 when required, then the City may draw on the letters of credit an amount equal to the amount then due from the Donors, and a draw that does not exhaust the letters of credit will be a partial draw that leaves the balance of the letters of credit intact. The City may also draw on the letters of credit in accordance with the terms of the letters of credit.
- (C) The City shall release the letters of credit within 30 days after the City has paid the final installment payment under the Purchase Agreement. Until then, the Donors shall maintain the letters of credit in effect as originally issued or as properly reduced, renewed, or replaced. Donors may, with the consent of the City, reduce or replace the initial letters of credit to reflect any decrease in the security required for Donors' obligation under Section 1.1.

1.3 Mutual Approval of Decisions. All approvals, formal notices, decisions and other actions required to be given by the Buyers (or either of them) under the Purchase Agreement, shall be given by that party designated in the Purchase Agreement, after consultation with the other Co-Owner.

- 1.4 Compliance with Purchase Agreement.** Each Co-Owner covenants and agrees to perform, satisfy, and comply in all material respects with all of the covenants, agreements and obligations of such Co-Owner under the Purchase Agreement including, without limitation, the timely payment of all amounts to be paid by such parties as provided in the Purchase Agreement and Section 1.1 above.
- 1.5 Transfer of Title; Ownership of Artwork.** The Co-Owners acknowledge and agree that at such time as title of the Artwork is to be transferred to Buyers under the Purchase Agreement, the Artwork shall be transferred to each Co-Owner (collectively, the “Transfer”) as follows: an undivided 60% interest to the City and an undivided 40% interest to the Donors (as to each of the City and Donors, its “Ownership Interest”). The date of such Transfer is referred to herein as the “Transfer Date.”
- 1.6 Termination of Purchase Agreement.** Upon any termination of the Purchase Agreement, this Agreement shall terminate and be of no further force and effect, except for any provision which expressly survives such termination.
- 2. Co-Ownership Period; Lease of Donors’ Ownership Interest to the City; Use, Display and Possession of Artwork.** Concurrently herewith, the City and Donors shall enter into a written lease agreement substantially in the form attached hereto as Exhibit A, and incorporated herein by this reference (the “Lease”), providing for the lease by Donors to the City of all of Donors’ Ownership Interest for the period (the “Co-Ownership Period”) commencing on the Transfer Date and continuing until the “Donation Date” (as defined below). The Co-Owners acknowledge and agree that during such Co-Ownership Period, as a result of the rights of the City under the Lease with respect to Donors’ Ownership Interest and the City’s ownership of its Ownership Interest, the City shall have all right to use, display, and otherwise possess the Artwork, subject to the terms and conditions of the Lease.
- 3. Donation of Donors’ Ownership Interest.** Concurrently herewith, Donors shall execute and deliver to the City a pledge agreement substantially in the form attached hereto as Exhibit B, and incorporated herein by this reference (the “Pledge Agreement”), providing for the donation by Donors to the City of Donors’ Ownership Interest on a date (the “Donation Date”) not later than the third (3rd) anniversary of the Transfer Date; provided that such Pledge Agreement has not been revoked by Donors as a result of a default of City under the Lease pursuant to Section 12 of the Lease.
- 4. Indemnification.** Each Co-Owner shall indemnify, defend and hold harmless the other Co-Owner from and against any and all liabilities of every kind caused by the failure by

such Co-Owner to perform any of its obligations under the Purchase Agreement or this Agreement.

5. **Tax Implications.** The City makes no representations as to the tax consequences of this Agreement and any determinations related to this issue are the sole responsibility of the Donors. Donors have consulted with their own tax advisors regarding this transaction.
6. **Further Assurances.** Each of the Co-Owners covenants and agrees to take such additional actions and execute and deliver such additional documents and instruments as may be reasonably necessary to carry out the intent of this Agreement; provided, however, that the requesting party shall reimburse the other parties immediately upon demand for any and all reasonable third-party costs or expenses actually incurred by a party in complying with this Section.
7. **Notices.** Any notice, demand, approval, consent, or other communication required or desired to be given under this Agreement in writing shall be given in the manner set forth below, addressed to the party to be served at the addresses set forth below, or at such other address for which that party may have given notice under the provisions of this Section. Any notice, demand, approval, consent, or other communication given by (a) mail shall be deemed to have been given on the second (2nd) business day immediately following the date it was deposited in the United States mail, first class and postage prepaid; (b) overnight common carrier courier service shall be deemed to be given on the business day immediately following the date it was deposited with such common carrier; (c) delivery in person or by messenger shall be deemed to have been given upon delivery in person or by messenger; or (d) facsimile or email transmission ("Electronic Transmission") shall be deemed to have been given on the date of transmission of the entire communication, provided that such transmission occurs during 8:00 a.m. and 5:00 p.m., Pacific Time, on normal business days, and the sending party deposits a hard copy of the original transmitted document(s) with an overnight courier for next business day delivery or by United States mail, addressed to the receiving party, first class postage prepaid, not later than the first (1st) business day following such transmission.

To City:
Sacramento Metropolitan Arts Commission
1030 15th Street
Sacramento, CA 95814
Attn: Shelly Willis
Tel: (916) 808-3971
Fax: (916) 808-3996
Email: swillis@cityofsacramento.org

To Donors:
c/o John Rinehart
Sacramento Kings
One Sports Parkway
Sacramento, CA 95834
Tel: (916) 928-3636
Fax: (916) 928-6983
Email: Rinehart@kings.com

with a copy to:
Office of the City Attorney
915 I Street, Fourth Floor
Sacramento, CA 95814
Attn: Matthew Ruyak
Tel: (916) 808-5346
Fax: (916) 808-7455
Email: mruyak@cityofsacramento.org

with a copy to:
Murphy Austin Adams Schoenfeld LLP
304 S Street
Sacramento, CA 95811-6906
Attn: Russell J. Austin
Tel: (916) 446-2300
Fax: (916) 329-3007
Email: raustin@murphyaustin.com

8. **Time of the Essence; Dates.** Time is of the essence in the performance of this Agreement. In the event that any date specified in this Agreement falls on Saturday, Sunday or other day on which public agencies and major banks are not open for business in California (each a “Non-Business Day”), such date shall be deemed to be the succeeding business day. For purposes of this Agreement, a “business day” shall mean a day other than a Non-Business Day.
9. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between the Co-Owners pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
10. **Assignment.** The City may not assign this Agreement or any right, title, or interest in its Ownership Interest, in whole or in part, without the prior written consent of the Donors. Donors (or any of them) may not assign this Agreement or any right, title, or interest in its Ownership Interest, in whole or in part, without the prior written consent of the City,

which shall not be unreasonably withheld; provided that: (a) to the extent one or more, but not all, of the Donors elect to assign its interest in this Agreement or its Ownership Interest, such assigning Donor(s) shall obtain the prior written consent of all other Donor(s) to such assignment; (b) such assignment shall be in writing and assignee shall assume in writing all obligations of the assigning Donor under this Agreement and the Lease; and (c) such assignee shall execute and deliver to the City a pledge agreement substantially in the form of Exhibit B providing for the donation by such assignee to the City of all of assignee's assumed Ownership Interest on the Donation Date. Any attempted assignment that does not meet the applicable requirements of this Section shall be void.

- 11. Binding on Successors.** This Agreement shall be binding on and inure to the benefit of the respective successors, assigns, personal representatives, estates, heirs and legatees of each of the Co-Owners, except where conditioned or prohibited by this Agreement, provided that such persons or entities assume the obligations hereunder.
- 12. Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provisions of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.
- 13. Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any action relating to the Property or this Agreement shall be in Sacramento County, California.
- 14. Drafting.** Each of the parties hereto agree that this Agreement is the product of joint draftsmanship and negotiation and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous, or unintelligible, that the same sentences, phrases, clauses or other wordage or language of any kind shall not be construed against the drafting party in accordance with California Civil Code Section 1654, and that each such party to this Agreement waives the effect of such statute.
- 15. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by Electronic Transmission) as against the party signing such counterpart, but which together shall constitute one and the same instrument.
- 16. Effective Date.** This Agreement is effective on the date the City, in its exclusive judgment, accepts the Donors' letters of credit under Section 1.2 above.

IN WITNESS WHEREOF, the Co-Owners have executed this Agreement as of the Effective Date as set forth below.

CITY:

CITY OF SACRAMENTO, a California municipal corporation

By: _____

Jody Ulich, Director of Convention and Cultural Services

For: John F. Shirey, City Manager

APPROVED AS TO FORM:

By: _____

Matthew D. Ruyak
Assistant City Attorney

ATTEST:

By: _____

City Clerk

Exhibits:

- A – Form of Lease
- B – Form of Pledge Agreement
- C – Letter of Credit

DONORS:

Phil Oates

Kevin Nagle

Vivek Ranadive

**LEASE OF ARTWORK
FOR THE SACRAMENTO ENTERTAINMENT AND SPORTS CENTER PROJECT**

This LEASE, dated _____, 2015, for purposes of identification only, is by and between the **CITY OF SACRAMENTO**, a California municipal corporation (the “**Lessee**”), on the one hand, and **PHIL OATES, KEVIN NAGLE** and **VIVEK RANADIVE** (collectively, the “**Lessor**”), on the other hand.

Background

Lessor and Lessee are parties to that certain Contribution and Co-Ownership Agreement dated _____, 2015 (the “**Co-Ownership Agreement**”). The Co-Ownership Agreement contemplates that Lessor shall acquire an undivided 40% interest, and Lessee shall acquire an undivided 60% interest, in certain artwork more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the “**Artwork**”). The date of such acquisition is referred to herein as the “**Commencement Date**.”

As provided in the Co-Ownership Agreement, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, all of Lessor’s undivided 40% interest in the Artwork (the “**Leased Interest**”), on the terms and conditions set forth herein.

Also as provided in the Co-Ownership Agreement, concurrently herewith, Lessor has executed and delivered to Lessee that certain Pledge Agreement of even date herewith (the “**Pledge Agreement**”), providing for the donation by Lessor to Lessee of the Leased Interest on a date (the “**Donation Date**”) not later than the third (3rd) anniversary of the Commencement Date.

With these Background facts in mind, Lessor and Lessee agree as follows:

- 1. Lease.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, all of the Leased Interest, subject to the terms and conditions set forth herein. Delivery of the Leased Interest by Lessor to Lessee, and acceptance of the Leased Interest by Lessee, shall be deemed to have occurred as of the Commencement Date.
- 2. Lease Term.** The term of this Lease (the “**Lease Term**”) shall commence on the Commencement Date, and shall terminate on the Donation Date.
- 3. Permitted Use.** During the Lease Term, Lessee shall have the right to the use, possession, and control of the Leased Interest and, as a result, shall have all right to use, display, possess, and control the Artwork as part of Lessee’s Art in Public Places artwork associated with Lessee’s Entertainment and Sports Center in downtown Sacramento.

4. **Maintenance.** Lessor shall use reasonable efforts to make available to Lessee, at no cost to Lessee, a lift or other suitable equipment to be used by Lessee for maintenance of the Artwork during the Lease Term.
5. **No Rent.** No rent shall be payable by Lessee to Lessor for the lease of the Leased Interest as provided herein.
6. **Maintenance.** During the Lease Term, Lessee shall be responsible, at its cost and expense, for all maintenance and any repair of the Artwork.
7. **Taxes and Other Impositions.** During the Lease Term, each party shall be responsible for and pay before delinquency all taxes and other impositions of any kind with respect to the Artwork, charged to or imposed upon the party or their respective interests in the Artwork.
8. **Insurance.**
 - 8.1 **Self-Insurance.** Lessor acknowledges that Lessee is a public entity. Within 30 days of the execution of this Co-Ownership Agreement, Lessee shall provide Lessor with a letter of self-insurance stating that Lessee's self-insurance program adequately protects against liabilities and claims arising out of the performance of this Agreement.
 - 8.2 **Fine Arts Insurance Policy.** Lessee shall add the Artwork to Lessee's fine arts insurance policy and add Lessor as an additional insured under the policy.
 - (A) **Total Loss.** In the case of a total loss of the Artwork during the Lease Term, all insurance proceeds shall be split between the parties, with 60% going to Lessee and 40% going to Lessor.
 - (B) **Partial Loss.** In the case of a partial loss or damage to the Artwork during the Lease Term, if the Lessee elects to repair the Artwork, the Lessee shall use the insurance proceeds to do so. If Lessee chooses not to repair the Artwork, the insurance proceeds shall be split between the parties, with 60% going to Lessee and 40% going to Lessor.
 - (C) Upon termination of the Lease Term for a reason other than Lessee's default, Lessors shall have no right to or interest in any insurance proceeds associated with the Artwork.
9. **Indemnification.** During the Lease Term, each party shall indemnify, defend and hold harmless the other party and their successors and assigns from and against any claims,

damages, costs, expenses, including reasonable attorneys' fees, and liabilities (collectively "Claims") related to the Artwork, except to the extent that any such Claims result from the other party's active negligence or willful misconduct.

10. Tax Implications. Lessee makes no representations as to the tax consequences of this Agreement and any determinations related to this issue are the sole responsibility of Lessor. Lessor has consulted with its own tax advisors regarding this transaction.

11. Waiver of Claims. Lessor waives and releases any and all claims of whatever sort or nature that may arise against Lessee, its officers, employees, agents, contractors, and due to any damage to the Artwork or loss in value of the Artwork while it is in Lessee's care. This waiver shall include any and all claims arising under Section 1542 of the Civil Code, which provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, Lessor expressly acknowledges that this agreement is intended to release and extinguish, without limitation, all claims for loss of any sort or nature related to the Artwork that Lessor does not know or suspect to exist.

12. Default; Remedies. In the event Lessee fails to observe or perform any of its material obligations under this Lease, Lessor shall, in addition to any other remedies available at law or in equity, have the right to terminate this Lease and revoke the Pledge Agreement. Lessee shall not be in default of any of its obligations under this Lease unless Lessor first provides to Lessee written notice of default and Lessee thereafter fails within 15 days after receipt of such notice of default to either cure such default or diligently commence such actions reasonably necessary to cure such default within such 15 day period, and thereafter cures such default not later than 45 days after receipt of such notice of default.

13. Assignment. The City may not assign this Lease, in whole or in part, without the prior written consent of Lessor. Lessor (or any of them) may not assign this Lease, in whole or in part, without the prior written consent of the City, which shall not be unreasonably withheld; provided that: (a) to the extent one or more, but not all, of the parties that comprise Lessor elect to assign its interest in this Lease, such assigning Lessor party shall obtain the prior written consent of all other Lessor parties to such assignment; and (b) such assignment shall be in writing and assignee shall assume in writing all obligations of

the assigning Lessor party under this Lease. Any attempted assignment that does not meet the applicable requirements of this Section shall be void.

- 14. Further Assurances.** Each of Lessor and Lessee covenants and agrees to take such additional actions and execute and deliver such additional documents and instruments as may be reasonably necessary to carry out the intent of this Lease; provided, however, that the requesting party shall reimburse the other parties immediately upon demand for any and all reasonable third-party costs or expenses actually incurred by a party in complying with this Section.
- 15. Notices.** Any notice, demand, approval, consent, or other communication required or desired to be given under this Lease in writing shall be given in the manner set forth below, addressed to the party to be served at the addresses set forth below, or at such other address for which that party may have given notice under the provisions of this Section. Any notice, demand, approval, consent, or other communication given by (a) mail shall be deemed to have been given on the second (2nd) business day immediately following the date it was deposited in the United States mail, first class and postage prepaid; (b) overnight common carrier courier service shall be deemed to be given on the business day immediately following the date it was deposited with such common carrier; (c) delivery in person or by messenger shall be deemed to have been given upon delivery in person or by messenger; or (d) facsimile or email transmission ("**Electronic Transmission**") shall be deemed to have been given on the date of transmission of the entire communication, provided that such transmission occurs during 8:00 a.m. and 5:00 p.m., Pacific Time, on normal business days, and the sending party deposits a hard copy of the original transmitted document(s) with an overnight courier for next business day delivery or by United States mail, addressed to the receiving party, first class postage prepaid, not later than the first (1st) business day following such transmission.

To Lessee:

Sacramento Metropolitan Arts Commission
300 Richards Blvd., 2nd Floor
Sacramento, CA 95811
Attn: Shelly Willis
Tel: (916) 808-3971
Fax: (916) 808-3996
Email: swillis@cityofsacramento.org

To Lessor:

c/o John Rinehart
Sacramento Kings
One Sports Parkway
Sacramento, CA 95834
Tel: (916) 928-3636
Fax: (916) 928-6983
Email: rinehart@kings.com

with a copy to:
Office of the City Attorney
915 I Street, Fourth Floor
Sacramento, CA 95814
Attn: Matthew Ruyak
Tel: (916) 808-5346
Fax: (916) 808-7455
Email: mruyak@cityofsacramento.org

with a copy to:
Murphy Austin Adams Schoenfeld LLP
304 S Street
Sacramento, CA 95811-6906
Attn: Russell J. Austin
Tel: (916) 446-2300
Fax: (916) 329-3007
Email: raustin@murphyaustin.com

- 16. Time of the Essence; Dates.** Time is of the essence in the performance of this Lease. In the event that any date specified in this Lease falls on Saturday, Sunday or other day on which public agencies and major banks are not open for business in California (each a “**Non-Business Day**”), such date shall be deemed to be the succeeding business day. For purposes of this Lease, a “business day” shall mean a day other than a Non-Business Day.
- 17. Entire Agreement; Modification; Waiver.** This Lease constitutes the entire agreement between Lessor and Lessee pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Lease shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Lease shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- 18. Binding on Successors.** This Lease shall be binding on and inure to the benefit of the respective successors, assigns, personal representatives, estates, heirs and legatees of each of Lessor and Lessee, except where conditioned or prohibited by this Lease, provided that such persons or entities assume the obligations hereunder.
- 19. Severability.** Each provision of this Lease is severable from any and all other provisions of this Lease. Should any provision(s) of this Lease be for any reason unenforceable, the balance shall nonetheless be of full force and effect.
- 20. Governing Law; Venue.** This Lease shall be governed by and construed in accordance with the laws of the State of California. Venue for any action relating to the Property or this Lease shall be in Sacramento County, California
- 21. Drafting.** Each of the parties hereto agree that this Lease is the product of joint draftsmanship and negotiation and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous

and/or unintelligible, that the same sentences, phrases, clauses or other wordage or language of any kind shall not be construed against the drafting party in accordance with California Civil Code Section 1654, and that each such party to this Lease waives the effect of such statute.

- 22. Counterparts.** This Lease may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by Electronic Transmission) as against the party signing such counterpart, but which together shall constitute one and the same instrument.
- 23. Effective Date.** This Lease is effective on the effective date of the Co-Ownership Agreement.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the Effective Date as set forth below.

LESSEE:

CITY OF SACRAMENTO, a California municipal corporation

By: _____
Jody Ulich, Director of Convention and Cultural Services
For: John F. Shirey, City Manager

APPROVED AS TO FORM:

By: _____
Matthew D. Ruyak
Assistant City Attorney

ATTEST:

By: _____
City Clerk

Exhibits:

A - Description of Artwork

LESSOR:

Phil Oates

Kevin Nagle

Vivek Ranadive

Exhibit A (Description of Artwork)

The Artwork, titled “Coloring Book,” by artist Jeff Koons, is a sculpture to be fabricated by the artist, approximately 223 x 133 x 9 1/8 inches in size and made from mirror-polished stainless steel with transparent color coating.



JEFF KOONS *Coloring Book*, 1997-2005 High chromium stainless steel with transparent color coating, 222 x 131 1/4 x 9 inches, (563.9 x 333.4 x 22.9 cm)
KOONS 2006.0016

GAGOSIAN GALLERY

**PLEDGE TO GIFT ARTWORK
FOR THE SACRAMENTO ENTERTAINMENT AND SPORTS CENTER PROJECT**

Effective as of this ____ day of _____, 2015 (the “**Effective Date**”), we hereby pledge to give and transfer unconditionally to the CITY OF SACRAMENTO, a California municipal corporation (hereinafter, the “**City**”) on a date (the “**Donation Date**”) not later than the third (3rd) anniversary of the “**Acquisition Date**” (as defined below), absolute and unconditional ownership of all of our undivided 40% interest (the “**Pledged Interest**”) in that certain artwork described in Exhibit A, attached hereto and incorporated herein by this reference (the “**Artwork**”), which we expect to acquire as contemplated in that certain Contribution and Co-Ownership Agreement of even date herewith between us and the City. The date on which we acquire the Pledged Interest is referred to herein as the “Acquisition Date.” During the period commencing on the Acquisition Date and terminating on the Donation Date, we will lease the Pledged Interest to the City as provided in that certain written lease agreement of even date herewith (the “**Lease**”). Notwithstanding anything to the contrary herein, we have the right to revoke this pledge upon termination of the Lease due to a default by the City.

We wish that the gift be identified in the records of the City as a gift from Phil Oates, Kevin Nagle, and Vivek Ranadive. In addition, we ask that the gift be noted at the site where the Artwork is displayed.

If, due to death or incapacity, one of us is unable to complete the obligations of this pledge, the pledge continues to apply to the remaining parties. This pledge will remain in effect to the exclusion of any new parties that might acquire an interest in the subject of this pledge and will continue to apply to the parties that retain the Pledged Interest or a legal interest therein.

This pledge shall extend to and be binding upon our respective executors, administrators, heirs, and assigns. If this gift is not completed during our respective lifetimes, our failure to include a specific bequest of the Pledged Interest to the City in our will, subject to the authority of an executor or administrator, shall not release the executor or administrator of such will from the obligation of delivering the Pledged Interest to the City in accordance herewith.

As we believe that a definite commitment to make this gift will be of great value to the City, we agree that the City may publicly refer to this gift prior to its delivery, as a gift promised by us, that the City may act in reliance on this pledge, and that the pledge may be made known to the public in the course of soliciting gifts from others.

To the best of our knowledge and belief, the Pledged Interest is free and clear of all encumbrances and restrictions and the Artwork has not been acquired, or imported or exported, into or from any country contrary to its laws.

We acknowledge that the City makes no representations as to the tax consequences of this Pledge to Gift Artwork and any determinations related to this issue are the sole responsibility of the Donors. Donors have consulted with their own tax advisors regarding this transaction.

This agreement shall be governed by the laws of the state of California.

DONORS:

Phil Oates

Vivek Ranadive

Kevin Nagle

I certify that this pledge was accepted by the proper authority of the City and that it correctly states the agreement between the City and Donors.

CITY:

CITY OF SACRAMENTO, a California municipal corporation

By: _____
Jody Ulich, Director of Convention and Cultural Services
For: John F. Shirey, City Manager

APPROVED AS TO FORM:

By: _____
Matthew D. Ruyak
Assistant City Attorney

ATTEST:

By: _____
City Clerk

Exhibit:

A - Description of Artwork

DONOR: PHIL OATES

Signature

VERIFICATION

The State of California

County of Sacramento

On _____, 2015, before me, _____, personally appeared

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument—PLEDGE TO GIFT ARTWORK FOR THE SACRAMENTO ENTERTAINMENT AND SPORTS CENTER PROJECT—and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[signature]

(This area for official notarial seal)

DONOR: KEVIN NAGLE

Signature

VERIFICATION

The State of California

County of Sacramento

On _____, 2015, before me, _____, personally appeared

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument—PLEDGE TO GIFT ARTWORK FOR THE SACRAMENTO ENTERTAINMENT AND SPORTS CENTER PROJECT—and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[signature]

(This area for official notarial seal)

DONOR: VIVEK RANADIVE

Signature

VERIFICATION

The State of California

County of Sacramento

On _____, 2015, before me, _____, personally appeared

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument—PLEDGE TO GIFT ARTWORK FOR THE SACRAMENTO ENTERTAINMENT AND SPORTS CENTER PROJECT—and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[signature]

(This area for official notarial seal)

**PLEDGE TO GIFT FUNDS FOR ARTWORK
FOR THE SACRAMENTO ENTERTAINMENT AND SPORTS CENTER PROJECT**

Effective as of this _____ day of _____, 2015 (the “**Effective Date**”), I hereby pledge to give and transfer to the CITY OF SACRAMENTO, a California municipal corporation (the “**City**”), the sum of One Million Dollars (\$1,000,000) (the “**Pledged Interest**”), payable in two annual installments of \$500,000 each on or before March 31, 2015 and January 31, 2016.

The Pledged Interest is being given to establish a fund for the purchase, installation, repair, maintenance, and administration of City-owned public art for the Sacramento Entertainment and Sports Center Project as well as the removal, restoration, and relocation of artworks from the K Street Mall in Sacramento. The Pledged Interest is a restricted gift to the City for these uses. All purchases of artwork from the Pledged Interest shall be from artists based in any of the following counties: Sacramento, El Dorado, Placer, Sutter, Yolo, Placer, Amador, Calaveras, San Joaquin, Contra Costa, Solano, Butte, Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma. The City shall hold the Pledged Interest in a segregated account designated for use for these purposes.

I wish that the gift be identified in the records of the City as a gift from Marcy Friedman. In addition, I ask that the gift be noted at the site where the Artwork is displayed.

This pledge shall extend to and be binding upon my respective executors, administrators, heirs, and assigns. If this gift is not completed during my lifetime, my failure to include a specific bequest of the Pledged Interest to the City in my will, subject to the authority of an executor or administrator, shall not release the executor or administrator of my will from the obligation of delivering the Pledged Interest to the City in accordance herewith.

As I believe that a definite commitment to make this gift will be of great value to the City, I agree that the City may publicly refer to this gift prior to its delivery, as a gift promised by me, that the City may act in reliance on this pledge, and that the pledge may be made known to the public in the course of soliciting gifts from others.

I acknowledge that the City makes no representations as to the tax consequences of this Pledge to Gift Funds and any determinations related to this issue are my sole responsibility. I have consulted with my own tax advisors regarding this transaction.

This Pledge to Gift Funds shall be governed by the laws of the State of California.

MARCINE FRIEDMAN

I certify that this pledge was accepted by the proper authority of the City and that it correctly states the agreement between the City and Marcine Friedman.

CITY:

CITY OF SACRAMENTO, a California municipal corporation

By: _____

Jody Ulich, Director of Convention and Cultural Services

For: John F. Shirey, City Manager

APPROVED AS TO FORM:

By: _____

Matthew D. Ruyak,
Assistant City Attorney

ATTEST:

By: _____

City Clerk

MARCINE FRIEDMAN

Signature

VERIFICATION

The State of California

County of Sacramento

On _____, 2015, before me, _____, personally appeared

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument—PLEDGE TO GIFT FUNDS FOR ARTWORK FOR THE SACRAMENTO ENTERTAINMENT AND SPORTS CENTER PROJECT—and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[signature]

(This area for official notarial seal)