ART IN STATE BUILDINGS AGREEMENT – ARTWORK SELECTION

UF PROJECT NO. UF-### ({insert project title})

This ART IN STATE BUILDINGS AGREEMENT (this “**Agreement**”) is made and entered into by and between **THE UNIVERSITY OF FLORIDA BOARD OF TRUSTEES**, a public body corporate of the State of Florida (“**University**”), and **{INSERT ARTIST’S NAME AND JURISDICTION/TYPE OR RESIDENCE}** (“**Artist**” and, with University, the “**Parties**”).

WHEREAS, pursuant to Section 255.043, *Florida Statutes*, the Florida Department of State, Florida Division of Arts and Culture, Florida Council on Arts and Culture (the “**Florida Arts Council**”) has authorized University to expend funds for a commissioned work of art for the University of Florida;

WHEREAS, following review of the site-specific proposal prepared by Artist, University selected the work of art proposed by Artist in such proposal; and

WHEREAS, University and Artist desire to establish the terms and conditions under which the work of art will be created, fabricated and installed in the place designated herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

# **ARTICLE 1 SCOPE OF SERVICES**

* 1. **Artist’s Plan.**
1. Pursuant to Section 255.043, *Florida Statutes*, and the rules and policies promulgated thereunder, University approved the acquisition of one (1) work of art entitled **{insert title/name of art}** (the “**Work**”), described as:**{insert description of art, including materials to be used}** and to be installed **{describe specific location}** **on University’s campus OR {insert other description of location off campus}** (the “**Installation Site**”).
2. Simultaneously with the execution of this Agreement, Artist shall submit to University, in a form generally accepted in Artist’s field, a plan containing the following data (collectively, the “**Plan**”):
3. the name of the Work and specific location for installation at the Installation Site;
4. a model, scaled drawing or digital depiction of the Work, including specification of the dimensions, medium and colors;
5. a written description of the Work, its thematic content and its intended relationship to the Installation Site;
6. a detailed budget for the design, fabrication and installation of the Work, including site preparation and photography pursuant to Section 1.2(J);
7. a detailed description of Artist’s construction method showing materials and processes;
8. a detailed list of all proposed materials to be utilized by Artist, including structural and exposed materials for the Work;
9. the anticipated maintenance requirements for the Work;
10. a detailed construction schedule showing the activities contemplated to occur, including their sequence, and the projected commencement and completion dates of each activity; and
11. the name and address of all subcontractors who will be performing services or providing materials for the Work, including a description of the services or materials to be provided by each such subcontractor.
12. Within thirty (30) days after the receipt of Artist’s Plan, University shall notify Artist, in writing, of its approval or disapproval of the Plan, said approval not to be unreasonably withheld. If University disapproves of the Plan, Artist shall modify the Plan as needed until University approves the Plan, such approval not to be unreasonably withheld. The Plan, as approved by University in writing and modified pursuant to Section 1.2(I), is referred to herein as the “**Approved Plan**.”
	1. **Artist’s General Services.**
13. Artist shall perform or provide all services and furnish all supplies (including photographs of the Work pursuant to Section 1.2(J) and the copyright pursuant to Section 3.4(E)), materials and equipment necessary for the design, execution, fabrication, transportation and installation of the Work at the Installation Site consistent with the Approved Plan.
14. Subject to the Approved Plan, Artist will determine the artistic expression, scope, size, material, texture, color, location and method of fabrication of the Work, subject to review and acceptance by University, as set forth in this Agreement.
15. Once the Approved Plan is established, Artist shall obtain all permits and approvals required to fabricate the Work and to install the Work on University property (collectively, “**Approvals**”). University will assist Artist in determining what permits are required.
16. Artist shall properly and timely prepare and submit all drawings and other graphic materials needed to obtain the Approvals.
17. Upon Artist’s procurement of all Approvals, Artist shall commence fabrication, site preparation and installation of the Work in accordance with the construction schedule contained in the Approved Plan.
18. Artist shall provide all barricades necessary to protect the Work and adjacent University property during the fabrication and installation of the Work.
19. University will have the right to review the progress of the Work at any time and from time to time but will provide at least three (3) days’ Notice to Artist prior to any review.
20. Artist shall submit progress reports to University at reasonable intervals, if requested in writing by University.
21. Artist shall present to University in advance, for further review and approval, a written proposal for every change to the Work that is not in substantial conformity with the Approved Plan. Without limiting the generality of the foregoing, a proposal must be prepared by Artist and approved by University for every change in the scope, design, color, size, material, texture or location of the Work that affects installation, scheduling, site preparation or maintenance for the Work or that changes the concept of the Work from that contained in the Approved Plan. Artist may not implement any proposed change to the Work until University approves the change to the Approved Plan in writing.
22. Artist shall provide University with the following photographic documentation of the completed and installed Work: at least four (4) publication quality, high resolution (300+ dpi) digital photographs of the completed Work. The photographs must include a photograph of the installed Work in its entirety as well as, for two-dimensional works, detailed shots and, for three-dimensional works, a photograph of the Work in context with the surrounding environment.
23. Following completion of the Work, but prior to acceptance by University, Artist shall provide University with an affidavit in the form attached as **Exhibit A** stating that the materials used to construct and display the Work are durable, structurally sound and appropriate to the environmental conditions of the Installation Site.
24. Following completion of the Work, but prior to acceptance by University, Artist shall provide University with written instructions detailing the maintenance and preservation requirements for the Work, as well as handling instructions in the event the Work should have to be moved.
25. Artist shall comply with the General Conditions set forth in Article 3 in performing its services under this Agreement.

## **ARTICLE 2 COMPENSATION**

* 1. **Firm Fixed Price.** University shall pay Artist a firm fixed price of **(${insert amount})** (the “**Total Fee**”), which will constitute full compensation for the Work and the license to University, including Artist’s fee.
	2. **Method of Payment.** Provided Artist has fulfilled all its obligations under this Agreement at the time for payment of each installment of the Total Fee, the Total Fee will be paid in the following installments, with each installment constituting full and final payment for all services and materials provided prior to payment thereof:
1. Recognizing that Artist has invested time and expense in preliminary design coordination with University, University shall pay Artist **(${insert amount})** within thirty (30) days of receipt of an invoice from Artist.
2. University shall pay Artist **(${insert amount})** after Artist completes at least fifty percent (50%) of the Work, which payment will be made within thirty (30) days after University’s receives:
3. an invoice and an affidavit from Artist stating that the Work is at least fifty percent (50%) complete; and
4. a photograph documenting the extent of completion of the Work.
5. University shall pay Artist **(${insert amount})** after University accepts the Work, which payment will be made within thirty (30) days after University’s receives:
6. an invoice and an affidavit from Artist stating that the Work is complete and was installed at the Site Location in accordance with the Approved Plan;
7. a written bill of sale conveying title and an irrevocable copyright license to University pursuant to Section 3.4 in the form attached as **Exhibit B**;
8. a written affidavit of materials pursuant to Section 1.2(K);
9. written instructions for maintenance, preservation and handling of the Work pursuant to Section 1.2(L);
10. an affidavit of no liens, claims or other encumbrances pursuant to Section 3.4(A);
11. written acceptance of the Work by University’s designee; and
12. photographs of the installed Work pursuant to subsection 1.2(J).
	1. **Payment Questions.** For questions about payments, please contact the Disbursements department of the University Division of Finance and Accounting at 352-392-1241.

## **ARTICLE 3 GENERAL CONDITIONS**

* 1. **Time of Performance.** Artist shall, and shall cause its subcontractors to, perform all services in accordance with the construction schedule submitted by Artist and set forth in the Approved Plan, **all of which must be completed no later than {insert completion date}**. University will grant a reasonable extension of time to Artist for delays caused by University and where conditions beyond Artist’s control, such as extreme weather events, render timely performance of Artist’s services unreasonably burdensome. A Party will not be deemed to have breached this Agreement where the Party fails to fulfill its obligations under this Agreement due to conditions beyond such Party’s reasonable control as long as the Party promptly resumes its obligations following cessation of the applicable condition and thereafter diligently pursues the same to completion.
	2. **Assignment, Transfer or Subcontracting.** A material element of this Agreement is the personal skill, judgment and creativity of Artist. Therefore, Artist shall not assign, transfer or subcontract the creative and artistic portions of the Work to another person without the prior written approval of University.
	3. **Warranty of Quality.** Artist warrants that the Work is and will be free of defects in material and workmanship, including all defects consisting of “inherent vice” or qualities that cause or accelerate deterioration of the Work. Artist shall correct, at Artist’s expense, all defects that appear during the two (2) year period after final acceptance of the Work by University.
	4. **Title and Copyright.**
1. Artist warrants that the Work is and will be the result of the artistic efforts of Artist and that, unless otherwise stipulated herein, as of completion of the Work, the Work is unique, an edition of one, and does not infringe on any copyright. Artist shall deliver the Work free and clear of all liens, claims and other encumbrances arising from the acts of Artist and shall furnish an affidavit to this effect in the form attached as **Exhibit A**.
2. Title to the Work shall vest in University at the time of the final acceptance by University. University may additionally select, and Artist shall convey to University, at no additional cost to University, one (1) of the original drawings, designs, maquettes or models of the Work submitted as part of the Plan to be used by University solely for exhibition. All other studies, drawings, designs, maquettes and models prepared by Artist will be returned to Artist and will belong to Artist.
3. Artist grants to University and its assigns an irrevocable license to make two‑dimensional reproductions of the Work for non‑commercial purposes, including for brochures, marketing materials and catalogues or similar publications. All reproductions by University must contain a credit to Artist and a copyright notice in substantially the following form: **“[{insert artist’s name}, {insert year of completion}].”**
4. Artist retains all rights of copyright to the Work except as limited by this Agreement. In view of the intention that the Work must be unique, Artist shall not make any reproductions of the final Work in any form, nor shall Artist grant permission to others to do so, except with the prior written permission of University. In every public showing of reproductions of the Work in any form, Artist shall ensure that credit is given in substantially the following form: “An original work commissioned by the State of Florida Council on Arts and Culture for the University of Florida, Gainesville, Florida.”
5. Artist shall, at Artist’s expense, register a Copyright in the Work with the United States Register of Copyrights.
	1. **Acceptance.** University shall accept the Work within fifteen (15) business days after Artist has completed installation of the Work and satisfied all Artist’s other obligations with respect to the Work.
	2. **Risk of Loss.** Artist will bear the full risk of loss of or damage to the Work until installation has been completed and University has finally accepted the Work. Artist shall take such measures as are necessary to protect the Work from and insure the Work against loss or damage.
	3. **Insurance.** Artist shall, and shall cause its subcontractors to, maintain the following policies of insurance during performance of all services under this Agreement and for at least thirty (30) days after University has finally accepted the Work:
	4. Worker’s Compensation Insurance as required by Chapter 440, Florida Statutes.
	5. Commercial General Liability Insurance in an amount not less than $500,000 per occurrence for bodily injury, death and property damage, and naming University as an additional insured.
	6. Automobile Liability Insurance covering all owned, non‑owned and hired vehicles used in connection with the Work, in amounts not less than $100,000 per person, $300,000 per occurrence for bodily injury, and $50,000 per occurrence for property damage.
	7. Insurance required pursuant to Section 3.6.

All insurance policies required above must be issued by companies that are authorized to do business in the State of Florida and rated not less than “A” as to management and not less than Class “X” as to strength by the latest edition of Best’s Insurance Guide or its equivalent. Artist shall furnish a certificate of insurance to University prior to the commencement of operations on University property. No change to or cancellation of insurance coverage will relieve Artist of its liability or obligations under this Agreement.

* 1. **Indemnification.** Artist shall indemnify, defend and hold harmless University and the State of Florida and their respective current or former trustees, directors, officers, representatives, employees and agents (collectively, “**Indemnitees**”) from and against all actions, claims, liabilities, losses, costs and expenses (including attorneys’ fees and court costs) directly or indirectly arising or alleged to arise from negligent acts or omissions or other wrongful conduct of any one or more of Artist, its subcontractors, and their respective representatives, employees and agents in connection with the Work or otherwise with this Agreement, except to the extent arising from negligent acts or omissions or other wrongful conduct of Indemnitees.
	2. **Publicity and News Releases.** Artist may not disseminate marketing materials or news releases regarding the Work without the prior written approval of University.
	3. **Display of Work.** After final acceptance of the Work:
1. University will use reasonable efforts to keep the Work in good condition and repair and, subject to removal pursuant to the Deaccession Policy promulgated by the Florida Arts Council, permanently display the Work to the public in a manner suitable to a work of fine art with a nameplate that, at a minimum, identifies the Artist and the Work and includes such information as is required by the Florida Arts Council.
2. If the Work is damaged during the lifetime of Artist, University will notify Artist of the occurrence and the nature of the damage and will afford Artist a reasonable opportunity to conduct and supervise the restoration of the Work at a price to be mutually agreed upon. If Artist does not take steps to commence the restoration within thirty (30) days after the receipt of Notice from University, then University will be free to make whatever arrangements it deems appropriate for restoration or removal of the Work.
3. If University fails to display or to maintain the Work in good condition, Artist may, as its sole remedy, disown the Work and request that the nameplate be removed from the Work until its condition is satisfactorily repaired and displayed.
4. Pursuant to 17 U.S.C. Section 106a(e)(1), Artist waives Artist’s rights under 17 U.S.C. Section 106A(a) with respect to the Work and all uses of the Work set forth in this Agreement, including display of Work at the Installation Site. Artist acknowledges that, as part of the foregoing waiver, Artist is giving up Artist’s right to prevent intentional distortion, mutilation or other modification of the Work and the right to prevent the destruction of the Work. Artist acknowledges that Artist has carefully read 17 U.S.C. Section 106A and understands the rights Artist is giving up by agreeing to this waiver.
	1. **Notices.** All notices and other communications required or permitted under this Agreement (each, a “**Notice**”) must be in writing. Notices will be deemed given: (A) the date delivered by hand; (B) the date delivered by a nationally recognized overnight courier, when sent by overnight delivery, receipt requested; (C) three days after the date mailed by First Class U.S. Mail, certified and return receipt requested; or (D) the date delivered by email, if sent before 5:00pm Eastern Time on a business day for the University of Florida, or on the next following business day, if sent on a day other than a business day. All Notices must be served on the respective Parties at the addresses set forth below. A Party may change its address by Notice to the other Party; provided, however that no Notice of a change of address will be effective until actual receipt of such Notice. Artist’s failure to notify University of changes in its address will be deemed a waiver by Artist of the right to enforce all provisions that call for the approval of Artist. However, University will make reasonable efforts to locate Artist when matters arise relating to Artist’s rights under this Agreement.

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| If to Artist:**{insert artists’s name}****{insert artists’s address}****{insert artists’s email address}** | If to University:Planning, Design & ConstructionUniversity of Florida245 Gale Lemerand P. O. Box 115050Gainesville, FL 32611-5050Attn: **{insert PM’s name}****{insert PM’s email}** | with copies to:Office of the General CounselUniversity of Florida123 Tigert HallGainesville, FL 32611 |

* 1. **Default.** If a Party fails to comply with any provision of this Agreement, and such failure continues for thirty (30) days after Notice from the other Party identifying the failure, such Party will be in default of this Agreement. If a Party is in default under this Agreement, the other Party may immediately terminate this Agreement by Notice to the defaulting Party and exercise all other rights and remedies it has at law or in equity.
	2. **Termination for Death or Disability.** In the event of the death or disability of Artist such that Artist cannot deliver the Work pursuant to the Plan, University may, at its option, terminate this Agreement upon ten (10) days’ Notice to Artist or Artist’s personal representative or, if Artist has proposed an acceptable alternative artist to complete the Work who has agreed to accept Artist’s obligations hereunder, permit assignment of this Agreement to such alternative artist. No assignment will relieve Artist of its obligations hereunder.
	3. **Independent Contractor.** Artist is an independent contractor and nothing in this Agreement may be construed as constituting Artist as an employee, agent or representative of University or the State of Florida.
	4. **No Lobbying.** Artist shall not use funds provided under this Agreement for the purpose of lobbying the Legislature or any official, officer, commission, board, authority, council, committee or department of any branch of State government.
	5. **Equal Employment Opportunity and Non‑Discrimination.** Artist shall not, and shall instruct its subcontractors not to, discriminate against any qualified individuals based on their status as protected veterans or individuals with disabilities or against any individuals based on their race, color, religion, sex, sexual orientation, gender identity, pregnancy, age, marital status, national origin, or for inquiring about, discussing, or disclosing compensation.
	6. **Compliance with Law.** Artist shall comply with and ensure that the Work and its installation comply with all applicable codes, statutes and regulations, including all guidelines and standards promulgated thereunder.
	7. **Entire Agreement; Amendment.** This Agreement embodies the entire agreement, and supersedes all prior agreements, between the Parties with respect to the subject matter of this Agreement. This Agreement may be amended or supplemented only by an instrument in writing executed by the Parties.
	8. **Invalidity; Waiver.** If any portion of this Agreement is held inoperative, then, so far as is reasonable and possible, (A) such portion will be construed by modifying it so as to be enforceable and to otherwise give effect to the intent of the Parties, and (B) the remainder of this Agreement will be deemed valid and operative. No waiver by a Party of any provision of this Agreement will be effective unless set forth in writing and signed by such Party. The failure by a Party to enforce against the other Party any term of this Agreement will not be deemed to be a waiver of such Party’s right to enforce against the other Party the same or any other term in the future.
	9. **Joint and Several Liability.** If two or more persons sign this Agreement as Artist, the liability of each such person to perform all obligations hereunder will be deemed to be joint and several.
	10. **Governing Law; Forum.** This Agreement is governed by the substantive laws of the State of Florida. Every claim arising in connection with this Agreement must be brought and maintained in a state or federal court of competent jurisdiction sitting in Alachua County, Florida, and the Parties agree to submit to the personal jurisdiction of such court.
	11. **Sovereign Immunity**. Nothing in this Agreement may be deemed as the consent of University or the State of Florida or their agents and agencies to be sued, or a waiver of University’s or the State of Florida’s sovereign immunity or of any limitation of liability beyond the limited waiver provided in Section 768.28, *Florida Statutes*. Nothing in this Agreement will inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.
	12. **Public Records**. This Agreement is subject to the Public Records Law of the State of Florida, Chapter 119, *Florida Statutes*. University may terminate this Agreement at any time for Artist’s refusal to allow public access to all documents, papers, letters and other materials that are subject to the provisions of Chapter 119, *Florida Statutes*, and made or received by either Party in conjunction with this Agreement.
	13. **Interpretation.** The headings contained in this Agreement are for convenience only and may not be held to explain or modify the meaning of this Agreement. For purposes of this Agreement, unless otherwise specified herein, (A) the words “hereunder” and “herein” and words of similar import will be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement; (B) references to “Sections” will be deemed to refer to the designated provisions of this Agreement; (C) the words “include” or “including” will be deemed to be followed by the words “without limitation”; (D) “or” will be construed in the inclusive sense of “and/or”; (E) the word “shall” imposes a mandatory obligation on the Party to which it refers; and (F) the word “person” will be deemed to include individuals, partnerships, firms, associations, limited liability companies and corporations or any other form of business entity.
	14. **Modifications.** Modifications to this Agreement are set forth on **Exhibit C**.

[Signatures on Following Page]

IN WITNESS WHEREOF, Artist and University have caused this Agreement to be duly executed to be effective as of the latest execution date below.

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|  |  | **“ARTIST”** |
|  |  | (If Artist is an entity)Artist Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  | (If Artist is an Individual)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |
|  |  | Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

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|  |  | **“UNIVERSITY”**The University of Florida Board of Trustees |
|  |  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  | Name: David E. KratzerTitle: Senior Vice President for Construction,  Facilities, and Auxiliary Operations  University of FloridaDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

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| Reviewed |  | Approved |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: Colt H. LittleTitle: Associate Vice President for Enterprise  Projects and Senior Counsel, Office of  the Vice President and General Counsel University of FloridaDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Name: Cydney McGlothlinTitle: Assistant Vice President, Planning, Design & Construction University of Florida Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Exhibit A**

**Form Of Artist’s Affidavit**

ARTIST’S AFFIDAVIT

**UF PROJECT NO. UF-### ({insert project title})**

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

Before me, the undersigned, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Affiant”), personally appeared and, after being duly sworn, says the following:

1. Affiant is the [TITLE] of [ENTITY NAME] (“Artist”), a[n] [STATE OF ORGANIZATION] [ENTITY TYPE] and gives this affidavit in such capacity. Artist is authorized to transact business in the State of Florida. **OR** Affiant (“Artist”) is an individual residing in the State of [STATE].
2. Capitalized terms used in this affidavit and not otherwise defined have the meanings given to such terms in that certain Art in State Buildings Agreement dated **{insert date}** by and between Artist and The University of Florida Board of Trustees.
3. The Work is complete and was installed at the Site Location in accordance with the Approved Plan.
4. Artist is the sole creator of the Work, which is unique, an edition of one, and does not infringe on any copyright or other intellectual property rights.
5. The Work is free and clear of all liens, encumbrances, claims and demands arising from the acts of Artist. Artist has not previously sold or assigned the Work to any other person.
6. The materials used to construct and display the Work are durable, structurally sound and appropriate to the environmental conditions of the Installation Site.
7. The following maintenance instructions set forth all maintenance efforts that are reasonably required to indefinitely maintain and preserve the Work in good condition and repair: **{insert instructions}**.
8. The following instructions set forth all efforts that are reasonably required to relocate the Work: **{insert instructions}**.
9. Affiant has personal knowledge of the matters sworn to in this affidavit. Affiant gives this affidavit with full knowledge of applicable Florida law regarding sworn affidavits and the penalties and liabilities imposed for providing false statements or misrepresentations in an affidavit.

AFFIANT

Print: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The foregoing instrument was acknowledged before me by means of [ ]  physical presence or [ ]  online notarization this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who [ ]  is personally known to me, or ☐ has produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

(NOTARY SEAL)

Notary Public

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit B**

**Form Of Bill Of Sale, Copyright License, and Warranty Agreement**

BILL OF SALE, COPYRIGHT LICENSE, AND WARRANTY AGREEMENT

**UF PROJECT NO. UF-### ({insert project title})**

This BILL OF SALE, COPYRIGHT LICENSE, AND WARRANTY AGREEMENT (this “**Agreement**”) is made and entered into by and between **THE UNIVERSITY OF FLORIDA BOARD OF TRUSTEES**, a public body corporate of the State of Florida, with an address of **{insert address}** (“**University**”), and **{INSERT ARTIST’S NAME AND JURISDICTION/TYPE OR RESIDENCE}**, with an address of **{insert address}**, (“**Artist**” and, with University, the “**Parties**”).

WHEREAS, pursuant to that certain Art in State Buildings Agreement dated **{insert date}** by and between University and Artist (the “**Art in State Buildings Agreement**”), University engaged Artist to complete a commissioned work of art for the University of Florida; and

WHEREAS, University and Artist enter this Agreement to effect the transactions contemplated by the Art in State Buildings Agreement.

NOW, THEREFORE, for and in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals; Defined Terms**. The foregoing Recitals are accurate and incorporated herein by this reference. Capitalized terms used in this Agreement and not otherwise defined have the meanings given to such terms in the Art in State Buildings Agreement. Further, where the conveyance under this Agreement includes a Model (as defined below), the term “**Work**” (as defined below) will be deemed to include the Model.
2. **Payment**. As consideration in full for conveyance of the Work and the rights granted herein, University paid Artist a one-time fee in the amount and manner set forth in the Art in State Buildings Agreement.
3. **Bill of Sale**. Artist, hereby sells, assigns, transfers, conveys and delivers to University: (i) the work of art entitled **{insert title/name of art}** (the “**Work**”), described as:**{insert description of art, including size and materials/ medium}** and located at the Installation Site; and (ii) the drawing, design, maquette or model of the Work described as: **{insert description or N/A}** (the “**Model**”). TO HAVE AND TO HOLD by University and its representatives, successors and assigns to its and their own use and benefit forever. Artist binds itself, and its heirs, successors and assigns, as applicable, to WARRANT AND DEFEND the Work against the lawful claims of any person claiming by, through or under Artist.
4. **Warranty of Quality**. Artist warrants that the Work is free from defects in workmanship and materials, including all defects consisting of “inherent vice” or qualities that cause or accelerate deterioration of the Work. If any defects appear within the two (2) years following the date of this Agreement, then Artist shall promptly correct, at Artist’s expense, each such defect after Notice from University identifying the defect.
5. **Grant of Copyright License**.
	1. Artist hereby grants to University an exclusive, irrevocable right and license to reproduce, display, transmit and distribute two-dimensional reproductions of the Work in all formats and media whether now or hereafter known or devised and by all technologies and means of delivery whether now or hereafter known or devised for noncommercial, educational, marketing, advertising and publicity purposes.
	2. Artist shall, at Artist’s expense, register a Copyright in the Work with the United States Register of Copyrights. Artist retains all rights of copyright to the Work except as limited by this Agreement. In view of the intention that the Work must be unique, Artist shall not make any reproductions of the final Work in any form, nor shall Artist grant permission to others to do so, except with the prior written permission of University. In every public showing of reproductions of the Work in any form, Artist shall ensure that credit is given in substantially the following form: “An original work commissioned by the State of Florida Council on Arts and Culture for the University of Florida, Gainesville, Florida.”
	3. Section 3.10 of the Art in State Buildings Agreement is incorporated into this Agreement by this reference.
6. **Waiver of Moral Rights**. Artist waives, to the extent permitted by applicable law, all rights of paternity, integrity, attribution, disclosure, withdrawal and any other rights that may be known as “moral rights” (“**Moral Rights**”) with respect to the use of the Work pursuant to this Agreement. To the extent this waiver is not permitted by applicable law, Artist agrees not to enforce such Moral Rights against University.
7. **Copyright Notice**. University shall ensure that its use of the Work is marked with a copyright notice in substantially the following form: **“[{insert artist’s name}, {insert year of completion}].”**
8. **Representations and Warranties**. Artist represents and warrants that:
	1. Artist has the full right, power and authority to enter into this Agreement and to make the grants and perform Artist’s obligations hereunder, the execution of this Agreement has been duly authorized by all necessary actions, and this Agreement is enforceable in accordance with its terms;
	2. Artist has not granted and will not grant any licenses, liens, security interests or other encumbrances in, to or under the Work, and no consents from or payments to any person are or will be required by Artist’s grant and license of rights to University hereunder or by University’s exercise of such rights; and
	3. the exercise by University of the rights and license granted under this Agreement will not infringe or otherwise conflict with the rights of any other person.
9. **Indemnification**. Artist shall indemnify, defend and hold harmless University and its officers, directors, representatives and agents (each, a “**University Indemnified Party**”) from and against all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, fees, costs or expenses of whatever kind, including reasonable attorneys’ fees, the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers (collectively, “**Losses**”) arising out of or in connection with any third-party claim, suit, action or proceeding (“**Third-Party Claim**”): (a) relating to any actual or alleged misrepresentation by Artist or to any actual or alleged failure to perform any obligation hereunder; or (b) resulting directly or indirectly from use of the Work by University in accordance with this Agreement, including actual or alleged infringement or other violation of any intellectual property or other rights of any person.
10. **Default**. If a Party fails to comply with any provision of this Agreement, and such failure continues for thirty (30) days after Notice from the other Party identifying the failure, such Party will be in default of this Agreement. If a Party is in default under this Agreement, the other Party may exercise all rights and remedies it has at law or in equity. However, in no event may any remedy limit or otherwise negatively affect the conveyance under Section 3 of this Agreement.
11. **Notices**. Notices and other communications required or permitted under this Agreement must be given in accordance with Section 3.11 of the Art in State Buildings Agreement.
12. **Miscellaneous**.
	1. **Entire Agreement; Amendment**. This Agreement, the Art in State Buildings Agreement and the Artist’s Affidavit dated on or about even date herewith embody the entire agreement between the Parties with respect to the Work. This Agreement may be amended or supplemented only by an instrument in writing executed by the Parties.
	2. **Invalidity; Waiver**. If any portion of this Agreement is held inoperative, then, so far as is reasonable and possible, (i) such portion will be construed by modifying it so as to be enforceable and to otherwise give effect to the intent of the Parties, and (ii) the remainder of this Agreement will be deemed valid and operative. No waiver by a Party of any provision of this Agreement will be effective unless set forth in writing and signed by such Party. The failure by a Party to enforce against the other Party any term of this Agreement will not be deemed to be a waiver of such Party’s right to enforce against the other Party the same or any other term in the future.
	3. **Joint and Several Liability**. If two or more persons sign this Agreement as Artist, the liability of each such person to perform all obligations hereunder will be deemed to be joint and several.
	4. **Governing Law; Forum**. This Agreement is governed by the substantive laws of the State of Florida. Every claim arising in connection with this Agreement must be brought and maintained in a state or federal court of competent jurisdiction sitting in Alachua County, Florida, and the Parties agree to submit to the personal jurisdiction of such court.
	5. **Sovereign Immunity**. Nothing in this Agreement may be deemed as the consent of University or the State of Florida or their agents and agencies to be sued, or a waiver of University’s or the State of Florida’s sovereign immunity or of any limitation of liability beyond the limited waiver provided in Section 768.28, *Florida Statutes*. Nothing in this Agreement will inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.
	6. **Public Records**. This Agreement is subject to the Public Records Law of the State of Florida, Chapter 119, *Florida Statutes*. University may terminate this Agreement at any time for Artist’s refusal to allow public access to all documents, papers, letters and other materials that are subject to the provisions of Chapter 119, *Florida Statutes*, and made or received by either Party in conjunction with this Agreement.
	7. **Interpretation**. The headings contained in this Agreement are for convenience only and may not be held to explain or modify the meaning of this Agreement. For purposes of this Agreement, unless otherwise specified herein, (i) the words “hereunder” and “herein” and words of similar import will be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement; (ii) references to “Sections” will be deemed to refer to the designated provisions of this Agreement; (iii) the words “include” or “including” will be deemed to be followed by the words “without limitation”; (iv) “or” will be construed in the inclusive sense of “and/or”; (v) the word “shall” imposes a mandatory obligation on the Party to which it refers; and (vi) the word “person” will be deemed to include individuals, partnerships, firms, associations, limited liability companies and corporations or any other form of business entity.

[Signatures on Following Page]

IN WITNESS WHEREOF, Artist and University have caused this Agreement to be duly executed to be effective as of the latest execution date below.

|  |  |  |
| --- | --- | --- |
|  |  | **“ARTIST”** |
|  |  | (If Artist is an entity)Artist Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  | (If Artist is an Individual)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |
|  |  | Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

|  |  |  |
| --- | --- | --- |
|  |  | **“UNIVERSITY”**The University of Florida Board of Trustees |
|  |  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  | Name: David E. KratzerTitle: Senior Vice President for Construction,  Facilities, and Auxiliary Operations  University of FloridaDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

|  |  |  |
| --- | --- | --- |
| Reviewed |  | Approved |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: Colt H. LittleTitle: Associate Vice President for Enterprise  Projects and Senior Counsel, Office of  the Vice President and General Counsel University of FloridaDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Name: Cydney McGlothlinTitle: Assistant Vice President, Planning, Design & Construction University of Florida Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Exhibit C**

**Project Specific Modifications**

**3.25 Modifications to the Agreement Between Owner and Artist.**

[Insert modifications, including any requirement for an engineering certification, or Write “None”]