

ST. PETERSBURG CITY COUNCIL

Consent Agenda

June 6, 2019

TO: The Honorable Charlie Gerdes, Chair and Members of City Council

SUBJECT: A Resolution authorizing the Mayor or his designee to execute an agreement between the City of St. Petersburg, Florida, and Nick Ervinck ("Artist"), for artist to design, develop and oversee installation of a piece of exterior art entitled "Olnetopia" in the southwest corner of the lawn bowl area of the City's New St. Pete Pier™ for a total firm fixed price of \$137,000 ("Agreement") and all other documents necessary to effectuate this transaction; authorizing the City Attorney's office to make non-substantive changes to the agreement; approving a supplemental appropriation in the amount of \$137,000 from the unappropriated balance of the Art in Public Places Fund (1901) to the Mayor's Office, Cultural Affairs Division (020-1777); providing that this Resolution shall supersede Resolution No. 2019-27 and that the prior supplemental appropriation included in Resolution No. 2019-27 is nullified; and providing an effective date.

EXPLANATION: On January 3, 2019, City Council approved the agreement for Artist to design, develop and install a piece of exterior art entitled Olnetopia in the southwest corner of the lawn bowl area in the pier head section of the St. Pete Pier™. Since the date of approval by City Council, it has been determined that it is in the city's best interest to have the city's construction manager install Olnetopia with an oversight from the Artist rather than having the Artist complete the installation.

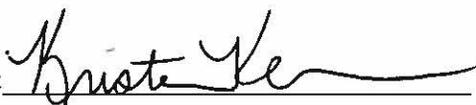
RECOMMENDATION: Administration and the Public Arts Commission recommends approval of the attached Resolution.

COST/FUNDING/ASSESSMENT INFORMATION: Funding for this project was included in a previous transfer from the General Capital Improvement Fund (3001) in the amount of \$310,500 to the Arts in Public Places Fund (1901) approved by City Council on November 15, 2018. Funds will be available after approval of a supplemental appropriation in the amount of \$137,000 from the unappropriated balance of the Arts in Public Places Fund (1901) to the Mayor's Office Cultural Affairs division (0201777). As this resolution shall supersede Resolution No. 2019-27, the previous supplemental appropriation in the amount of \$140,000 from the unappropriated balance of the Arts in Public Places Fund (1901) to the Mayor's Office Cultural Affairs Division (020-1777) included in Resolution No. 2019-27 shall be nullified.

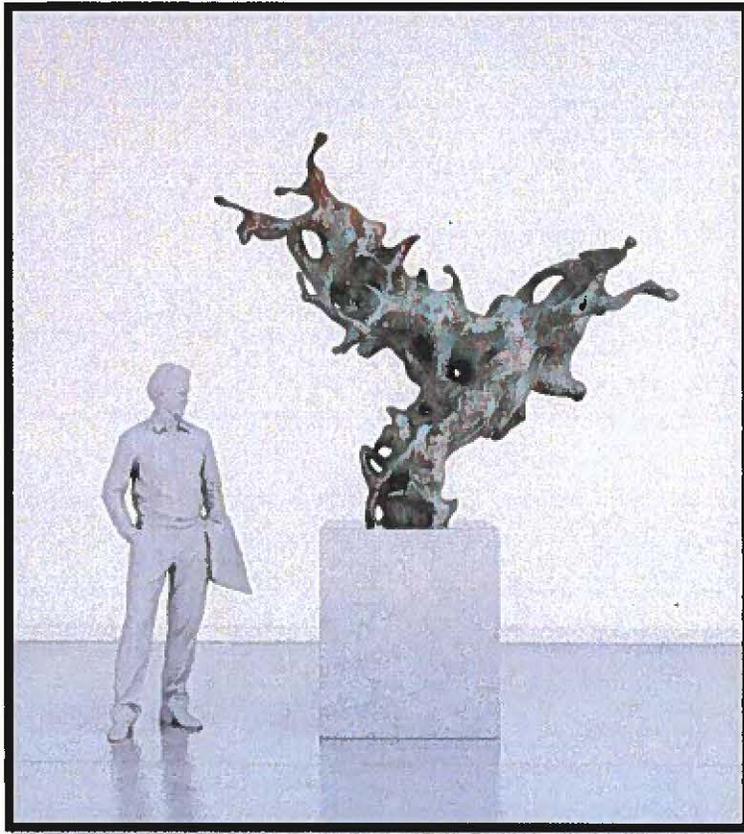
ATTACHMENTS:

- (1) Sculpture Design Rendering
- (2) Resolution
- (3) Artist Agreement

APPROVALS:

Administration:  Budget: 

"Olnetopia"



The sculpture was first sculpted in foam. For this piece, a model is then made with a silicone mold; a wax model is then extracted from that mold. The wax model will be created in bronze with a patina finish. The model is provided with an internal reinforcing structure.

This organic form is linked to hollowed rocks and the wild waters, often used in oriental horticultural art. The structure results in a spontaneous, natural erosion process. My work is inspired by macro photographic images of splashing water, and thus sculpturally interprets the encounter between nature and technology. I try to catch the sublime dynamics lurking behind a serene surface. How natural erosion

processes generate irregular, complex structures (e.g. the erosion of rocks by seawater) has always fascinated me. Though inspired by natural dynamics, this sculpture is generated by the power of the virtual. I strive towards a balance in the final image between structure and complexity, figuration and abstraction, fancy and symmetry.

As the viewer moves around the sculpture, he sees how everything becomes wider and narrower. The sculpture represents the dynamic power of life and provides a warm welcome to the St. Pete Pier™. The site provides space for reflection and innovation. The gardens and the sculpture make it possible for the visitors to dream of this parallel universe. This sculpture can be seen as an animation in which organic forms, grow from the sculpture and mutate as an environmental matter. It is a sculpture that is openly in dialogue with the environment (the sea), and asks for a new look every time.

Resolution No. 2019-_____

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF ST. PETERSBURG, FLORIDA, AND NICK ERVINCK ("ARTIST"), FOR ARTIST TO DESIGN, DEVELOP AND OVERSEE INSTALLATION OF A PIECE OF EXTERIOR ART ENTITLED "OLNETOPIA" IN THE SOUTHWEST CORNER OF THE LAWN BOWL AREA OF THE CITY'S NEW ST. PETE PIER™ FOR A TOTAL FIRM FIXED PRICE OF \$137,000 ("AGREEMENT") AND ALL OTHER DOCUMENTS NECESSARY TO EFFECTUATE THIS TRANSACTION; AUTHORIZING THE CITY ATTORNEY'S OFFICE TO MAKE NON-SUBSTANTIVE CHANGES TO THE AGREEMENT; APPROVING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF \$137,000 FROM THE UNAPPROPRIATED BALANCE OF THE ART IN PUBLIC PLACES FUND (1901) TO THE MAYOR'S OFFICE, CULTURAL AFFAIRS DIVISION (020-1777); PROVIDING THAT THIS RESOLUTION SHALL SUPERSEDE RESOLUTION NO. 2019-27 AND THAT THE PRIOR SUPPLEMENTAL APPROPRIATION INCLUDED IN RESOLUTION NO. 2019-27 IS NULLIFIED; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of St. Petersburg, Florida, is committed to supporting and encouraging the artistic and cultural enrichment of the St. Petersburg community; and

WHEREAS, the Pier Public Art Project Committee ("Committee") was established pursuant to Section 5-58 of the City Code to ensure that proper considerations are given to the design, siting, facility operation, and neighborhood interests for artwork to be commissioned for the new St. Pete Pier™; and

WHEREAS, the Committee posted a call to artists online, inviting artists from around the world to express their interest in the project and submit their qualifications; and

WHEREAS, the Committee performed a rolling review of potential artists who expressed interest in the project and submitted their qualifications; and

WHEREAS, after having narrowed down the potential artists to six finalists, the Committee met on April 11, 2018 to hear the six finalists' presentations of their proposals; and

WHEREAS, based on the site-specific proposal for an exterior piece presented by Nick Ervinck ("Artist"), one of the finalists, the Committee selected Artist to fully design and fabricate a piece of exterior art entitled "Olnetopia" to be installed in the southwest corner of the lawn bowl area of the new St. Pete Pier™; and

WHEREAS, on May 1, 2018, the Public Arts Commission approved the Committee's selection and recommended that City Council approve an agreement for Artist to fully design and fabricate Olnetopia to be installed at the new St. Pete Pier™ ("Agreement"); and

WHEREAS, since the Agreement was brought before City Council on January 3, 2019 for approval, it has been determined that it is in the City's best interest to have the City's construction manager install Olnetopia with oversight from the Artist rather than having the Artist complete the installation; and

WHEREAS, Administration, in conjunction with the Public Arts Commission, recommends approval of the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida, that the Mayor or his designee is authorized to execute an agreement between the City of St. Petersburg, Florida, and Nick Ervinck ("Artist"), for Artist to design, develop and oversee installation of a piece of exterior art entitled "Olnetopia" in the southwest corner of the lawn bowl area of the City's new St. Pete Pier™ for a total firm fixed price of \$137,000 ("Agreement") and all other documents necessary to effectuate this transaction.

BE IT FURTHER RESOLVED that the City Attorney's Office is authorized to make non-substantive changes to the Agreement.

BE IT FURTHER RESOLVED that there is hereby approved from the unappropriated balance of the Art in Public Places Fund (1901), the following supplemental appropriation for FY 2019:

<u>Art in Public Places Fund (1901)</u>	
Mayor's Office, Cultural Affairs Division (020-1777)	\$137,000

BE IT FURTHER RESOLVED that this Resolution superseded Resolution No. 2019-27 and the prior supplemental appropriation in Resolution No. 2019-27 is hereby nullified.

This Resolution shall become effective immediately upon its adoption.

Approvals:



Administration



Budget



City Attorney (Designee)

00450082

ARTIST AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2019 (“Effective Date”), by and between the City of St. Petersburg, Florida, a municipal corporation of the State of Florida, (“City”) and Nick Ervinck (“Artist”) (collectively, “Parties”).

WHEREAS, it is the desire of City and Artist to establish the terms and conditions under which a work of art shall be created, fabricated and installed by a third party with oversight from Artist in the place designated herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein (which are an integral part of this Agreement and are incorporated herein by reference), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties to this Agreement agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 Artwork - The work of art entitled Olnetopia which is created, designed, and fabricated by the Artist under this Agreement.
- 1.2 Site – The Site for Olnetopia is at the southwest corner of the lawn bowl in the area depicted in Exhibit A (page 2).

ARTICLE 2. SCOPE OF SERVICES

- 2.1. Artwork Described. Artist shall complete the design, development, fabrication, delivery and oversight of installation of the Artwork. The Artwork is generally depicted and described in Exhibit A, which is attached hereto and made a part of this Agreement.
- 2.2. Independent Contractor. Artist is an independent contractor and nothing in this Agreement shall be construed as constituting Artist as an employee, agent or representative of the City. No employee or agent of the City shall supervise Artist.
- 2.3. Artist Responsibilities. Artist shall perform or provide all services and furnish all supplies, materials and equipment necessary for the design, development, fabrication, delivery and oversight of installation of the Artwork and comply with the following:
 - A. Beginning on the Effective Date, Artist shall commence the final design, development, and fabrication of the Artwork in accordance with this Agreement.
 - B. Artist acknowledges that Artist has provided the City with all information and documentation necessary to enable the City to design, or cause to be designed, the pedestal on which the Artwork will be installed (“Pedestal”).

- C. Within five (5) business days after receipt of any request for information and/or request for approval, Artist shall provide the necessary response and/or approval to the City.
- D. Artist shall coordinate with the City on the delivery date and exact delivery location for the Artwork.
- E. Artist acknowledges that the City's construction manager will anchor the Artwork on the Pedestal pursuant to coordinated details between the Artist and City's construction manager.
- F. Artist shall submit monthly progress reports to the City upon written request.
- G. Artist shall present to the City in advance, for further review and approval, a written proposal for any significant changes in the scope, design, color, size, material or texture, or location on the Site of the Artwork which affects installation, scheduling, Site preparation or maintenance for the Artwork or the concept of the Artwork as approved by the City.
- H. Artist agrees that the Artwork will not utilize any protected patent, trademark, or copyright unless Artist has obtained proper permission and all releases and other necessary documents. If Artist uses any protected material, process, or procedure, Artist shall disclose such patent, trademark, or copyright in the construction drawings and technical specifications.
- I. Artist shall provide written instructions for the care, maintenance and preservation requirements for the Artwork. The City acknowledges that the Artwork may suffer some ordinary wear and tear, but such wear and tear shall not be of such a nature to affect the integrity or overall visual quality of the Artwork. The Artwork shall be designed to withstand all conditions that could reasonably be expected to occur at the Site.
- J. Artist shall provide a written warranty of the Artwork, guaranteeing the quality of materials and workmanship (excluding the patina finish) for a period of not less than five (5) years after the City's Final Acceptance (as hereinafter defined). The City understands that the patina finish on the Artwork may change color over time.
- K. Artist is responsible for acquiring all City, county, state or federal permits or variances necessary for the construction and delivery of the Artwork.
- L. Artist and the Artwork shall at all times comply with all current and future federal, state, and local statutes, rules, regulations, and ordinances, the federal and state

constitutions and the orders and decrees of any lawful authorities having jurisdiction over the matter at issue (collectively, "Laws").

M. If access to the Site is required prior to the completion of the City's St. Pete Pier™, which is currently under construction, Artist must obtain permission from the City's construction manager and comply with all procedures and requirements of the City's construction manager related to site access and safety, including but not limited to any requirement that the City's construction manager be listed as an additional insured on this Agreement or otherwise.

- 2.4. City's Right to Review Progress. The City shall have the right to review the progress of the Artwork at all reasonable times.
- 2.5. Ownership of Documents. Upon completion of the Artwork all studies, drawings, designs and photographs prepared and submitted to the City under this Agreement by Artist shall become the property of the City. The City will not be entitled to any other original drawings in the possession of Artist.

ARTICLE 3. COMPENSATION

- 3.1. Firm Fixed Price. City shall pay Artist a firm fixed price of one hundred thirty-seven thousand United States dollars (USD) (\$137,000) ("Firm Fixed Price"), which shall constitute full compensation for all services performed (including any approved services provided prior to the Effective Date) and materials furnished by Artist under this Agreement, including Artist's fee.
- 3.2. Federal Taxes. Artist represents and warrants that Artist is entitled to an exemption from withholding of federal income taxes pursuant to the Convention between the Government of the United States of America and the Government of the Kingdom of Belgium dated November 27, 2006 ("Treaty"), and that Artist has completed and submitted to the City a true, accurate, and complete Form W-8BEN-E to document Artist's eligibility under the Treaty for the exemption. In the event that, for any reason, it is determined by the applicable governmental authority with jurisdiction over the assessment, determination, collection, or imposition of any federal taxes ("Taxing Authority") that Artist was not eligible for the claimed exemption from withholding of federal income taxes, Artist shall pay to the City all amounts imposed or claimed against the City by the Taxing Authority.
- 3.3. Method and Schedule of Payment. The Firm Fixed Price shall be paid in the following installments, each installment to represent full and final payment for all services and materials provided prior to payment thereof. Each installment shall be paid upon receipt of the certifications and documentation described below, which shall be in a form acceptable to the City in its reasonable discretion.

- A. Artist shall invoice the City for twenty-eight thousand USD (\$28,000) of the Fixed Firm Price within thirty (30) days after the Effective Date, and the City shall pay such invoice within thirty (30) days after receipt (provided Artist is in compliance with the terms and conditions of this Agreement). This amount is intended to cover commencement and completion of the design phase.
 - B. Artist shall invoice the City for fifty-six thousand USD (\$56,000) of the Firm Fixed Price to cover materials and start of fabrication, and the City shall pay such invoice within thirty (30) days after receipt, provided the Artist has provided evidence of completion of final design.
 - C. Artist shall invoice the City for twenty-eight thousand USD (\$28,000) of the Firm Fixed Price to finalize production, and the City shall pay such invoice within thirty (30) days after receipt.
 - D. Artist shall invoice the City for eleven thousand USD (\$11,000) of the Firm Fixed Price to cover transportation and installation oversight, and the City shall pay such invoice within thirty (30) days after receipt.
 - E. The City shall pay Artist the remaining fourteen thousand USD (\$14,000) of the Firm Fixed Price after completion and approval of the Artwork and presenting to or obtaining from the City the following:
 - i. Photos and documentation of completed fabrication of the Artwork and evidence that all required permits have been obtained,
 - ii. A written bill of sale conveying title of the Artwork to the City,
 - iii. Written instructions for the care, maintenance, preservation and handling of the Artwork pursuant to this Agreement,
 - iv. A sworn statement of no liens, claims or other encumbrances pursuant to this Agreement,
 - v. A written warranty pursuant to this Agreement,
 - vi. Written assignment of any and all warranties for materials used or labor performed by subcontractors or other persons, and
 - vii. Obtaining Final Acceptance of the Artwork pursuant to this Agreement.
- 3.4. Availability of Funds. The performance by the City of any of its obligations under this Agreement shall be subject to and contingent upon the availability of funds appropriated by the City for the purposes of this Agreement for the current and any future fiscal period.

The City will appropriate all funds necessary to fund this Agreement at the time this Agreement is approved by City Council.

- 3.5. Travel and Other Expenses. Travel and other expenses shall not be reimbursed except as provided in this Agreement. Artist's sole compensation shall be the Firm Fixed Price as described in this Article 3.

ARTICLE 4. TIME OF PERFORMANCE

- 4.1. Time of Performance Described. All services by Artist shall be completed pursuant to this Agreement. Artist agrees to be available to begin this project immediately on the Effective Date. Artist shall complete and oversee the installation of the Artwork and submit all required documentation to the City no later than November 1, 2019.
- 4.2. Extensions by City. The City may grant Artist a reasonable extension of time in the event there is a delay on the City's part in performing obligations under this Agreement or if conditions beyond Artist's control or acts of God render timely performance of Artist's services impossible or unreasonably burdensome. Artist agrees and understands that the City shall be the sole judge of what constitutes "beyond Artist's control." Further, Artist agrees that there will be no extension of time for any reason if such extension of time would result in an increase in the Fixed Firm Price.
- 4.3. Special Extensions. The City's Mayor or his designee shall have the authority to grant one extension for up to ninety (90) days for good cause, as determined by the City in its sole and absolute discretion.
- 4.4. Failure to Fulfill Obligations. Except as otherwise provided herein, failure to fulfill obligations due to conditions beyond either party's reasonable control will not be considered a breach of this Agreement, provided that such obligations shall be suspended only for the duration of such conditions.
- 4.5. Presentations of Artwork While in Progress. During the performance of this Agreement, Artist specifically grants to the City the right, at the City's discretion, to make presentations, photographs or otherwise reproduce faithful images of the Artwork while in progress for presentation purposes.
- 4.6. Acceptance of Artwork upon Completion. The Artist shall provide the City with written notice of completion after the Artist completes the Artwork and provides to the City all documentation required pursuant to this Agreement. The City shall, in writing, accept or reject the Artwork within ten (10) business days of the City's receipt of the Artist's written notice of completion. The City may only reject the Artwork if it does not meet the design plans, drawings or specifications set forth herein or if the Artist has not provided documentation as required pursuant to this Agreement. If the City fails to accept the Artwork due to noncompliance with the design plans, drawings or specifications or failure

to provide documentation required pursuant to this Agreement (“Noncompliance”), the City shall give Artist written notice of such failure to accept, the reasons therefore and a reasonable opportunity for Artist to correct such Noncompliance, provided, however, that in no event shall the period to correct the Noncompliance exceed thirty (30) calendar days from the date the City provides notice of Noncompliance to Artist. For purposes of this Agreement, “Final Acceptance” means that Artist has cured all Noncompliance (if any), and the City has issued written approval of the Artwork and associated documentation.

ARTICLE 5. GENERAL CONDITIONS

- 5.1. 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 or artistic portions of the Artwork to another party without the prior written approval of the City, which approval may be withheld in the City’s sole and absolute discretion.
- 5.2. Nameplate. Artist may, at Artist's expense, include a permanent and proper nameplate, which shall include the name of the Artwork, the name of Artist, and the date of completion. The content, design and location thereof must be mutually agreed to by Artist and the City. If Artist provides a nameplate or if no nameplate is provided and the City wishes to provide a nameplate, or if the nameplate provided by Artist is replaced, the nameplate should, at a minimum, include the information set forth in this Section 5.2.
- 5.3. Public Records.
 - A. Artist shall (i) keep and maintain public records (as defined in Florida’s Public Records law) required by the City to perform the services pursuant to this Agreement; (ii) upon request from the City Clerk’s Office, provide the City (at no cost to the City) with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided under Florida’s Public Records law or other applicable Laws; (iii) ensure that public records in Artist’s possession that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by applicable Laws from the Effective Date until the City issues its Final Acceptance (“Services Term”) or until earlier termination of this Agreement; and (iv) during the Services Term or earlier termination of this Agreement, at the City’s request, either transfer, at no cost, to the City all public records in Artist’s possession within ten (10) days following the City’s request and/or keep and maintain any public records required by the City to perform the services pursuant to this Agreement. If Artist transfers all public records to the City upon expiration of the Services Term or earlier termination of this Agreement, Artist shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Artist keeps and maintains public records after the expiration of the Services Term or earlier termination of this Agreement, Artist

shall meet all applicable requirements for retaining public records in accordance with this Agreement and all applicable Laws. At the City's request, all public records stored electronically by Artist shall be provided to the City in a format approved by the City.

B. IF ARTIST HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO ARTIST'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY CLERK'S OFFICE (THE CUSTODIAN OF PUBLIC RECORDS) AT (727) 893-7448, CITY.CLERK@STPETE.ORG, OR 175 FIFTH ST. N., ST. PETERSBURG FL 33701.

C. Nothing contained herein shall be construed to affect or limit Artist's obligations including but not limited to Artist's obligations to comply with all applicable Laws.

ARTICLE 6. WARRANTIES

- 6.1. Warranty of Title. Artist warrants that the Artwork shall be the result of the artistic efforts of Artist and that, unless otherwise stipulated herein, the Artwork shall be unique, an edition of one, and not infringe on any copyright. Artist shall deliver the Artwork free and clear of any liens, claims or other encumbrances of any type arising from the acts of Artist.
- 6.2. Warranty of Quality. Artist warrants that upon completion, the Artwork shall be free of defects in material and workmanship and that Artist shall correct any such defects which appear for a period of five (5) years after Final Acceptance at Artist's expense. This warranty of quality shall not require Artist to correct any damage caused by vandalism or any act of the City so long as such damage is not the result of a defect in material or workmanship of Artist. It is understood by the City that the Artwork has been designed and built by Artist as a work of art. Any use by the City of the Artwork for purposes other than for adornment of the Site as a work of art hereby voids this warranty of quality.
- 6.3. Warranty Regarding Useful Life. Artist warrants that the Artwork will be designed and fabricated to have a useful life of at least twenty-five (25) years after Final Acceptance.

ARTICLE 7. TITLE AND COPYRIGHT

- 7.1. Artist Responsibility. Artist shall execute any and all lawful documents, including assignments, which the City deems necessary or desirable to fully acknowledge the City's ownership interest in the Artwork and to effectuate any assignment and this Agreement.

- 7.2. Title. Title to the Artwork shall vest in the City upon delivery of the Bill of Sale by Artist. As owner of the Artwork, the City may exercise any and all rights of ownership including but not limited to sale, removal or destruction of the Artwork, subject to the requirements set forth in this Agreement.
- 7.3. Copyright. Except ownership and possession, Artist retains all rights in and to the Artwork, including all rights under the Copyright Act of 1976, 17 U.S.C. §§ 101 et. seq., except as such rights are limited by this Agreement. In the event Artist records Artist's identity and address with the Copyright Office, Artist shall notify the City in writing of such recordation.
- 7.4. VARA Waiver. Artist hereby waives, disclaims and terminates any rights he may have to prevent any intentional or accidental distortion, damage, destruction, or mutilation of the Artwork, which would be prejudicial to his honor or reputation and the right to prevent any intentional or grossly negligent destruction of the Artwork if it is of a recognized stature as provided under 17 U.S.C. § 106A (Visual Artist Rights Act of 1990). This waiver applies to the use of the Artwork to enhance the Site or to enhance any other site chosen by the City in the event the City relocates the Artwork to another site. Notwithstanding the foregoing, Artist may, through written notice to the City, request the City not use his name as the author of the Artwork.
- 7.5. Limitations on Artist Copyright. The Artwork in its final dimension shall be unique. Artist shall not make any exact duplicates of the final Artwork or grant permission to others to do so except with the written permission of the City.
- 7.6. License to City. Artist grants to the City and its assigns an irrevocable license to make two-dimensional reproductions of the Artwork for noncommercial purposes, including but not limited to reproductions used in marketing, advertising, brochures, media publicity, web sites, and catalogues or other similar publications, provided that such reproductions of the Artwork must be made in a professional and tasteful manner.
- 7.7. Credit to Artist. The City shall use reasonable efforts, in all reproductions based on the Artwork, to give credit to Artist. This section 7.7 shall not apply if Artist requests the City to stop using Artist's name as the author of the Artwork in accordance with this Agreement.
- 7.8. Credit to City. Artist shall use best efforts to give a credit reading substantially, "all original work owned by the City of St. Petersburg, Florida" in any public showing or distribution to the public of any reproductions of the Artwork which have been authorized by the City and which are under Artist's control.

ARTICLE 8. RISK OF LOSS AND INSURANCE

- 8.1. Damage. Should any repairs to any structure or the Site become necessary or if the Artwork is damaged in any way prior to the City issuing its Final Acceptance, the City shall not have any liability or responsibility for replacement or repair of the Artwork.
- 8.2. Damage to Materials. If, before the City issues its Final Acceptance, the Artwork, art materials or any portion of the art materials are substantially damaged by fire, explosion, or other casualty or occurrence, the City may elect to repair or replace the art materials or immediately terminate this Agreement. In the event of termination pursuant to this Section 8.2, the City shall not be obligated to pay Artist any remaining monies in connection with this Agreement. The City shall not have any liability to Artist in the event of termination of this Agreement pursuant this Section 8.2 and Artist shall not be required to repay any money paid to Artist from the City pursuant to this Agreement, unless such damage to the art materials was caused or contributed to by the negligence or intentional act of Artist or Artist's employees, subcontractors, representatives or agents. Nothing contained herein shall limit the City's rights and remedies against Artist if Artist, any other occupant of the Site, or their respective agents, employees, representatives, guests, invitees, customers, contractors or subcontractors, caused or contributed to the damage to the art materials.
- 8.3. Insurance. Artist shall arrange for, or ensure that Artist and all subcontractors have, or are covered by, general liability insurance as approved by the City and workers' compensation insurance as required by the laws of the State of Florida.

ARTICLE 9. INDEMNIFICATION AND RELEASE

- 9.1. Indemnification. Artist shall defend at its expense, pay on behalf of, hold free and harmless, indemnify and assume legal liability for the City and its officers, employees, agents, and elected and appointed officials and volunteers (collectively, "Indemnified Parties"), from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, whether or not a lawsuit is filed, in law or in equity, including but not limited to attorneys' fees at trial and appellate levels, reasonable investigative and discovery costs, court costs, or claims for bodily injury or death of persons and for loss of or damage to property, of every kind and nature whatsoever, which in any manner directly or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the negligent acts or omissions or other wrongful conduct of or the infringement of any copyright, protected patent or trademark by Artist and/or its subcontractors, employees, and agents in connection with Artist's performance pursuant to this Agreement.
- 9.2. Notice. The Parties each agree to give the other party prompt notice of any claim coming to its knowledge that in any way directly or indirectly affects the other party.
- 9.3. Release. Artist releases and forever waives any and all present and future claims, covenants not to sue, and holds harmless the Indemnified Parties from and against all actions, claims,

damages, liabilities, costs and expenses, including but not limited to, attorneys' fees and costs, on account of injury to the person or property in connection with Artist's performance pursuant to this Agreement, whether arising out of or caused by the negligence of any or all of the Indemnified Parties or otherwise, or whether arising out of or caused by any defect, or presence or absence of any condition of, or in or on any real property, premises, the Site, City property or thoroughfare while the undersigned is participating in any phase of the design, fabrication and installation of the Artwork. Artist shall require all workers engaged in the performance of this Agreement to execute the release set forth Exhibit "B".

ARTICLE 10. MAINTENANCE, RESTORATION, MODIFICATION, AND REMOVAL

- 10.1. Maintenance. The City recognizes that the maintenance of the Artwork on a regular basis will be necessary and shall clean and maintain the Artwork in conjunction with the normal maintenance and cleaning procedures based on Artist's written instructions therefor provided pursuant to this Agreement for as long as the Artwork remains at the Site.
- 10.2. Failure to Maintain Artwork. In the event the City fails to maintain the Artwork in good condition, Artist shall have the right to prevent the use of Artist's name as author of the Artwork. In such event, Artist may require, by providing written notice to the City of such requirement, that the City remove any references to Artist on the nameplate accompanying the Artwork (if applicable) unless and until the Artwork is satisfactorily repaired.
- 10.3. Restoration. After Final Acceptance, the City shall have the right to determine when and if repairs and restorations to the Artwork will be made. During Artist's lifetime, to the extent practical, the City shall give Artist notice of any intended repairs or restorations and the opportunity to approve all repairs and restorations; provided, however, that Artist shall not unreasonably withhold approval for any repair or restoration of the Artwork. If, within ninety (90) days, Artist does not respond to the City's reasonable attempts to give Artist the opportunity to approve any repair or restoration, or if Artist unreasonably fails to approve any repair or restoration, the City shall have the right to make such repair or restoration. To the extent practical, Artist shall be given the opportunity to make or personally supervise significant (as determined by the City) repairs and restoration and shall be paid a reasonable fee for any such services, provided that the City and Artist agree in writing, prior to commencement of any significant repairs or restorations, upon Artist's fee and timeline for such services. If no agreement is reached as to Artist's fee or timeline for such repairs or restoration, then the City may make repairs, restoration or other arrangements it deems appropriate for the Artwork.
- 10.4. Alteration of the Artwork. Except to the extent the City may alter the Site or remove, relocate, maintain, restore, sell, donate, dispose of, destroy, or store the Artwork pursuant to this Agreement, the City agrees that it will not intentionally damage, alter, modify or change the Artwork without the prior written approval of Artist to the extent the City deems

it is practical to obtain such approval.

- 10.5. Alteration of the Site. To the extent the City deems practical, the City shall notify Artist of any proposed alteration of the Site that would affect the intended character and appearance of the Artwork and shall consult with Artist in the planning and execution of any such alteration and shall make a reasonable effort to maintain the integrity of the Artwork consistent with the provisions of this Agreement.
- 10.6. Removal of Artwork. The City has the right to remove the Artwork from the Site for any reason in the City's sole and absolute discretion, subject to the requirements of this Agreement. If the City removes the Artwork, the City may then, in the City's discretion, subject to the requirements of this Agreement, place the Artwork on other property of the City that the City deems suitable, store the Artwork in its entirety in a safe location, place the Artwork on non-City owned property that the City deems suitable, or dispose of, destroy, sell or donate the Artwork.
 - A. Relocation or Storage. To the extent practical, during Artist's lifetime, the City shall notify Artist if the City elects to remove and relocate or store the Artwork, and shall give Artist the opportunity to remove the Artwork at the Artist's expense, or to personally supervise the removal of the Artwork to the location chosen by the City. In the event that Artist fails, within ninety (90) days of receipt of such notice, to participate in the planning or execution of the removal of the Artwork, the City shall have the right to proceed with the removal and relocation or storage of the Artwork without any input or participation by Artist.
 - B. Disposition, Destruction, Sale, or Donation. To the extent practical, during Artist's lifetime, the City shall give Artist reasonable notice and opportunity (not to exceed ninety (90) days) to have the Artwork returned to Artist at Artist's expense in the event the City elects to dispose of, destroy, sell, or donate the Artwork. In the event the City elects to sell the Artwork during Artist's lifetime, the Artist will be entitled to 2% of the resale price the City obtains from the sale.

ARTICLE 11. DEFAULT AND TERMINATION

- 11.1. Default Defined. Failure of either party to comply with any provisions of this Agreement shall place that party in default. Except as otherwise provided in Section 5.3 and Section 8.2, concerning public records and damage to materials, respectively, the defaulting party shall be entitled to thirty (30) days to cure the default upon receipt of written notice specifying the default.
- 11.2. Termination. In the event the default is not timely cured in the thirty (30) day period referenced in Section 11.1, this Agreement may be terminated immediately by written notice. Prior to terminating this Agreement and except as otherwise provided herein, the non-defaulting party shall notify the defaulting party in writing stating specifically the

provisions which are alleged to give rise to the default. If the City terminates this Agreement pursuant to this Section 11.2 before Final Acceptance by the City, Artist shall immediately repay all payments paid to Artist under this Agreement. If Artist terminates this Agreement pursuant to this Article, the City shall forfeit any right to repayment of any payments made through the date Artist notifies the City that the Agreement is terminated.

- 11.3. Termination for Convenience. This Agreement may be terminated at any time by the City for convenience upon thirty (30) days written notice. In the event of termination for convenience, the City shall only be liable to Artist for payment milestones reached prior to the effective date of termination.

ARTICLE 12. NOTICE TO PARTIES

- 12.1. Notice of Documents. All notices, requests, demands, or other communications hereunder shall be in writing and shall be deemed to be served as of the delivery date appearing upon the return receipt if sent by certified mail, postage prepaid with return receipt requested, at the address listed below, or upon the actual date of delivery if hand delivered to the address below:

TO CITY:

City of St. Petersburg
Attention: Lynn Goodwin
P.O. Box 2842
St. Petersburg, FL 33731

TO ARTIST:

Nick Ervinck
Kortemarkstraat 67
8810 Lichtervelde
Belgium
Attn: Nick Ervinck

- 12.2. Change of address. Any party may change its address for the giving of notice pursuant to notice given in accordance with the provisions of Section 12.1, which notice shall be effective upon receipt by the other party.
- 12.3. Failure to Notify City of Change of Address. If Artist fails to notify the City of a change of address, Artist waives all rights that are granted in this Agreement that require notice to Artist.

ARTICLE 13. MISCELLANEOUS

- 13.1. Entirety of Agreement. This writing embodies the entire agreement and understanding between the Parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto.

- 13.2. Surviving Covenants. The covenants and obligations set forth in this Agreement shall survive the delivery and Final Acceptance and associated documentation and shall be binding upon the Parties, their heirs, legatees, executors, administrators, assigns, transferees, and all their successors in interest.
- 13.3. Severability. If any provision of this Agreement is contrary to, prohibited by, or deemed invalid by applicable Laws of any jurisdiction in which it is sought to be enforced, then such provision shall be deemed inapplicable and omitted, but such omissions shall not invalidate the remaining provisions of this Agreement.
- 13.4. Captions. Captions are inserted only as a matter of convenience and for reference, and in no way define, limit, nor describe the scope of this Agreement, nor the intent or content of any provision contained herein.
- 13.5. Waiver. No waiver of any provision of this Agreement or any breach thereof shall be construed as a continuing waiver nor shall it constitute a waiver of any other provision or breach. Further, the failure of either party to exercise its rights under this Agreement shall not be construed as a waiver to such a right.
- 13.6. Choice of Law. This Agreement will be governed by and interpreted in accordance with the laws of the state of Florida, not including its conflicts of laws rules but including its statutes of limitations, regardless of the legal theory upon which such matter or dispute is asserted.
- 13.7. Choice of Language. The parties hereto acknowledge and agree that the text of this Agreement, including any and all exhibits attached hereto, has been written in English. Additionally, all notices and other documents required under this Agreement shall be provided by one party hereunder to the other party in the English language. The Parties shall bear their own expenses for having text or other communications translated into English.
- 13.8. Choice of Forum. The Parties hereby agree that any action arising hereunder shall be brought in Pinellas County, Florida, or, if in Federal Court, the Middle District of Florida, Tampa Division. Both Parties hereby submit to the exclusive jurisdiction and venue of any such court. Each party waives any defense, whether asserted by motion or pleading, that the aforementioned courts are an improper or inconvenient venue. Moreover, the Parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.
- 13.9. Construction. Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not construe it against one party more strictly by reason of the rule of interpretation that a document is to be construed more strictly against the party who itself or through its agents prepared the same, as each party has participated in the preparation of this Agreement and each party consulted with

independent legal counsel of its own selection or waived its right to do so prior to the execution of this Agreement.

- 13.10. No Third Party Beneficiaries. Neither Artist nor the City intends to directly or indirectly benefit a third party by this Agreement. Therefore, the Parties agree that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 13.11. Incorporation by Reference. Composite Exhibit C, the Bill of Sale, Warranty, Contractor's Affidavit, Affidavit of No Liens, Approval and Acceptance of Artwork, Certification of Completion and Installation, and Copyright Agreement and Assignment are upon their execution by a party to this Agreement incorporated into and made a part of this Agreement.
- 13.12. Further Assurances. The Parties shall promptly execute all documents reasonably required and take such other steps in addition to the execution of this Agreement to effectuate the intent and purpose of this Agreement.
- 13.13. Exhibits. Each exhibit to this Agreement is an essential part hereof and is incorporated herein by reference.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement for the purposes herein expressed.

**CITY OF ST. PETERSBURG,
FLORIDA**

By: _____
Print: _____
Title: _____
Address: P. O. Box 2842
St. Petersburg, FL 33731

ATTEST:

City Clerk (or designee)

(SEAL)

NICK ERVINCK:

Sign: _____
Print: _____
Address: _____

**WITNESSES
AS TO ARTIST:**

Sign: _____
Print: _____

Sign: _____
Print: _____

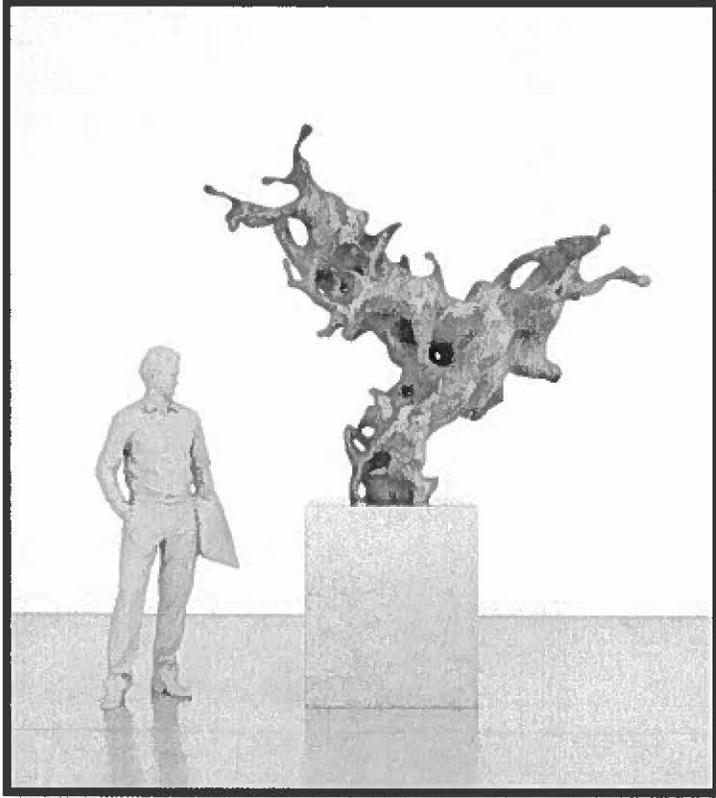
APPROVED AS TO FORM AND CONTENT:

City Attorney (designee)
document # -00449475 FINAL

ATTACHMENTS:

- Exhibit A - Final Design, Description of Artwork and location of Artwork
- Exhibit B - Release of any person working on the Site or the Artwork
- Composite Exhibit C - Bill of Sale, Warranty, Contractor's Affidavit, Affidavit of No Liens, Approval and Acceptance of Artwork, Certification of Completion and Installation and Copyright Agreement and Assignment

Exhibit A
Final Design and Description of Artwork



The sculpture was first sculpted in foam. For this piece, a model is then made with a silicone mold; a wax model is then extracted from that mold. The wax model will be created in bronze with a patina finish. The model is provided with an internal reinforcing structure.

This organic form is linked to hollowed rocks and the wild waters, often used in oriental horticultural art. The structure results in a spontaneous, natural erosion process. I inspired my work at macro photographic images of splashing water, and thus sculpturally interprets the encounter between nature and technology. I try to catch this sublime dynamics lurking behind a serene surface. How natural erosion processes generate irregular,

complex structures (e.g. the erosion of rocks by seawater) has always fascinated me. Though inspired by natural dynamics, this sculpture is generated by the power of the virtual. I strive towards a balance in the final image between structure and complexity, figuration and abstraction, fancy and symmetry.

As the viewer moves around the sculpture, he sees how everything becomes wider and narrower. The sculpture represents the dynamic power of life and provides a warm welcome to the St. Pete Pier™. The site provides space for reflection and innovation. The gardens and the sculpture make it possible for the visitors to dream of this parallel universe. This sculpture can be seen as an animation in which organic forms, grow from the sculpture and mutate as an environmental matter. It is a sculpture that is openly in dialogue with the environment (the sea), and asks for a new look every time. As a result, it will definitely not leave anyone untouched. The game with sculptural shapes brings about a kind of embrace and security.

Exhibit B

Release and Hold Harmless Agreement

THIS RELEASE and HOLD HARMLESS AGREEMENT ("Agreement") is made this ___ day _____, 2019, by Nick Ervinck, his heirs, successors and assigns (collectively "Worker") for the benefit of the City of St. Petersburg, Florida ("City").

WHEREAS, at the request of Nick Ervinck ("Artist"), the City has agreed to purchase a work of art (herein "Artwork") and Worker has agreed with Artist to help implement the Artwork by providing labor or other services.

WHEREAS, pursuant to the artist agreement between the Artist and the City dated _____, 2019 ("Artist Agreement"), Worker must execute this Agreement in favor of the City prior to working on the Artwork or Site (as defined in the Artist Agreement) in order to protect the Releasees (as defined herein) from certain liabilities.

NOW, THEREFORE, in order to induce the City to fund the Artwork and allow Worker to work for Artist on the Artwork or Site and as consideration therefore, the Worker agrees as follows:

1. Worker hereby releases and forever waives any and all present and future claims, covenants not to sue, and holds harmless the City of St. Petersburg, its City Council, its employees, servants, representatives, officers, agents, successors, assigns and volunteers (hereinafter referred to as "Releasees"), from and against all actions, claims, damages, liabilities, costs and expenses, including but not limited to attorney's fees and costs, on account of injury to the person or property or resulting in death of the undersigned, whether arising out of or caused by the negligence of any or all of the Releasees, or otherwise, or whether arising out of or caused by any defect, or presence or absence of any condition of, or in or on any real property, premises, City property, the Site or any thoroughfare while the undersigned is participating in any phase of the Artwork.
2. Worker agrees to indemnify and hold and save the Releasees harmless from any and all damages, loss or liability occurring by reason of any injury of any person or property which may occur as a result of or in connection with the implementation of the Artwork or occasioned by an act or omission, neglect, or wrongdoing of the Worker.
3. Worker will, at Worker's own cost and expense, defend and protect the Releasees against any and all such claims or demands which may be claimed to have arisen as a result of or in connection with the implementation of the Artwork.
4. The undersigned expressly agrees personally that this Agreement is intended to be as broad and inclusive as is permitted by the law of the State of Florida, and if any portion thereof is held to be invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

WORKER

Sign: _____
Print: _____
Address: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
201__, by _____, who is personally known to me or who has produced
_____ as identification, and who did take an oath.

NOTARY PUBLIC

Sign _____
Print _____
My Commission No.:

COMPOSITE EXHIBIT C

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that Nick Ervinck for and in consideration of the sum of one hundred thirty-seven thousand United States dollars (\$137,000), lawful money of the United States, and other good and valuable consideration, the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver to the City of St. Petersburg, Florida, its successors and assigns, the work of art consisting of bronze with a patina finish installed at the southwest of the lawn bowl area in the pier head section of the St. Pete Pier™.

TO HAVE AND TO HOLD the same unto the City of St. Petersburg, Florida, its successors and assigns forever.

IN WITNESS WHEREOF, Nick Ervinck, has hereunto set his hand and seal this ____ day of _____, 20__.

Address: _____

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by _____, who is personally known to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC:

Sign _____
Print _____
State of _____
My Commission No.: _____
My Commission expires: _____

WARRANTY

Nick Ervinck ("Artist"), hereby warrants the work of art consisting of bronze with a patina finish installed at the southwest corner of the lawn bowl area in the pier head section of the St. Pete Pier™, to be free from defects in materials or workmanship for five (5) years from the date of the written Final Acceptance (as defined in the Artist Agreement) thereof by the City. Artist shall immediately correct any such defects which appear during that period at Artist's own cost and expense.

This warranty is in addition to all other warranties, statutory or otherwise, express or implied, all other representations to the City and all other obligations or liabilities with respect to such work of art including implied warranties of merchantability and fitness.

IN WITNESS WHEREOF, Nick Ervinck has hereunto set his hand and seal this ____ day of _____, 201__.

Address: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by _____, who is personally known to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC:

Sign _____
Print _____
State of _____
My Commission No.: _____
My Commission expires: _____

CONTRACTOR'S AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF PINELLAS)

On this day personally appeared before me, the undersigned authority, duly authorized to administer oaths and take acknowledgments, _____, who after being first duly sworn by me, on oath, deposes and says:

That I am a general contractor under an agreement executed on the ____ day of _____, 20__, between Nick Ervinck and the City of St. Petersburg, Florida, that I completed the work of art consisting of bronze with a patina finish installed by a third party at the center of the lawn bowl area in the pier head section of the St. Pete Pier™, for a total price of one hundred thirty-seven thousand United States dollars (\$137,000) to be paid to Nick Ervinck and that said installation is now completed and finished.

That Nick Ervinck has paid and discharged all subcontractors, laborers and materialmen and that there are no liens outstanding of any nature nor any debts or obligations out of which could arise a lien or encumbrance.

That I am making this affidavit upon consideration of the payment of one hundred thirty-seven thousand United States dollars (\$137,000) to in full satisfaction and discharge of said agreement.

Sign: _____
Address: _____

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by _____, who is personally known to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC:

Sign _____
Print _____
State of _____
My Commission No.: _____
My Commission expires: _____

AFFIDAVIT OF NO LIENS

STATE OF _____)
COUNTY OF _____)

On this day personally appeared before me, the undersigned authority, duly authorized to administer oaths and take acknowledgments, _____, who after being first duly sworn by me on oath deposes and says:

1. _____ is the owner of a work of art consisting of bronze with a patina finish installed by a third party at the southwest of the lawn bowl area in the pier head section of the St. Pete Pier™.
2. There are no liens, claims or other encumbrances on the work of art and Nick Ervinck is the sole owner and creator of said work of art.
3. Nick Ervinck has paid and discharged all subcontractors or materialmen, if any, and there are no liens outstanding of any nature nor any debts or obligations out of which could arise a lien or encumbrances on the work of art.
4. I am making this Affidavit upon consideration of the payment of one hundred thirty-seven thousand United States dollars (\$137,000).

Address: _____

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by _____, who is personally known to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC:

Sign _____
Print _____
State of _____
My Commission No.: _____
My Commission expires: _____

APPROVAL AND ACCEPTANCE OF ARTWORK
“Olnetopia”

Nick Ervinck ("Artist") has completed the work of art consisting of bronze with a patina finish ("Artwork") installed by a third party at the southwest corner of the lawn bowl area in the pier head section of the St. Pete Pier™, in a manner that meets all the requirements of the Artist Agreement dated _____, 20__, by and between Artist and the City of St. Petersburg, Florida ("Owner"). Owner hereby approves and accepts ownership of the Artwork.

DATE: _____

CITY OF ST. PETERSBURG, FLORIDA

BY: _____

Print: _____

Address: P. O. Box 2842
St. Petersburg, FL 33731

CERTIFICATION OF COMPLETION
AND INSTALLATION
“Olnetopia”

Artist: Nick Ervinck
Artwork: Olnetopia
Location: Southwest corner of the lawn bowl area in the pier head section of the St. Pete Pier™

The above named artwork is installed and 100% completed as required by the Artist Agreement entered into on _____, 20__, by and between Nick Ervinck and the City of St. Petersburg, Florida.

Date: _____

COPYRIGHT AGREEMENT AND ASSIGNMENT

_____, for and in consideration of the purchase by the City of St. Petersburg of the work of art consisting of bronze with a patina finish installed by a third party at the southwest corner of the lawn bowl area in the pier head section of the St. Pete Pier™, which work of art ("Artwork") is owned by Nick Ervinck hereby assigns to the City of St. Petersburg, Florida, title and full rights of ownership as well as the irrevocable license to make reproductions of the Artwork for noncommercial purposes, including but not limited to reproductions used in marketing, advertising, brochures, media publicity, web sites, and catalogues or other similar publications, provided that such reproductions of the Artwork must be made in a professional and tasteful manner.

Nick Ervinck further assigns to the City of St. Petersburg, Florida, any and all warranties for materials used and labor performed by subcontractors or other persons, if any, which Nick Ervinck holds to the City of St. Petersburg, Florida.

Nick Ervinck further agrees to execute any and all further lawful documents including assignments which the City of St. Petersburg, Florida shall deem necessary or desirable to fully effectuate this Copyright Agreement and Assignment.

Address: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, who is personally known to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC:

Sign _____
Print _____
State of _____
My Commission No.: _____
My Commission expires: _____