

## CITY OF MANHATTAN BEACH ART LOAN AGREEMENT

This Agreement is made by and between the City of Manhattan Beach, a California municipal corporation ("City") and Warren Lichtenstein ("Donor"), with reference to the following facts:

### RECITALS

Whereas Donor desires to loan City a sculpture entitled LOVE by Robert Indiana, as is more particularly described in Exhibit A ("Art Work") for public display at the South End of the Lower South Pier Lot, as represented in the photograph attached as Exhibit B, with an orientation adjusted to the East (the "Site");

Now therefore, for good and valuable consideration, including the mutual promises, conditions and covenants contained herein, the parties hereto agree as follows:

1. Loan. Donor agrees to lend the Art Work to City, and City agrees to borrow the Art Work from Donor, for the purpose of exhibiting the Art Work at the Site. The Art Work shall remain in the possession of City for the time specified herein, but Donor agrees that the City Manager or City Manager's designee may withdraw the Art Work from exhibition at any time in City's sole discretion and that this Agreement may be terminated by either party at any time with or without cause. If so withdrawn or terminated by the City, City shall provide notice of that action to the Donor, and shall arrange removal and transportation of the Art Work to a location determined by Donor in his sole discretion.

2. Term. The term of the loan of the Art Work shall commence on \_\_\_\_\_, 2018 and end June 30, 2021. The term of the loan may be extended for an additional period of time upon mutual written agreement of the parties. In the event of such mutually agreed extension, the City Manager or his designee may extend the term of this Agreement on behalf of City.

3. Liens and Encumbrances. City shall maintain the Art Work free and clear of and from and against all liens and encumbrances of any nature whatsoever. City shall indemnify and hold harmless Donor from and against any loss or damage solely caused by acts of City which result in any such liens or encumbrances being placed upon the Art Work, including all costs, fees and expenses incurred by Donor in commencing or participating in such proceedings as are necessary for Donor to defend its ownership interest in the Art Work.

4. Transportation, Delivery, Installation and Removal.

(a) Donor certifies that the Art Work is in such condition as to withstand ordinary strains of transportation, delivery, and handling, provided the Art Work is handled with such due care as is reasonable for a valuable object of this nature. Donor shall coordinate the transportation, delivery, installation and removal of the Art Work with City, at City's expense as to delivery and installation and at Donor's expense as to removal. City shall have no liability to Donor for damage to the Art Work which results from the transportation, delivery, installation and removal of the Art Work to and from the Site, except for any damage caused by City or any person employed or contracted by City.

(b) Installation and de-installation of the Art Work at the Site shall be coordinated and provided by City. City acknowledges that the Art Work requires a suitable concrete platform. The Donor, however, shall oversee the installation and de-installation by City. Donor hereby releases and holds City, City Council and each member thereof, and every officer, employee and agent harmless from any liability for damage to or loss of the Art Work, regardless of who causes such damage, during the installation and de-installation of the Art Work, except for any such damage caused in whole or in part by any such person.

5. Care and Preservation.

(a) City will exercise the same care with respect to the Art Work as it does in the safekeeping of comparable property of its own. It is understood, however, that the Art Work shall be displayed out of doors and shall be exposed to extremes of rain, wind, heat, sun, humidity and other features of weather, as well as dirt, pollution, insects, birds and other animals, and the possibility of theft, vandalism and malicious mischief.

(b) In the event of any damage to the Art Work which requires immediate repair or removal of the Art Work solely in order to prevent injury to persons or property, Donor shall at City's cost immediately repair or remove the Art Work following receipt of notification from City of the need for such repair. In the event Donor fails to perform the repairs or removal within a reasonable time, or if the damage to the Art Work is such that immediate action is required in order to prevent injury to persons or property, City may take action to remove, repair and/or secure the Art Work at City's cost for all costs and expenses incurred in connection therewith. Notwithstanding, City reserves the right to require removal of the Art Work if City determines, in its sole discretion, that the Art Work may be a safety hazard. In such case, Donor shall be notified to transport its Art Work from the Site, at City's cost.

(c) Donor hereby releases and holds City, City Council and each member thereof, and every officer, employee and agent harmless from any liability for damage to or loss of the Art Work, regardless of whom or what causes such damage, except for the actions of any such indemnified person, and City shall not be responsible for the preservation and/or safekeeping of the Art Work, nor shall City have any liability for theft, loss or damage to the Art Work, except to the extent caused by the gross negligence or willful misconduct of City. Notwithstanding the foregoing, in the event the Art Work is damaged by graffiti, City's sole obligation will be to clean off such graffiti to the extent reasonably practicable.

6. Insurance. City shall insure the Art Work for its stated value set forth in Exhibit A up to a maximum of Fifty Thousand Dollars (\$50,000) under a standard policy of insurance for art objects against all risks of physical loss or damage which may contain standard exclusions, including exclusions for wear and tear, gradual deterioration, insects, vermin; damage from repair, restoration or retouching processes; hostile or warlike action, insurrection, and rebellion; and nuclear reaction or radioactive contamination. Such insurance shall only be provided during the duration of the term of this Agreement and only while on display. In the event such insurance is not adequate to cover losses which arise in connection with this Agreement, except to the extent otherwise set forth herein, Donor shall be responsible for all such losses not covered by the required insurance policy and hereby releases City, City Council and each member thereof, and

every officer, employee and agent of City from any liability for any and all claims arising out of such loss or damage except to the extent of any loss or damage caused by any such person.

7. Indemnification. Donor hereby warrants that, to his knowledge, the Art Work is durable, structurally sound, properly constructed and securely fastened. Donor hereby agrees to indemnify and hold harmless City, and its officers, agents and employees, from and against any and all losses, liability, costs or expenses (including attorneys' fees and costs) arising from or in connection with, or caused by the intentional, reckless negligent or otherwise wrongful act or omission of Donor, his agents, employees, subcontractors or other personnel or from and, except to the extent set forth otherwise herein, against any and all losses, liability, including property damage or death, and costs or expenses (including attorneys' fees and costs) arising out of or related to defects of the Art Work, faulty workmanship of the creator thereof, and Art Work or otherwise caused by the Art Work.

8. Removal of Art Work.

(a) Upon the expiration of the term of this Agreement or if sooner terminated as set forth herein, Donor shall remove the Art Work from the Site. In order to minimize disruption of pedestrian and/or vehicular traffic, Donor shall schedule the removal with City, at least 10 days in advance of the date of termination. Donor is responsible for the costs of transporting the removed Art Work from the Site. If Donor fails to retrieve the Art Work within 30 days after the termination of this Agreement, City shall have the right to remove and store the Art Work at Donor's cost and expense. Donor shall reimburse City within 30 days following receipt of a written statement. If, after one year, the Art Work has not been reclaimed, then, and in consideration for its storage, insurance and safeguarding during such period, the Art Work shall be deemed an unrestricted gift to City.

(b) If the legal ownership of the Art Work shall change during the pendency of this loan, whether by reason of death, sale, insolvency, and gift or otherwise, the new owner may, prior to the Art Work's return, be required to establish his or her legal right to receive the Art Work upon proof satisfactory to City.

9. City Obligations. City shall place a credit near the Art Work which contains the name of the Donor, the creator of the Art Work, and the title(s) of the Art Work as set forth in Exhibit A.

10. Donor Warranty. Donor represents and warrants to City that he has the proper legal authority to loan the Art Work to City on the terms and conditions set forth in this Agreement. Donor shall indemnify and hold harmless City, and its officers, agents and employees from any and all losses, liability, costs or expenses (including attorneys' fees and costs) arising from any breach by Donor of such representation and warranty.

11. Photography and Reproduction. Donor authorizes City to photograph, videotape, reproduce and publish the Art Work in any medium for any purpose including but not limited to archival, educational and publicity purposes related to the exhibition and/or City. In the event City reproduces the Art Work as described in this paragraph, the following credit shall appear as

follows: LOVE, Robert Indiana: Artist. This provision shall survive termination of this Agreement.

12. Sale of Art Work. Donor may sell the Art Work during the term of this Agreement; however, Donor shall as part of the sale ensure that this Agreement, and the obligations and rights hereunder, are assigned to the new owner by requiring that Donor and the buyer execute an assignment and assumption agreement in the form approved by City Attorney. Under no circumstances shall the sale of the Art Work adversely affect City's rights under this Agreement, including but not limited to City's right to possess the Art Work during the term hereunder. Upon its sale, Donor shall deliver to City a duly executed assignment and assumption agreement and shall provide to City written notice as to whom the Art Work should be released to upon expiration or termination of this Agreement.

13. Addresses for Notices. Any notices, demand or documents required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid to the addresses set forth as follows: To City: City of Manhattan Beach, Director of Parks and Recreation, 1400 Highland Avenue, Manhattan Beach, California 90266; To Donor: See, Exhibit A. Either party shall have the right to designate a different address by written notice similarly given. Donor shall notify City promptly in writing if there is any change in ownership of the Art Work (whether through *inter vivos* transfer or death) or if there is a change in the identity or address of Donor. City assumes no responsibility to search for Donor or subsequent owner if it cannot be reached at the address of record provided herein.

14. Exhibition Honoraria. The Donor agrees to provide the LOVE sculpture to the City free of charge for the term of the loan. In addition, Donor agrees to contribute \$10,000.00 towards the installation and transportation costs related to the loan of the sculpture.

15. General. This Agreement represents the entire integrated agreement between City and Donor and supersedes all prior negotiations, representations or agreements, either written or oral. Except as otherwise provided herein, this Agreement may be amended only by a written instrument signed by both City, through its City Manager, and Donor. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect. In the event either party shall commence any action against the other party relating to this Agreement or for the breach of any obligation contained herein, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, expenses and court costs.

16. Successors, Assigns and Subcontractors. The terms of this Agreement shall be binding upon and inure to the benefit of the respective heirs, successors in interest and assigns of the parties thereto. Donor shall not assign or subcontract or attempt to assign or subcontract any portion of this Agreement without the prior written approval of City, except as otherwise provided herein.

17. Contract Administration. The City Manager or his designee shall administer the terms and conditions of this Agreement for City.

EXECUTED this April 2, 2018 at Manhattan Beach, California.

CITY OF MANHATTAN BEACH  
City Manager

DONOR

\_\_\_\_\_  
Bruce Moe

  
\_\_\_\_\_  
Warren Lichtenstein

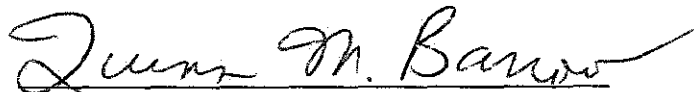
ATTEST:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Liza Tamura  
City Clerk

  
\_\_\_\_\_  
Mark Leyman  
Parks and Recreation Director

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Quinn M. Barrow  
City Attorney

**EXHIBIT A**  
**ART WORK DESCRIPTION**

**Donor:** \_\_\_\_\_

**Telephone:** Business ( ) \_\_\_\_\_

Home ( ) \_\_\_\_\_

**Address:** \_\_\_\_\_

(Unless otherwise instructed below, work will be shipped from and returned to this address)

**Credit:** \_\_\_\_\_

(Exact form of Donor's name for exhibition credit and publicity)

**Title of Work:** \_\_\_\_\_

**Medium or Materials and Support:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Size:** Sculpture (excluding pedestal) or relief: H \_\_\_\_ x W \_\_\_\_ x D \_\_\_\_

Approximate Weight \_\_\_\_\_

**Pedestal:** Provided by the City of Manhattan Beach

**Date of Work:** \_\_\_\_\_ If date appears on work, where? \_\_\_\_\_

**Insurance Value (U.S. Currency):** \$ \_\_\_\_\_

**EXHIBIT B**  
**SITE**