



## CITY COUNCIL STAFF REPORT

DATE: June 17, 2009 NEW BUSINESS

SUBJECT: APPROVE AN AGREEMENT FOR PURCHASE AND SALE OF PUBLIC ARTWORK WITH RED DOT GALLERY FOR \$16,000 FOR PLACEMENT AT 538 NORTH PALM CANYON DRIVE, IN FRONT OF PALM CANYON THEATRE.

FROM: David H. Ready, City Manager

BY: Community & Economic Development

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### SUMMARY

In 1996 the artist John Kennedy donated the sculpture "The Entertainer" to the City. The sculpture was initially installed on a two foot by four foot circular concrete pad in front of Palm Canyon Theatre. In January 2006 the sculpture was permanently relocated to the lobby of the Convention Center because its design is used as the award statuette for the Palm Springs International Film Festival. Since that time the sculpture pad in front of Palm Canyon Theatre has been vacant. On May 14, 2009 the Public Arts Commission voted 5/0 to recommend the purchase of the artwork entitled "Male Figure of Balzac" by artist Christopher Georgesco for placement (on the existing pad) in front of Palm Canyon Theatre, 538 North Palm Canyon Drive.

### RECOMMENDATION:

- 1) Approve an Agreement for Purchase and Sale of Public Artwork with Red Dot Gallery for \$16,000 in a form acceptable to the City Attorney; and
- 2) Authorize City Manager to execute all necessary documents.

### STAFF ANALYSIS:

In January 2006, the sculpture donated by artist John Kennedy, "The Entertainer" located in front of Palm Canyon Theatre was relocated to the Convention Center. Since that time the pad at this location has been vacant. At the September 2008 Public Arts Commission meeting and study session the Commission agreed to focus on actively pursuing the acquisition of a sculpture for this site.

On November 13, 2008 the Public Arts Commission reviewed a presentation by artists Karen and Tony Barone. The Commission deferred making a recommendation until the December 2008 meeting. At the December meeting the Commission voted 3/2, with Commissioner Kabler abstaining, to postpone voting until additional artists were

considered. During the following months the Commission reviewed a number of presentations and various sculptures to determine the most appropriate piece for the site.


At the May 14, 2009 meeting the Commission narrowed their selection to three sculptures for placement at Palm Canyon Theatre. The Commission voted 5/0 to recommend the purchase of the sculpture "Male Figure of Balzac" from Red Dot Gallery by artist Christopher Gerogesco. The sculpture, constructed of fabricated steel, is 108"H x 27"W x 29"D and finished with matte black enamel paint. Maintenance requirements are minimal; the piece will require periodic pressure washing and may need repainting every five to ten years, which costs are estimated to be approximately \$500-\$800.

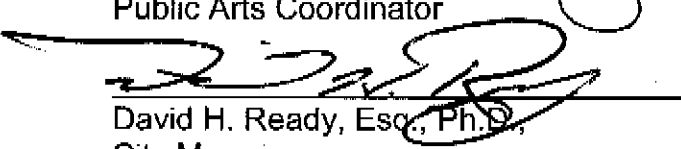
Staff has met with Facilities regarding the installation of lighting. An existing power source is available at the site, allowing for the installation of lighting fixtures. The approximate cost to install the lighting will be \$1,500-\$2,500. The sculpture has been fabricated and is ready for installation. The Public Arts Commission recommends moving forward with the acquisition and installation of the sculpture.

FISCAL IMPACT:

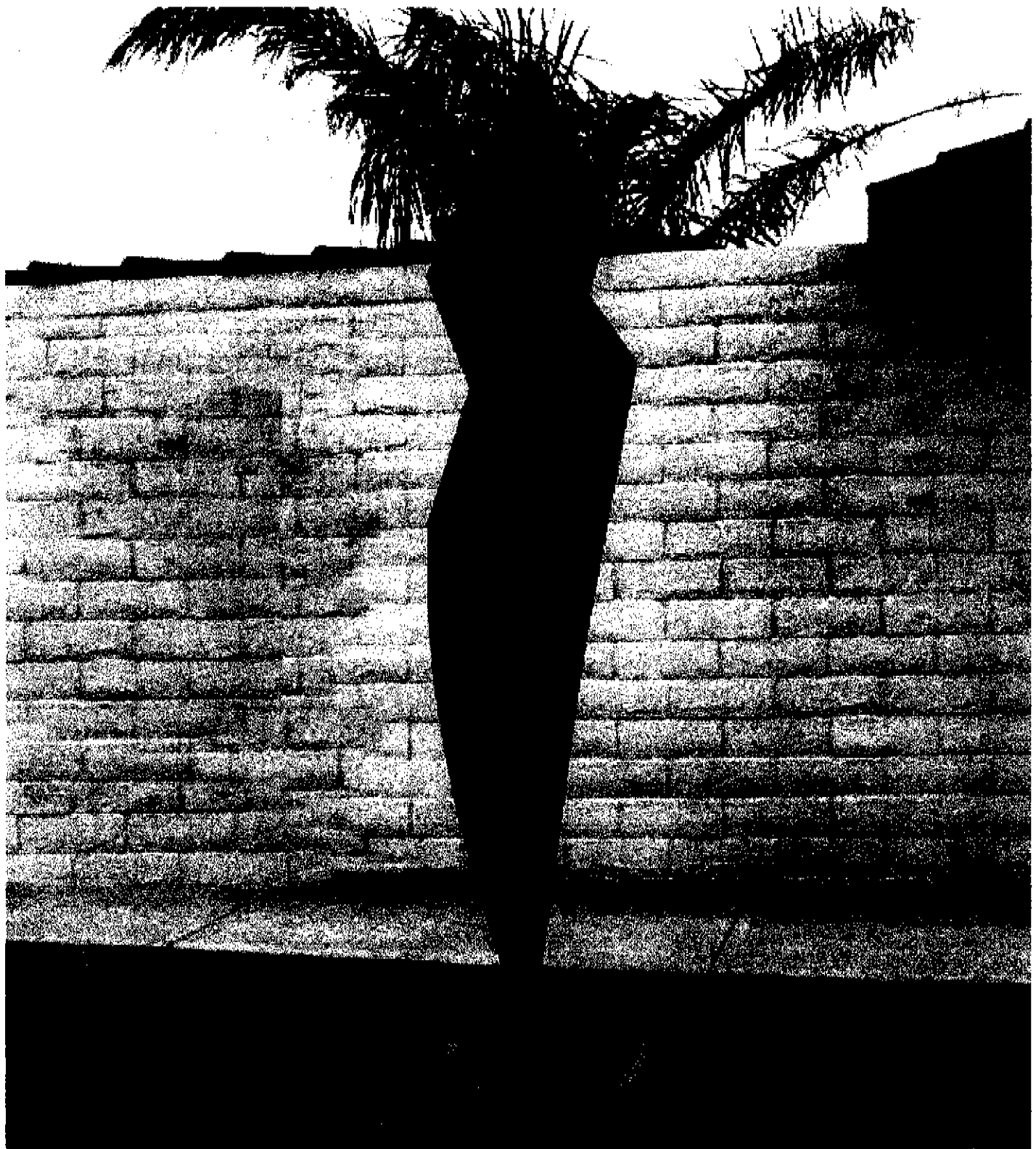
There is no impact to the General Fund. The cost to acquire and install the sculpture shall be made from the Public Arts Account #150-30-4408-50015, the current balance in this account is \$254,108.

  
Jennifer Henning  
Public Arts Coordinator

  
Thomas J. Wilson  
Assistant City Manager

  
David H. Ready, Esq., Ph.D.,  
City Manager

Attachments:  
Picture and description of Artwork  
Agreement for Purchase and Sale of Public Artwork



**Size: 108"Hx27"Wx29"D**

**Material: Steel**

**Cost: \$16,000 USD**



## AGREEMENT FOR PURCHASE AND SALE OF PUBLIC ARTWORK

THIS AGREEMENT FOR PURCHASE AND SALE OF PUBLIC ART WORK ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the CITY OF PALM SPRINGS, a municipal corporation ("City"), acting by and through its City Manager, or his designee, a Contract Officer of the City ("City Manager") and Red Dot Gallery (the "Gallery").

### RECITALS

A. Pursuant to Municipal Ordinance No. 1479, City established the Commission and an Art In Public Places Program ("Program").

B. Gallery submitted a proposal to the Commission for the sale and installation of an art piece referred to herein as "Male Figure of Balzac" ("Artwork"). The Artwork is offered for sale to the City, acting by and through the City. The Proposal, including all relevant specifications, is attached hereto as Exhibit "A" and incorporated herein by reference. Where the Proposal and the terms of Exhibit "A" conflict, the terms of Exhibit "A" shall control.

C. The Proposal provides that the Artwork will be installed in a public space located in Palm Springs more particularly depicted on Exhibit "B" attached hereto (the "Site").

D. Consistent with the objectives of the City, and in furtherance of the Public Arts Program, City desires to purchase from Gallery, and Gallery desires to sell to City, artwork described in the Proposal.

NOW, THEREFORE, City and Gallery, for the consideration and under the conditions hereinafter set forth, and pursuant to the authority, terms and conditions set forth in Municipal Ordinance No. 1479, agree as follows:

#### 1. Scope of Services.

1.1 Fabrication and Completion of the Art Work. Gallery has fabricated or caused to be fabricated, the Artwork under the personal supervision of the Gallery and in conformity with the Proposal, procedures and timeline set forth in the Schedule of Performance (the "Schedule"), attached hereto as Exhibit "C" and incorporated herein by reference. The Artwork shall not deviate in specifications, including, but not limited to, size, design or material from the Proposal, unless the change is approved in writing by motion of the City. In addition to the requirements described in Exhibit "A", Gallery shall create, transport, and install the Artwork to the Site (but not in relation to the preparation of the site) at its sole cost and expense. The Gallery shall install the Artwork with a reasonable standard of care, giving special consideration to protecting the Artwork from theft and/or breakage.

1.2 City's Installation Costs. City shall bear, in its sole and absolute discretion, any installation costs as it pertains to the site as described in Exhibit "B", relating to any landscaping alterations, lighting enhancements, and concrete materials.

1.3 Consultations and Deviations from Proposal. The Parties agree to cooperate and consult each other during installation of the Artwork to assure compliance with the specifications in the Proposal. Gallery will present any proposed installation design changes to the City for its approval and acceptance. The City shall have sole discretion to approve and accept any such installation design changes.

1.4 Modifications to Installation. The City shall have the right, before acceptance of the Artwork as defined in Exhibit "A", to request reasonable modifications to the installation of the Artwork. Should such modifications result in an increase in cost to Gallery, full documentation of such costs shall be submitted to the City in writing and subject to approval by the City. Upon approval, such increased costs shall be paid to Gallery prior to the date of installation, in addition to the fee to be paid to Gallery pursuant to Section 4 below. In the event the modifications result in a reduction of costs to Gallery, the fees owed to Gallery pursuant to Section 2 below outlined in Exhibit "C" shall be reduced by a like amount. Except as expressly provided in this Agreement, the City shall not intentionally damage, alter, modify or change the Sculpture, without the prior written consent of Gallery, except in such cases where damage results from an emergency or as set forth in Section 6.2 below.

1.5 City's Removal or Transfer of Artwork. City may remove or transfer the Artwork to another location, provided, however, that the Artwork is not destroyed, mutilated, or modified, as those terms are used in 17 U.S.C. §106A, and so long as the Artwork can be described as created by the original artist ("Original Artist").

2. Commencement of Installation of Artwork. Gallery shall commence installation of the Artwork upon the receipt of a written "Notice to Proceed" from the City. The Artwork shall be completed in accordance with the Schedule of Performance contained in the Proposal, a copy of which is attached hereto as Exhibit "C".

3. Ownership of Documents, Models. All studies, drawings, designs, and models prepared and submitted by Gallery to City relative to this Agreement shall become the property of City. The City may permit Gallery to borrow such items as needed for the installation of the Artwork. City agrees not to reuse such studies, drawings, and models for the purpose of constructing a full-sized duplicate of the Artwork. City acknowledges and agrees that Gallery is the exclusive intellectual property right owner of any and all designs, drawings, models and artwork created by Gallery pursuant to this Agreement.

4. Fee and Interim Payments. As consideration for the Artwork and all services by Gallery hereunder, City shall pay Gallery the fees set forth on the attached Exhibit "D" in accordance with the time frames provided therein ("Fee Schedule"). If at any time the City sells, transfers or assigns its rights in the Artwork pursuant to this Agreement before all its obligations are met under the Fee Schedule, all remaining fees and payments shall become immediately payable forthwith.

THE MAXIMUM AMOUNT OF CITY'S OBLIGATION UNDER THIS AGREEMENT IS THE AMOUNT SPECIFIED UNDER THIS SECTION 4 OF THIS AGREEMENT. GALLERY WILL COMPLETE THE WORK AND SERVICES REQUIRED UNDER THIS AGREEMENT FOR THE DESIGN, DEVELOPMENT, CONSTRUCTION, AND INSTALLATION OF THE ARTWORK WITHOUT LIABILITY ON THE CITY'S PART FOR ANY PAYMENT BEYOND SUCH MAXIMUM AMOUNT EXCLUDING ALL APPLICABLE STATE OR LOCAL TAXES.

5. Gallery's Rights; City's Ownership Rights.

5.1 Alterations. The City, having expended considerable public funds to commission the Artwork, and pursuant to its governmental and proprietary responsibilities, intends to display the Artwork at the Site as created by the Original Artist and to maintain the Artwork in good condition. The City must preserve complete flexibility to operate and manage City property in the public's interest. Therefore, City retains the absolute right to alter the Artwork in City's sole judgment, acting reasonably. For example, City may alter the Artwork to eliminate hazard, to comply with the ADA, to otherwise aid City in the management of its property and affairs, or through neglect or accident. If, during or after the term of this Agreement, City finds the Site to be inappropriate, City has the right to cause the Artwork to be installed at an alternate location that City chooses in its sole reasonable discretion.

5.2 Waiver. With respect to the Artwork produced under this Agreement, Gallery waives any and all claims, arising at any time and under any circumstances, against City, its officers, agents, employees, successors and assigns, arising under the federal Visual Galleries Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If the Artwork is incorporated into a building or the Site such that the Artwork cannot be removed from the building or Site without alteration of the Artwork, Gallery waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for alteration of the Artwork.

5.3 Good Faith. Where time permits, prior to altering the Artwork, City shall make reasonable good faith efforts to notify and consult with Gallery, at the last phone number or address provided by Gallery to the City, and to come to a

mutually agreeable plan for disposition of the Artwork. Such consultation shall be without charge by Gallery unless otherwise specifically agreed in writing. If the Artwork is altered and City intends to maintain the Artwork on display, City shall make a reasonable good faith effort to engage Gallery in the restoration of the Artwork and to compensate Gallery for Gallery's time and efforts at fair market value, which may be the subject of a future agreement between Gallery and City. However, City has no obligation under this Agreement to restore the Artwork to its original condition or to compensate Gallery for any restoration work. If Gallery fails or refuses to negotiate with City in good faith with respect to any restoration, City may contract with any other qualified art conservator or Gallery for such restoration.

5.4 Disclaimer. If City alters the Artwork without Gallery's consent in a manner that is prejudicial to Gallery's reputation, Gallery retains the right to disclaim authorship of the Artwork in accordance with California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).

5.5 Limitation of Liability. Upon execution of this agreement, the City and City hereby irrevocably releases and discharges the Gallery from any and all liability of any kind, including but not limited to any damages or costs for any injuries however caused, that arise now or in the future in relation to the artwork.

## 6. Gallery's Warranties/Waivers.

6.1 Defects in Materials or Workmanship. Gallery warrants that the Artwork and Gallery services hereunder will be free of defects in workmanship or materials, and that Gallery will, at Gallery's own expense, remedy any defects due to faulty workmanship or materials appearing during the twelve (12) month period immediately following completion of the installation of the Artwork. This warranty includes any workmanship or materials which cause the Artwork, or the installation, to deteriorate over said twelve (12) month period in a manner inconsistent with the design, the approved plans and specifications or as would otherwise be expected from products made of similar materials, or from any quality within the materials which comprise the Artwork, or their installation, which, either alone or in combination, result in the tendency of the Artwork, or their installation, to deteriorate.

6.2 Public Safety. City and Gallery shall cooperate to insure that the Artwork, or the installation, incorporate no feature which is a danger to the public such as sharp edges or points. The City shall review the Artwork and installation plans and shall request any modification relative to public safety prior to installation. Any modifications requested by the City shall be governed pursuant to Section 1.3 above. Should hazards in relation to the apparent after installation, City shall have the right to make adjustments and modifications thereto to eliminate such hazards. Gallery agrees to cooperate in making adjustments to the site or pedestal or display of the Artwork, if necessary, to eliminate other hazards which become apparent within one (1) year of the date the Artwork is finally accepted by City. City shall



solely bear the cost of any such modifications.

6.3 Title. Gallery warrants that the Artwork will be installed and transferred to City free and clear of any liens, claims, or other encumbrances of any type, exclusive of intellectual property rights of Original Artist.

7. Excuse or Suspension of Contractual Obligations; Force Majeure. The time period(s) specified in the Proposal for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Gallery, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if Gallery, within fifteen (15) days of the commencement of such delay, notifies the City in writing of the causes of the delay.

8. Maintenance of the Artwork. Upon completion of the installation of the artwork, Gallery shall provide City with written instructions for appropriate maintenance and preservation of the Artwork.

9. Default; Remedies.

9.1 Disputes. In the event of any dispute arising under this Agreement, the injured party shall notify the defaulting party in writing of the breach or dispute and the facts giving rise thereto. The injured party shall continue performing its obligations hereunder so long as the defaulting party commences to cure such default within fifteen (15) days of receipt of such notice and completes the cure of such default within thirty (30) days after receipt of the notice, or such longer period as may be permitted by the injured party; provided that if the default is or presents an immediate danger to the health, safety and general welfare, City may take immediate action. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to seek arbitration, and such compliance shall not be a waiver of any party's right to seek arbitration in the event that the dispute is not cured.

9.2 Waiver. No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver unless such waiver, delay or omission is memorialized in writing. A party's consent to or approval of any act by the other party requiring the first party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act unless such consent or approval is memorialized in writing. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

9.3 Rights and Remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the

parties hereunder are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

9.4 Arbitration. In addition to any other rights or remedies, either party may seek arbitration to cure, correct, or remedy any default or to recover damages for any default. Arbitration shall occur in the State of California according to the rules of the American Arbitration Association. The prevailing party shall be entitled to recover reasonable attorney's fees, in addition to all other sums provided by law. The internal laws of the State of California shall govern this Agreement (exclusive of the conflicts of laws provision).

9.6 Termination for Default of Gallery. City shall have the right to terminate this Agreement for cause upon any material breach by Gallery of the obligations imposed upon Gallery under this Agreement, subject to the requirements of Section 9.1 above. In such event, City may after compliance with the provisions of Section 9.1 above, take over the Artwork and complete the installation of the Artwork as such installation is contemplated hereunder, and Gallery shall be liable for the reasonable costs City incurs in completing the same. City may withhold payments to Gallery for the purpose of off set or partial payment of the amounts owed City as previously stated.

9.7 Termination for Default of City. Gallery shall have the right to terminate this Agreement for cause upon any material breach by City of the obligations imposed upon City under this Agreement, subject to the requirements of Section 9.1 above.

9.8 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or is made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs which are incurred in such arbitration and on appeal.

10. Insurance. Gallery shall procure and maintain, at its sole cost and expense, until completion of installation of the Artwork, the following policies of insurance:

10.1 Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit.

10.2 Workers' Compensation Insurance. Gallery shall maintain insurance and shall provide a copy for City upon execution of this Agreement.

10.3 Automotive Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than either (i) bodily injury liability limits of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) per person and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) per occurrence and property damage liability limits of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per occurrence and TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) in the aggregate, (ii) combined single limit liability of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), or (iii) limits as set by the City Risk Manager. Said policy shall include coverage for owned, non-owned, leased and hired cars.

All of the above policies of insurance shall be primary insurance and shall name City, its officers, employees and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against City, its officers, representatives, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or canceled without providing thirty (30) days prior written notice by registered mail to City. In the event any of said policies of insurance are canceled, Gallery shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the City. No work or services under this Agreement shall commence until Gallery has provided City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by City.

The policies of insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City Risk Manager due to unique circumstances.

## 11. Intellectual Property and Publicity Rights

11.1. General. Except as noted in this Agreement, the City and City hereby affirm that the Gallery is not the Original Artist and all copyrights in all original works of authorship produced under this Agreement remain at all times with the Original Artist. The City affirms that by executing this Agreement, the Gallery is not making any representation or warranties regarding the intellectual property rights relating to the Artwork or the Original Artist. For further clarification, all rights and obligations under this section 11 are not applicable to the Gallery.

11.2. Copyright. Original Artist's copyright shall not extend to predominantly utilitarian aspects of the work, such as landscaping elements, furnishings, or other similar objects. Nothing herein shall prohibit the Gallery from providing two-dimensional images of the Artwork or portions thereof to be included in any portfolio or other resume of the Gallery demonstrating or depicting representative samples of the Gallery's work.

11.3 City's Intellectual Property License. Except as provided in this Section 11.3, Gallery makes no representations or warranties with regard to the City's license, if any, to all rights worldwide with respect to the Artwork and any and all intellectual property or other property of any nature produced, created, or suggested by the Original Artist during the term of this Agreement including such license rights including, but not limited to, the following with respect to the Artwork and any original works of authorship created under this Agreement, whether in whole or in part, in all media (including electronic and digital) throughout the universe:

11.3.1 Implementation, Use, and Display. The City's use and display of all graphic representations or models of the Artwork, as well as the Artwork.

11.3.2 Reproduction and Distribution. The City is granted a license to make and distribute, and authorize the making, display, and distribution of, photographs and any other two dimensional reproductions. The Gallery makes no representation or warranty with regard to the City's use of such reproductions for any purpose, including advertising, educational, and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multimedia publicity, gifts for City benefactors, documentation of City's Civic Art Collection, and catalogues or similar publications. The City shall ensure that such reproductions are made in a professional and tasteful manner, in the sole and reasonable judgment of the City. The proceeds from the sale of any such reproductions shall be used to maintain and support the Artwork or for any other governmental or charitable purpose as determined at the sole discretion of City.

11.3.3 Public Records Requests. Any documents provided by Gallery to City are public records and City may authorize third parties to review and reproduce such documents pursuant to public records laws.

11.3.4 Title to Work Product. The Gallery makes no representation or warranty with regard to the title to all drawings, plans, ideas, concepts, specifications, models, or other tangible work product produced by the Original Artist becoming the property of the City when produced. The Gallery makes no representation or warranty with regard to the City's ownership of the worldwide right, title and interest in such work product.

11.4 Third Party Infringement. The City and Gallery are not responsible for any third party infringement of Original Artist's copyright and shall not be responsible for protecting the intellectual property rights of Original Artist.

11.5 Credit. Gallery hereby agrees that all formal references to the Artwork and any reproductions of the Artwork in any form shall include the following credit: "Collection of the City of Palm Springs Public Arts Commission." City shall credit Gallery for the Artwork upon publication of any two or three dimensional reproductions of the Artwork.

11.6 Publicity. City shall have the right to use Gallery's name, likeness, and biographical information, in connection with the display or reproduction and distribution of the Artwork including all advertising and promotional materials regarding the City. Gallery shall be reasonably available to attend any inauguration or presentation ceremonies relating to the public dedication of the Artwork.

11.7 Trademark. In the event that City's use of the Artwork creates trademark, service mark, or trade dress rights in connection with the Artwork, City shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress. Gallery may not use the Artwork in any manner that would cause a likelihood of confusion as to source or sponsorship by City, its agents or assigns, or to dilute the distinctive quality of such mark.

11.8 Unique. Gallery warrants that the design of the Artwork as expressed in the Proposal is an edition of one, and that neither Gallery nor Gallery's agents will execute or authorize the Original Artist or another to execute another work of the same or substantially similar image, design, dimensions, and materials as the Artwork. Gallery may authorize works that utilize or incorporate various individual art elements that comprise the Artwork, so long as the work utilizing or incorporating such individual elements (1) does not consist predominantly of such elements (2) is not the same or substantially similar in image, design, dimensions and materials as the Artwork, and (3) is not displayed in an environment that is the same or substantially similar to the environment in which the Artwork is to be displayed at the Site. This warranty shall continue in effect for a period consisting of the life of Gallery plus 70 years or for the duration of the Artwork's copyright protected status, whichever is longer, and shall be binding on Gallery and Gallery's heirs and assigns. Recognizing that City has no adequate remedy at law for Gallery's violation of this warranty, Gallery agrees that, in the event Gallery breaches this warranty, City shall be entitled to enjoin Gallery's breach.

11.9 Resale Royalty. If City sells the Artwork as a fixture to real property, and if the resale value of the Artwork is not itemized separately from the value of the real property, the Parties agree that the resale price of the Artwork shall be presumed to be less than the purchase price paid by City under this Agreement. Thus, City has no obligation to pay resale royalties pursuant to California Civil Code §986 or any other law requiring the payment of resale royalties. If City sells the Artwork as an individual piece, separate from or itemized as part of a real property transaction, City shall pay to Original Artist a resale royalty to the extent required by law, based upon the sale price of the Artwork.

12. Documentation. To the extent possible, Gallery shall provide information on the Artwork requested by the City for its registration files.

13. Repair and Restoration. It is the current policy of the City to consult with Gallery regarding repairs and restoration which are undertaken when that is practical. To facilitate consultation, Gallery will, to the extent feasible, notify the City of any change in business address.

14. Reputation.

14.1 City's Commitment. The City agrees that it will not use the Artwork or Gallery's name in a way which reflects discredit on the Artwork or on the name of Gallery or on the reputation of Gallery.

14.2 Gallery's Commitment. Gallery agrees that it will not make reference to the Artwork or reproduce the Artwork or any portion thereof in a way which reflects discredit on City or the Artwork.

14.3 No Assignment or Transfer. The personal skill, judgment and creativity of Gallery are essential elements of this Agreement. Therefore, Gallery shall not voluntarily or involuntarily assign, convey, subcontract, hypothecate, encumber or otherwise transfer any portion of this Agreement or any of the services to be performed hereunder without the express written consent of City, which consent may be withheld in City's sole and absolute discretion. In the event of such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void.

15. Gallery as Independent Contractor.

15.1 Neither City nor any of its employees shall have any control over the manner, mode or means by which Gallery, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Gallery employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Gallery shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Gallery shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of the City. City shall not in any way or for any purpose become or be deemed to be a partner of Gallery in its business or otherwise or a joint venture or a member of any joint enterprise with Gallery.

15.2 City may require Gallery to make such revisions to the Proposal as are necessary for the installation of the Artwork to comply with applicable statutes, ordinances or regulations governing the services of Gallery hereunder. Gallery acknowledges (i) that Labor Code Section 1771 may require the payment of

prevailing wages and (ii) the Public Contracts Code may require that certain aspects of the installation of the Artwork be publicly bid. Upon request of City, Gallery shall make such revisions to the installation of the Artwork and/or supply data to City as is necessary for the installation of the Artwork to comply with the Labor Code or Public Contracts Code; provided, however, that any such changes that increase Gallery costs to complete the installation shall be paid to Gallery in advance of the installation of the Artwork.

16. Conflict of Interest. No officer, representative or employee of City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer, representative or employee participate in any decision relating to the Agreement which effects his or her financial interest or the financial interest of any corporation, limited liability company, partnership or association in which he or she is, directly or indirectly, interested, in violation of any Federal or California statute or regulation. Gallery warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

17. Covenant Against Discrimination. Gallery covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Gallery shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

18. Integration; Amendments. This Agreement contains all of the agreements of the parties and cannot be modified, terminated or rescinded, in whole or in part, unless written and signed by authorized representatives of the parties hereto. No prior oral or written understanding shall be of any force with respect to those matters covered in this Agreement.

19. Governing Law. This Agreement and all matters pertaining thereto shall be construed according to the laws of the State of California.

20. Licenses, Permits and Fees. Any licenses, permits, and approvals required by law for installation of the Artwork on City property shall be obtained by the City at City's sole cost and expense.

21. Further Responsibilities of the Parties. Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the services of the other.

22. City Manager. The City Manager, or his designee, a Contract Officer of the

City shall be the City's designated representative with respect to this Agreement. It shall be Artist responsibility to assure that the City is kept informed of the progress of Artist services hereunder and Artist shall refer any decision which must be made by City to the City Manager or his designee. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the City Manager. Except as otherwise directed by the City Council, the City Manager shall have the authority to give any approvals or consents required hereunder and to otherwise act on behalf of City in order to carry out the terms of this Agreement.

23. Notices. Any notice which either party may desire to give to the other party under this Agreement must be in writing and may be given by personal delivery or by mailing the same by registered or certified mail, return receipt requested, to the party to whom the notice is directed at the address of such party hereinafter set forth, or such other address and to such other persons as the parties may hereafter designate, or by facsimile when followed by a facsimile confirming receipt:

To Gallery:           Red Dot Gallery  
                              2608 South Cherokee Way  
                              Palm Springs, CA 92264

To City Hall:           City Manager  
                              City of Palm Springs  
                              P.O. Box 2743  
                              Palm Springs, CA 92263

Copy to:                City Attorney  
                              City of Palm Springs  
                              P.O. Box 2743  
                              Palm Springs, CA 92263

A change in the designation of the person or address to which submittals, requests, notices or reports shall be delivered is effective when the other party has received notice of the change by certified mail or by facsimile when followed by a return facsimile confirming receipt.

24. Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original on the same counterpart.

///

[SIGNATURE PAGE SEPARATELY ATTACHED]



IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

**Red Dot Gallery, a Sloc Proprietorship**

a : \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**CITY OF PALM SPRINGS,  
a municipal corporation**

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_

EXHIBIT "A"  
(PROPOSAL)

The proposal made by Red Dot Gallery is to purchase one (1) Christopher Georgesco sculpture. The proposal and specifications for the artwork titled "Male Figure of Balzac" is as follows:

**General Description:** Steel shaped and welded, painted with black enamel paint. The sculpture stands one hundred and eight (108) inches in height, twenty-seven (27) inches in width and twenty-nine (29) inches in depth. The sculpture has been fabricated by the artist, Christopher Georgesco, at his studio located in Sky Valley, CA.

**Maintenance:** The sculpture will need periodic wipe down with sponge and water to remove sand and dust. Re-painting may be required every five (5) to ten (10) years. The City will assume maintenance responsibility.

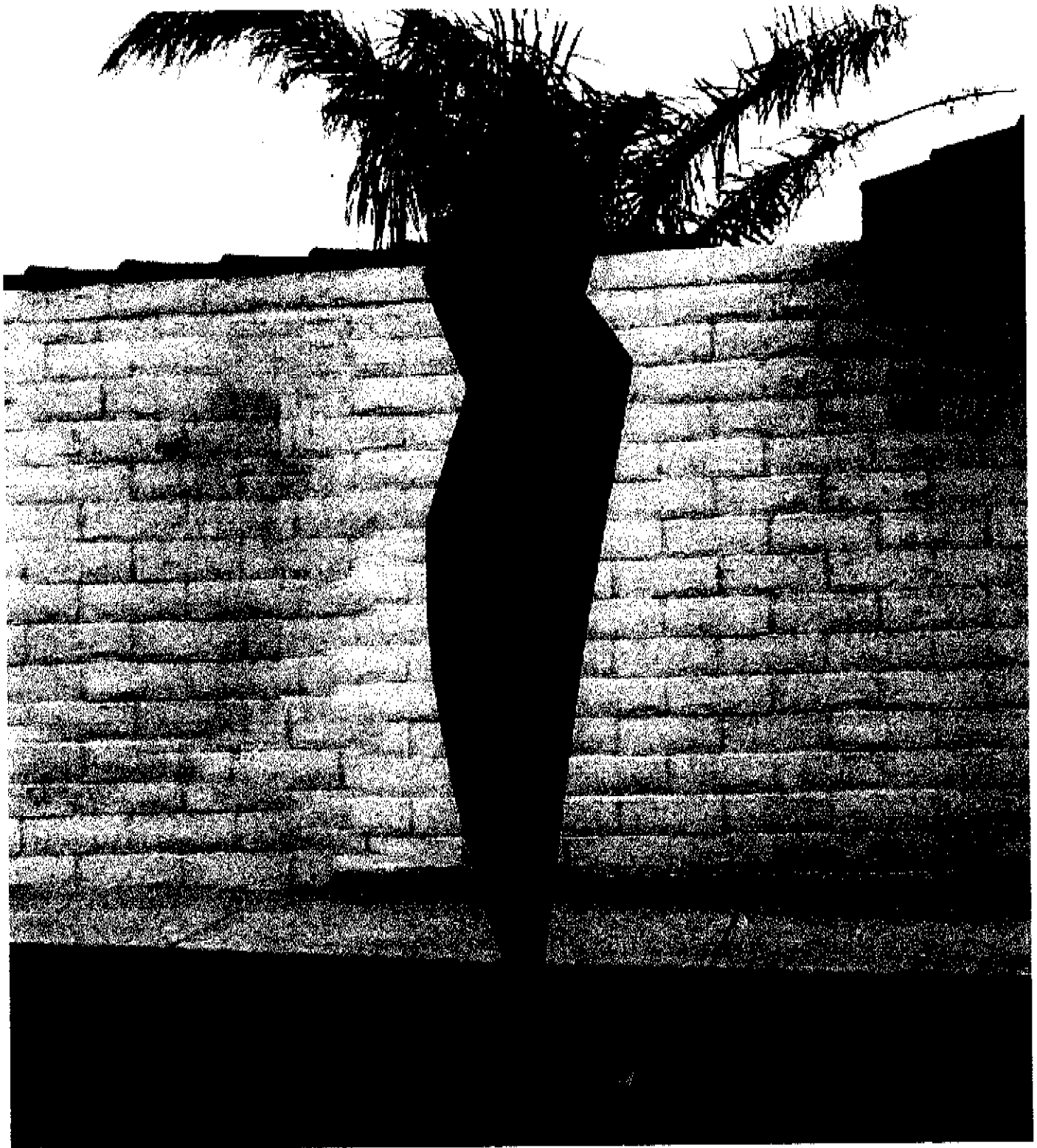
**One of a Kind:** The sculpture is unique and will not be reproduced.

**Costs:** The \$16,000 cost includes delivery and installation charges.

**City Responsibility:** The City will pay all associated costs for the lighting and preparation of the site for installation of the sculpture.

**Timeline:** The sculpture will be installed within four (4) months after the execution of this Agreement by all parties.

EXHIBIT "A"

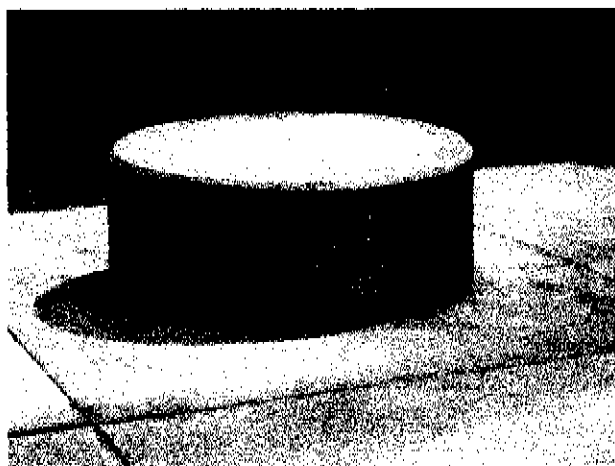


Size: 108"Hx27"Wx29"D

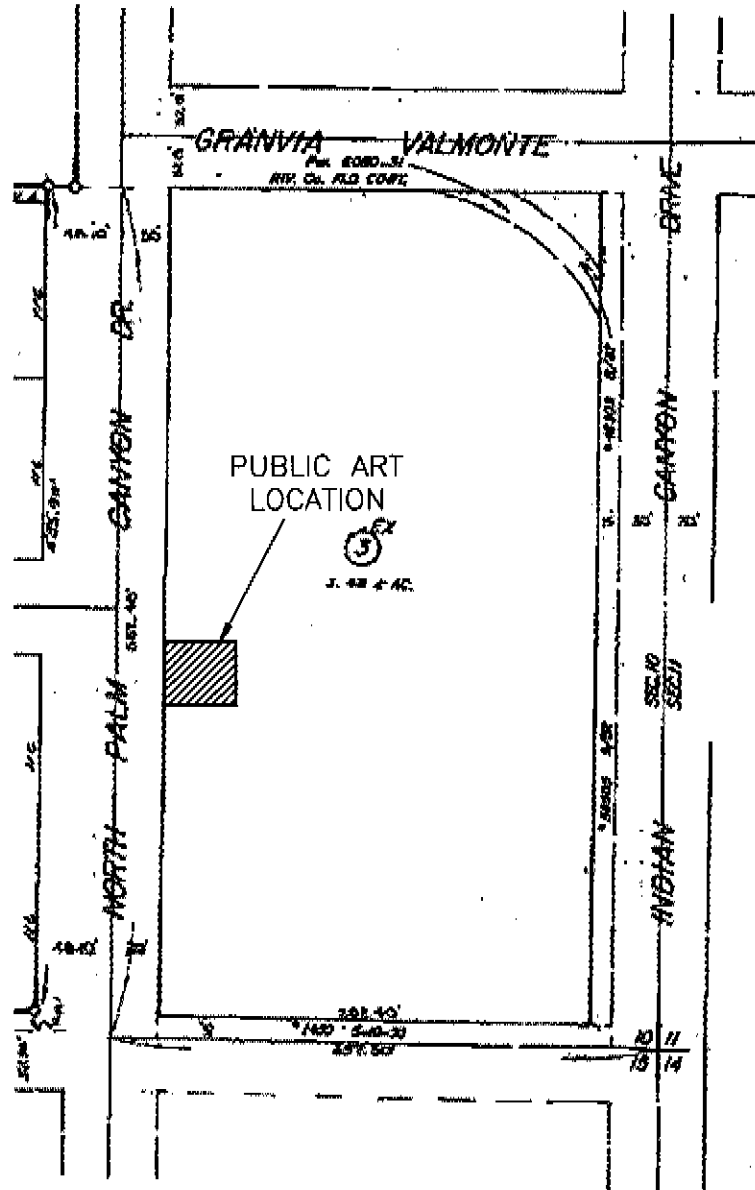
Material: Steel

Cost: \$16,000 USD

EXHIBIT "B"  
(THE SITE)



# EXHIBIT "B"



PUBLIC ART LOCATION  
538 N PALM CANYON DRIVE

DESIGN BY:  
FUP

SCALE:  
NTS

SECTION:  
10-T4S-R4E

CHECKED BY:

DATE  
06/09/09

SHEET NO.:

1 OF 21

**EXHIBIT "C"**  
**(SCHEDULE OF PERFORMANCE)**

The artist has completed fabrication of the sculpture and the one (1) sculpture is an existing work of art.

The finished sculpture will be delivered to the site within three (3) months after the execution of this Agreement.

Artist shall furnish to the City, within 30 days after the execution of this Agreement, a schedule for installation of the sculpture and estimated date of delivery.

EXHIBIT "D"  
(FEE SCHEDULE)

The City shall pay the following payment schedule to the Gallery. Payment for "Male Figure of Balzac" sculpture shall be as follows:

First payment in the amount of \$4,000 shall be payable upon execution of this Agreement;

Second payment in the amount of \$12,000 shall be payable within 30 days after the complete installation of the Sculpture.

EXHIBIT "E"  
(BILL OF SALE)

BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT is made as of \_\_\_\_\_ from Red Dot Gallery (Seller) to the CITY OF PALM SPRINGS, a municipal corporation ("Buyer").

That for good and valuable consideration to be paid pursuant to the provisions of that certain Agreement for Purchase and Sale of Public Art Work dated \_\_\_\_\_, 2009 between Buyer and Seller (the "Purchase Agreement") Seller does hereby sell, assign, transfer and deliver unto Buyer, and its successors and assigns, that certain work created by Seller entitled *Male Figure of Balzac by Christopher Georgesco* (the "Property"), including all right, title and interest therein, and shared copyrights thereto.

Seller does hereby represent and warrant to Buyer that Seller is the lawful owner of such personal property, and that Seller had good right to sell the same as aforesaid and will warrant and defend the title thereto unto buyer, its successors, subsidiaries, parent corporations, affiliates and loan participant.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the date first above written.

**Red Dot Gallery, a Sole Proprietorship**

\_\_\_\_\_  
(Tax I.D. Number)

By: \_\_\_\_\_  
Signature

**CITY OF PALM SPRINGS**  
a municipal corporation

By: \_\_\_\_\_  
City Manager

ATTEST:  
By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:  
CITY ATTORNEY: \_\_\_\_\_