

CONTRACT FOR SALE OF SCULPTURE "WINDING OUT"

THIS CONTRACT FOR SALE ("Contract") is made as of the ____ day of _____, 2014 by and between Robert Winkler, an individual with an address of 3 Round Oak Road, Asheville, NC 28804 doing business as "Robert Winkler Studio" ("ARTIST"), and Liberty Arts, Inc., a non-profit corporation organized and existing under the laws of North Carolina ("PURCHASER").

WHEREAS, ARTIST is the creator of, and sole and exclusive owner of, all rights, title and interest in and to a sculpture made primarily of natural cedar wood pieces attached with steel components configured into a spiraling structure titled "Winding Out" (hereinafter referred to as the "Work") and shown in the photograph attached hereto as Exhibit A;

WHEREAS, PURCHASER wishes to acquire the Work for the purpose of donating the Work to the City of Durham ("City") pursuant to a separate Artwork Acceptance Agreement ("Artwork Acceptance Agreement").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and with the intention of being legally bound hereby:

1. Sale of Work. ARTIST hereby agrees to sell the Work to the PURCHASER. Title, ownership and specified rights shall pass to the Purchaser at such time as full payment is received by the ARTIST pursuant to Paragraph 2 below. The Work is generally described as follows:

Title: Winding Out
Medium: Weathered cedar, steel, clear preservative
Size: 10'H x 13.5' x 8.5'
Year of Creation: 2011

The Work is currently on display in an outdoor location in the City of Durham, adjacent to the Durham Farmer's Market at 501 Foster Street between Hunt Street and W. Corporation Street.

2. Compensation. ARTIST shall be paid \$13,000.00, plus any applicable sales taxes ("Fee"). Payment of the Fee shall be made upon execution of this Contract.

3. Original Work. ARTIST hereby represents and warrants that the Work is original to the ARTIST and that the Work is unique, and will not infringe any copyright, trademark, trade dress rights, patent, right of privacy or right of publicity, contain any libelous or scandalous material, or infringe or violate any other right of any third party, including, but not limited to, other intellectual property or claims by third parties that the Work is proprietary to them. ARTIST further represents and warrants that the ARTIST

is the sole and exclusive owner of all right, title, and interest in and to the Work, and no other person or entity has any rights (as an owner, licensee, or otherwise) in or to the Work, that the ARTIST has obtained assignments from and waivers of moral rights from any other person or entity who may have been involved in the creation of the Work or otherwise may have a claim of ownership or rights in or to the Work, and that the ARTIST will transfer all right, title, and interest in and to the Work, including certain rights arising under copyright, to the PURCHASER, as provided in this Contract. ARTIST hereby further represents and warrants that he has clear, unencumbered title to the Work including the material and medium constituting the Work. The ARTIST shall indemnify the PURCHASER and City against any loss, cost, expense, including attorney's fees, and liability arising out of any such claim, whether or not such claim is successful. If so requested by the PURCHASER or the City, the ARTIST shall defend any such claim in the name of the PURCHASER or City, but at the ARTIST's expense. The terms and provisions of this Section 3 shall survive the expiration or termination of this Contract.

4. Quality and Condition of Work. The ARTIST represents and warrants that the design, execution and fabrication of the Work was performed in a workmanlike manner and that the Work, as designed, fabricated and currently installed is free of defects in material and workmanship, including any defects consisting of qualities which cause or accelerate deterioration of the Work other than the nature of the material of which it has been fabricated. The ARTIST warrants that the Work is suitable in all respects for display, the purpose for which it was created hereunder and the ARTIST is not aware of any serious flaws or conservation problems in any works previously created by the ARTIST which are composed of like or similar materials, or in which the ARTIST used fabrication methods similar to the materials or methods utilized or to be utilized in the fabrication of the Work, provided the Work is maintained on a periodic basis in accordance with Section 9.

5. Reservation, Waiver and Transfer of Rights in the Work.

(a) ARTIST reserves all reproduction rights in the Work, including the right to claim statutory copyright (the Copyright Act of 1976 and subsequent amendments) in the Work, except as such rights are limited by this Contract. ARTIST unconditionally waives all rights, claims, and causes of action relating to any moral rights and/or non-assignable rights in the Work, including but not limited to the Visual Artists Rights Act of 1990, as amended, together with all related past, present, and future causes of action related to the Work, including, but not limited to, any and all rights of approval or consent with respect to any modification, alteration, disassembly, removal, distortion or mutilation of the Work, except as expressly provided in this Contract.

(b) The Artist hereby irrevocably grants, transfers, conveys, assigns and sets over to the Purchaser, and its successors and assigns the entire right, title, and interest in perpetuity in and to the Work in the United States and worldwide.,
~~including without limitation~~

(c) The Artist hereby irrevocably grants, transfers, conveys, assigns and sets over to the Purchaser and the City a worldwide, perpetual, irrevocable, royalty-free, non-transferable, non-sublicensable, exclusive license to use, display, exhibit, prepare derivative works of, distribute copies of, photograph, video, and otherwise reproduce two-dimensional images of the Work for non-commercial purposes. Notwithstanding the foregoing, the license does not restrict the Artist from producing, marketing, selling or otherwise transferring works substantially similar to the Work for installation and display elsewhere and granting rights similar to those granted herein to such other works.

(d) ARTIST further agrees to execute and deliver at the request of the PURCHASER any and all other papers, instruments and assignments and to perform any other reasonable acts the PURCHASER may require in order to vest all of ARTIST's rights, title and interest in and to the Work in the PURCHASER (i) as are deemed necessary by PURCHASER or by the governmental agencies having jurisdiction over said Work to effect the transfer to PURCHASER, its successors and assigns of all of ARTIST's right, title, and interest in and to the Work, (ii) for maintaining and perfecting the PURCHASER's rights to the Work, and (iii) as may be or become necessary for obtaining, maintaining, or protecting said Work.

6. Non-destruction. PURCHASER and any future owner, successor, donee, assignee or transferee of PURCHASER shall not destroy the Work or permit the Work to be destroyed without first offering to return ownership of the Work to the Artist or his or her successors in interest by first attempting to contact ARTIST in accordance with Section 18, Notice below.

7. Integrity. PURCHASER and any future owner, successor, donee, assignee or transferee of PURCHASER shall not distort, mutilate, or otherwise alter the Work, except to the extent necessary for safety reasons. In the event such distortion, mutilation, or other alteration occurs, whether by action of the PURCHASER and any future owner, successor, donee, assignee or transferee of PURCHASER or otherwise, the Artist shall, in addition to any other rights and remedies, have the right to have his or her name removed from the Work and no longer have it attributed to him as its creator.

8. Attribution. The Artist shall, at all times, have the right to have his or her name appear with the Work and to be acknowledged as its creator. Purchaser and City shall provide the following copyright notice: ©2011 Robert Winkler, where feasible, on the media in which the Work is depicted by itself or in an otherwise solitary fashion and not in association with other works, structures or images.

9. Maintenance. ARTIST represents that the Work requires little or no ongoing maintenance; however, PURCHASER and any future owner, successor, donee, assignee or transferee of PURCHASER shall agree to make reasonable efforts to perform regular inspections of the Work and, if deemed necessary, provide additional clear coat stain on the Work according to the following procedures and specifications:

Maintenance

Winding Out requires recoating with preservative every two to three years depending on weather conditions. Rain or snow will not damage the surface, however, prolonged exposure to direct sun will dry out the material. It is time to recoat when the finish no longer repels water. I recommend recoating in the autumn when the air is less humid, the sun is lower in the sky and there are less pollen and insect problems.

This is a two-step process:

Step 1: Clean the sculpture with Olympic Premium Deck Cleaner, applied with a plastic sprayer and garden hose and rinsed following the manufacturer's directions. It must NOT be pressure washed or scrubbed as this will damage the surface of the cedar. After washing, the sculpture should be allowed to dry for 2-3 days before proceeding to Step 2.

Step 2: Recoat the sculpture with Sikkens Wood Finish, Cetol SRD □ Translucent Wood Finish, Cedar 077, #SIK240-077. The preservative can be applied in one of three ways; with a brush, wiped on with a rag or sprayed on. Please note, spraying requires back-brushing. I prefer applying with a rag, using a brush in the tight corners. It should be applied in small sections to avoid runs and drips. The preservative will dry in 2-4 days depending on humidity.

Both of these products are readily available at Home Depot.

Winding Out was last cleaned and recoated on April 15, 2014, prior to installation in the Bull City Sculpture Show.

10. Restoration. In the event of damage to the Work requiring restoration or repair, the PURCHASER and any future owner, successor, donee, assignee or transferee of PURCHASER shall, if practicable, offer the Artist the first opportunity to restore or repair the Work and, in any case, shall consult with the Artist with respect to the restoration or repairs by attempting to contact ARTIST in accordance with Section 18, Notice below.

11. Taxes. Except for any applicable sales tax, PURCHASER shall not have any responsibility for paying any applicable federal, state and local income taxes, gross receipt taxes, social security taxes, all other withholding taxes, unemployment and disability benefits, workers' compensation obligations, or licenses and fees of whatever nature in connection with the services provided by ARTIST pursuant to this Contract. ARTIST hereby specifically agrees that he will be liable to pay his own taxes and for complying with federal, state and local regulations on the subject of taxes, social security payments and employment laws. PURCHASER will not withhold any taxes

from ARTIST's compensation payable hereunder and will not file any tax reports or returns on ARTIST's behalf relating to payments made by PURCHASER to ARTIST, and no deductions shall be made by PURCHASER from ARTIST's compensation for social security, federal and/or state withholding taxes, or any other income or employment taxes.

12. Risk of Loss and Insurance. The risk of loss or damage to the Work and the provision of any insurance to cover such loss or damage shall be the responsibility of the Purchaser or the Assignee from the signing of this contract.

13. Entire Contract. This Contract contains the entire understanding between the parties and supersedes and cancels any prior oral and written understanding and/or Contracts between them respecting the subject matter of this Contract. This Contract may be amended or modified only in writing signed by both parties.

14. Severability. If any provision, term, condition, or clause of this Contract or the application thereof shall be invalid or unenforceable to any extent, the remainder of this Contract shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15. Governing Law. This Contract is made and entered into in the State of North Carolina and is to be construed in accordance with and take effect under the laws of the State of North Carolina without regard to principles of conflicts of laws.

16. Assignment. ARTIST acknowledges that PURCHASER intends to donate and transfer ownership of the Work and license, on an exclusive basis, certain rights under copyright in the Work to the City. ARTIST acknowledges that PURCHASER and any future owner, successor, donee, assignee or transferee of PURCHASER, without ARTIST's consent, may transfer ownership and title of the Work to other donee, assignee or transferee. Said donee, assignee or transferee shall be a third-party beneficiary of this Contract, excluding the non-transferrable license rights under Section 5(c) above.

17. Notice. Any notice, or other written communication to be given pursuant to this Contract for whatever reason shall be deemed duly given and received (a) if delivered personally, or the date of delivery, or (b) by certified mail, postage pre-paid, return receipt requested, three (3) days after the date of mailing, addressed:

In the case of PURCHASER:

Liberty Arts, Inc.
Attn: Jackie MacLeod, President
923 Franklin St.
Durham, NC 27701
E-mail: hello@jackiemacleod.com
Phone: _____

In the case of ARTIST:

Robert Winkler
3 Round Oak Road
Asheville, NC 28804
E-mail: studio@robertwinklersculpture.com
Phone: 828-225-3766

18. Miscellaneous. All rights of PURCHASER expressed in this Contract are in addition to any rights available under the common law or other legal principles. Section or paragraph titles or captions contained in this Contract are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Contract or the intent of any provision hereof. All pronouns and any variation thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of person or persons, firm or firms, corporation or corporations, and as context may require.

[Signatures appear on following page(s)]

IN WITNESS WHEREOF, ARTIST and PURCHASER executed this Assignment on the date(s) set forth below.

ARTIST:

_____ (SEAL)
ROBERT WINKLER
doing business as Robert Winkler Studio

Date: _____, 2014

State of _____ INDIVIDUAL ACKNOWLEDGMENT

County of _____

I, a notary public in and for the aforesaid county and state, certify that ROBERT WINKLER, doing business as ROBERT WINKLER STUDIO, personally appeared before me this day and acknowledged the execution, under seal, of the foregoing contract or agreement. This the _____ day of _____, 20____.

My commission expires: _____

Notary Public

PURCHASER:

Liberty Arts, Inc.

By _____(SEAL)

Title: _____

State of NORTH CAROLINA

ACKNOWLEDGMENT BY
LIBERTY ARTS, INC.

County of _____

I, a notary public in and for the aforesaid county and state, certify that
_____ personally
appeared before me this day and stated that he or she is

(strike through the inapplicable:) chairperson/ president/ chief executive officer/ vice-
president/ assistant vice-president/ treasurer/ chief financial officer of LIBERTY ARTS,
INC., a corporation, and that by authority duly given and as the act of the corporation,
he or she signed, under seal, the foregoing contract or agreement. This the _____ day
of _____, 20_____.

My commission expires: _____

_____ Notary Public