

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration/Discussion Presentation

SHORT TITLE RESOLUTION APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND EMMA JANE HANCOCK FOR THE PURCHASE OF ARTWORK AS IMAG_NE.
(Cost: \$4,250.00 from previously budgeted Public Art Contingency budget.)

Summary of Purpose and Why:

In accordance with Section § 160.04 POWERS AND DUTIES OF THE COMMITTEE, the Public Art Committee has the power to make recommendations to the City Commission on art and artist selection. At the November 20th, 2015 Public Art Committee meeting, the Committee voted to purchase Emma Jane Hancock's IMAG_NE modular artwork. At the September 21, 2015 City Commission meeting, the Commission approved the FY 2016 Public Art Annual Plan. The Annual Plan included a \$10,000 Contingency/ Opportunity fund. The Public Art Committee recommended \$4,250 of the Contingency/ Opportunity line item be used to purchase this artwork. The Public Art Committee has also decided that this sculpture will be a traveling artwork.

IMAG_NE is a modular sculpture that resembles that of a giant Scrabble letter holder. The artwork has potential for audiences to engage with it directly, photographing themselves occupying the missing "i".

The Assistant City Attorney has prepared an Agreement between the City of Pompano Beach and Emma Jane Hancock.

This is a companion item to the IMAG_NE location item.



Accomplishing this item supports achieving Initiative 2.8 Further develop and promote cultural / heritage tourism opportunities.

- (1) Origin of request for this action: Public Art Committee / Development Services
- (2) Primary staff contact: Laura Atria / Jennifer Gomez / Robin Bird Ext. 4310
- (3) Expiration of contract, if applicable: _____
- (4) Fiscal impact and source of funding: Cost: \$4,250.00 from previously budgeted Public Art Contingency budget.
Account Number: 315-1510-539.99-10

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	<u>4-1-16</u>	Approval	
City Attorney	<u>3-7-16</u>	<u>approved</u>	
Finance	<u>4-1-2016</u>	<u>APPROVE</u>	
Budget	<u>4/1/16</u>		
<input checked="" type="checkbox"/> Public Art Committee		Approval Memo # 16-080	
<input checked="" type="checkbox"/> City Manager			

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1 st Reading _____	1 st Reading _____	Results: _____	Results: _____
2 nd Reading _____	_____	_____	_____
_____	_____	_____	_____



City Attorney's Communication #2016-661

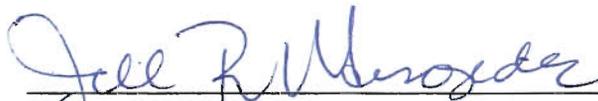
March 17, 2016

TO: Laura Atria, Public Art Program Manager
FROM: Jill R. Mesojedec, FRP, Paralegal
VIA: Tracy A. Lyons, Assistant City Attorney
RE: Resolution – Purchase of Artwork Known as IMAG_NE

As requested, the above-referenced Agreement has been revised and is attached at this time along with the appropriate Resolution captioned as follows:

A RESOLUTION APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND EMMA JANE HANCOCK FOR THE PURCHASE OF ARTWORK KNOWN AS IMAG_NE; PROVIDING AN EFFECTIVE DATE.

Please feel free to contact me if I may be of further assistance.



JILL R. MESOJEDEC

/jrm
l:cor/dev-srv/2016-661

Attachments

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND EMMA JANE HANCOCK FOR THE PURCHASE OF ARTWORK KNOWN AS IMAG_NE; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That a Purchase and Sale Agreement between the City of Pompano Beach and Emma Jane Hancock for the purchase of artwork known as IMAG_NE, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and Emma Jane Hancock.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

LAMAR FISHER

ATTEST:

ASCELETA HAMMOND, CITY CLERK

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (the "Contract") is entered into this _____ day of _____, 2016, by and between the **CITY OF POMPANO BEACH**, a Municipal Corporation (the "Buyer"), and **EMMA JANE HANCOCK** (the "Seller").

For and in consideration of the mutual covenants and obligations created hereby as well as other good and valuable considerations, Buyer agrees to buy and Seller agrees to sell the following described property subject to and upon the terms and conditions set forth below.

The effective date to complete the purchase under this Contract (the "Effective Date") shall be on or before April 30, 2016.

1. Property. The property which is the subject of this Contract consists of the following: Artwork known as IMAG _ NE. The Artwork is more particularly described as follows:

- Measurements: 14'x3'x3'
- Weight: 330 lbs with an external ballast weight for a total weight of 550 lbs.
- The artwork shall be constructed as a modular work incorporating a structural pine substrate that is clad with marine-grade plywood sheeting. Said Artwork shall be painted with heavy-duty outdoor textural paint finish with protective coating of anti-graffiti varnish to ensure longevity and durability to the natural elements. The estimated lifespan of said Artwork is five (5) years.

The Artist shall provide the labor and production assistance necessary to oversee the initial installation of the Artwork.

2. Deposit. No deposit shall be required.

3. Purchase Price. The Purchase Price of the Property (the "Purchase Price") is **Four Thousand Two Hundred Fifty Dollars (\$4,250.00)**, payable upon receipt and completed inspection of said Artwork. Said amount shall be inclusive of all shipping, installation, maintenance and refurbishment.

4. Right to Inspection Period. Buyer will retain an Expert in the field to examine and inspect said Artwork prior to Buyer acceptance of said work. Said artwork will be inspected for but not limited to compliance with the Sculpture Design, for safety and for quality workmanship. If said Artwork is not fully refurbished to as-new condition and/or if after inspection, the lifespan of the Artwork is determined to be less than five (5) years, the City will not be obligated to accept or purchase said Artwork and will have the right to reject or otherwise cancel the purchase of said Artwork. Notwithstanding the foregoing, Buyer shall not be responsible and shall bear no liability for the results of any inspections or any matter related thereto if discovered prior to the purchase of this Artwork. In the event that results of such investigations are unsatisfactory to Buyer, in Buyer's sole and absolute discretion, Buyer shall have the right, at Buyer's election, to terminate this Agreement. Said inspection shall be coordinated as to the time and place between the Buyer's Expert and Seller. Said inspection shall be completed on or before April 29, 2016.

5. Contract Documents. This Agreement shall consist of this Purchase Agreement and a fully executed Copyright Assignment of Artwork, provided by the Seller, which shall be incorporated herein and made a part of the entire agreement.

6. Proceeds of Sale and Closing Procedure. At the Purchase, Buyer shall pay to Seller the Purchase Price. Payment of the Purchase Price shall be made in the form of a cashier's check or immediately available federal wire funds payable or wired to the Seller's account or other account designated by Seller in writing.

7. Conditions Precedent.

A. Not to the exclusion of any other conditions and remedies contained herein, the obligations of Buyer hereunder shall be subject to satisfaction of all of the following conditions precedent (collectively, the "Conditions Precedent"):

(1) The representations and warranties made by Seller herein if any shall be true and correct statements of fact as said facts exist as of the Purchase Date, with the same force and effect as though such representations and warranties had been made as of the Purchase Date; and

(2) All terms, covenants and provisions of this Contract to be complied with and performed by the Seller on or before the Purchase Date shall have been duly complied with and performed.

If the conditions set forth in (1) and (2) above are not satisfied on or before the Purchase Date, or as otherwise provided herein, then, at Buyer's option, Buyer may: (i) waive any or all such unsatisfied conditions and proceed to Purchase as provided herein; (ii) extend the Purchase Date an additional thirty (30) days by giving Seller written notice of such extension prior to the original Purchase Date; or (iii) terminate this Contract by giving Seller written notice thereof at any time prior to the Purchase Date (or extended Purchase Date), in which event this Contract shall be cancelled.

8. Agreements of Seller.

A. Seller agrees that, from the Effective Date and until the earlier to occur of termination of this Contract, expiration of this Contract, or completed Purchase:

(1) Seller shall maintain the Artwork in the same condition as it is as of the date of Buyer's execution of this Contract;

(2) Seller shall not encumber the Artwork or permit the Property to be additionally encumbered, without the consent of the Buyer, with any agreements, concessions, licenses, judgments, leases or other third party rights or with any other monetary lien or encumbrance and at or prior to the Purchase, any judgments, leases and third-party rights shall be terminated and/or released;

(3) Seller shall promptly notify Buyer of any change in any condition with respect to the Artwork or of any event or circumstance which makes, or will make, any

representation or warranty of Seller to Buyer under this Contract untrue or misleading or any covenant of Seller to Buyer under this Contract incapable or less likely of being performed and shall deliver to Buyer any and all notices with respect to or affecting the Artwork promptly upon receipt of same; and

(4) Seller shall, upon written request from Buyer, obtain such estoppel letters and consents to this Contract and such alternative information and certifications as Buyer may require, in form and substance acceptable to Buyer, from the holders of any lien, security interest, judgment or other encumbrance on all or any portion of the Artwork or against Seller.

9. Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows, which representations and warranties shall be deemed made by Seller to Buyer as of the Effective Date, and shall be effective as of the Purchase Date, and Seller acknowledges that, but for such representations and warranties, Buyer would not execute this Contract:

A. This Contract, and the consummation of the transactions described herein, and all agreements, instruments and documents herein provided to be executed or to be caused to be executed by Seller have been or shall be, duly authorized, executed and delivered by, and, upon delivery thereof, shall be binding upon and enforceable against Seller in accordance with their respective terms.

B. Seller has the legal right, power and authority to enter into this Contract and to perform all of its obligations hereunder, and the execution and delivery of this Contract and the performance by Seller of its obligations hereunder shall not conflict with or result in a breach of any law or regulation, or order, judgment, writ, injunction or decree of any court or governmental instrumentality or any agreement or instrument to which Seller is a party or by which Seller is bound or to which Seller or any portion of the Artwork is subject.

C. Seller has not granted any option or other right to purchase or otherwise acquire any portion of the Artwork, or any interest therein, to any party except Buyer pursuant to this Contract. Exclusive possession of the Artwork shall be given to Buyer at the time of Purchase free and clear of all other right of possession or claim by anyone.

D. To the best knowledge of Seller, Seller has not received any notice of violation of any applicable law pertaining to the Artwork or any portion thereof, the provisions of which have not been complied with, nor does Seller have knowledge of any such violation.

G. To the best knowledge of Seller, there are no pending actions, suits, claims or legal proceedings affecting the Artwork or any portion thereof, at law or in equity, before any court or governmental agency.

10. Representations and Warranties of Buyer.

A. Buyer represents and warrants that it has the lawful authority to purchase the Artwork and to otherwise carry out the terms of this Contract, and the execution and delivery of this Contract and the performance thereof is not prohibited by or inconsistent with any agreement to which Buyer is a party or pursuant to which Buyer exists as a legal entity. Buyer also represents

and warrants that it is a duly formed validly existing limited liability company under the laws of the State of Florida.

B. Buyer acknowledges that this Agreement has been entered into to purchase Artwork in fulfillment of the objectives of the City's Public Art Project.

11. Default. In the event of a failure by Buyer or Seller to perform any obligation or covenant which either of them is obligated to perform under this Contract, except for the failure to close if required pursuant to the terms of this Contract, which failure shall constitute an immediate default hereunder, no default shall occur until notice thereof is given to the defaulting party by the other party hereto asserting an event of default has occurred, describing the nature of the default, and giving a period of thirty (30) days to cure the default.

12. Assignment. This Contract shall be binding upon and enforceable by and against the parties hereto, their successors and assigns, and inure to the benefit of the successors and assigns of the parties.

13. Notices. All notices, request, consents, instructions, and communications required or permitted under this Contract shall be in writing and shall be (as elected by the person giving such notice) hand-delivered by messenger or nationally recognized overnight courier service, mailed (air mail if international) by registered or certified mail (postage prepaid), return receipt requested, or sent by telex, telegraph or telecopier with confirmed answer back, and addressed to each party at their respective addresses as set forth below or to such other addresses any party may designate by notice complying with the terms of this Paragraph 21.

IF TO SELLER: Ms. Emma Jane Hancock
3 / 19-21 Cerberus Road
Baxter
Victoria 3911
Australia

IF TO BUYER: City of Pompano Beach
Attn: Dennis W. Beach, City Manager
100 West Atlantic Boulevard
Pompano Beach, Florida 33060

COPY TO: City of Pompano Beach
Attn: Laura Atria, Public Art Program Manager
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Laura.Atria@copbfl.com

Each such notice, request, or other communication shall be considered given and shall be deemed delivered (a) on the date delivered if by personal delivery or courier service; (b) on the date of transmission with confirmed answer back if by telex or telegraph or telecopier if transmitted before 5:00 p.m. Eastern Time on a business day, and on the next business day if transmitted after 5:00 p.m. Eastern Time or on a nonbusiness day; or (c) on the date on which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable,

as the case may be, if mailed. Rejection, refusal to accept, or inability to deliver of which no notice was given shall be deemed to be a receipt of such notice, request, or other communication. The respective attorneys for Seller and Buyer are hereby authorized to give any notice pursuant to this Contract on behalf of their respective clients.

14. Miscellaneous.

A. Counterparts and Facsimile Signatures. This Contract may be executed in any number of counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same agreement. The parties agree and intend that a signature by facsimile machine shall bind the party so signing with the same effect as though the signature were an original.

B. Governing Law; Venue. This Contract shall be governed by Florida law. No amendments to this Contract shall be effective unless signed by both parties and in writing. Venue for any legal proceedings shall be in Broward County, Florida.

C. Complete Agreement. This Contract evidences the complete understanding of the parties hereto as respects the matters addressed herein. No agreement or representation, unless set forth in this Contract, shall bind either of the parties hereto.

D. Partial Invalidity. In the event that any paragraph or portion of this Contract is determined to be unconstitutional, unenforceable or invalid, such paragraph or portion of this Contract shall be stricken from and construed for all purposes not to constitute a part of this Contract, and the remaining portion of this Contract shall remain in full force and effect and shall, for all purposes, constitute the entire agreement.

E. Construction of Contract. All parties hereto acknowledge that they have had the benefit of independent counsel with regard to this Contract and that this Contract has been prepared as a result of the joint efforts of all parties and their respective counsel. Accordingly, all parties agree that the provisions of this Contract shall not be construed or interpreted for or against any party hereto based upon authorship.

F. Waiver of Breach. The failure of any party hereto to enforce any provisions of this Contract shall not be construed to be a waiver of such or any other provision, nor in any way to affect the validity of all or any part of this Contract, or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Contract shall be held to constitute a waiver of any other or subsequent breach.

G. Time. Time is of the essence of this Contract.

15. Further Assurances. In addition to the obligations required to be performed hereunder by Seller at the time of Purchase, Seller agrees to perform such other acts, and to execute, acknowledge, and deliver subsequent to the Purchase such other instruments, documents, and other materials as Buyer may reasonably request in order to effectuate the consummation of the transactions contemplated herein.

16. Definitions. The following terms when used in this Contract shall have the following meanings:

A. Governmental Authorities. Any and all federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency or any instrumentality of any of them.

B. Governmental Requirement. Any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, agreement, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued applicable to the Seller or the Artwork.

17. Remedies. In the event of default under this Contract, the parties shall have such remedies as provided by law.

IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year first above written.

SELLER:

Signed, Sealed and Witnessed
In the Presence of:

EMMA JANE HANCOCK, Seller/Artist

Kathryn F Breedlove
Kathryn F Breedlove
(Print or Type Name)

By: [Signature]
Emma Jane Hancock

[Signature]
Euz Lillian Cuervo
(Print or Type Name)

STATE OF FLORIDA :
COUNTY OF BROWARD :

The foregoing instrument was acknowledged before me on this 4 day of April, 2016, by EMMA JANE HANCOCK. She is personally known to me or who has produced Passport M9772537 (type of identification) as identification.

NOTARY SEAL:



[Signature]
NOTARY PUBLIC, STATE OF FLORIDA
Lauren SACKS
(Name of Acknowledger Typed, Printed or Stamped)
EE212595
(Commission Number)

BUYER:

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved by:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

TAL/jrm
3/17/16
l:agr/DevSrvc/2016-446



**PUBLIC ART COMMITTEE
MEMORANDUM #16-080**

DATE: February 11, 2016
TO: City Commission
FROM: Public Art Committee
SUBJECT: IMAG_NE Purchase Agreement

At the meeting of the Public Art Committee held on November 19, 2015, the Committee discussed the proposed IMAG_NE project. The Committee unanimously approved the proposed project. At the January 28, 2016 meeting, the Public Art Committee discussed the location of the sculpture once purchased and unanimously agreed it would be a moving sculpture. The first location is still TBA.

The Public Art Committee unanimously approves the purchase and display of the IMAG_NE sculpture.

A handwritten signature in blue ink, which appears to read "Terrence Davis", is written over a horizontal line.

Terrence Davis
Chair
Public Art Committee



Pompano Beach Public Art Committee

Emma Lou Olson Civic Center
Conference Room

November 19, 2015
5:00 P.M.

MINUTES

1. **IMAG_NE Project Proposal**

Mr. Scott Reale introduced the public art project that was proposed by Ms. Jennifer Gomez and asked the Committee if it was something they would support. Ms. Donna Schorr asked staff if the public art piece would be a version of the original or the original. Ms. Schorr also asked how many pieces the artist plans to sell. Ms. Schorr commented that she thinks the project is great for tourism and asked if the wall comes with the letters. Ms. Tobi Aycock mentioned that this art installation falls under the plan to create a photo opportunity. Mr. Chris Mullon stated that Ms. Gomez's email mentions that the project would "not be unique to Pompano" and this implies that there are identical installations in other cities. Mr. Terry Davis stated that the email says that it has toured many cities and it was not created in Pompano; therefore, it would not be unique to Pompano. Ms. Aycock asked if the project would fit within the plan. Mr. Davis mentioned that there are funds available for this project. Ms. Schorr asked what the artist means by "temporary" and the Committee suggested that it means that the installation is "for purchase," but it would not last forever. The Committee discussed several details regarding the art installation. Mr. Davis suggested placing the installation at the Bailey while the Committee figures out a permanent home. The Committee would like staff to provide clarification on the word "temporary."

MOTION made by Chris Mullon and seconded by Chad Kovac to recommend acquiring the IMAG_NE project. All voted in favor.



IMAG_NE...

Production specifications / Florida model / September 2014

CONSTRUCTION & ASSEMBLY METHODOLOGY



- Marine-grade 3/4" ply over 2x4" structural pine substrate / frame
- Constructed in four parts - 2 x bases boxes and 2 x top angled boxes
- 2 x ply panels function as top 'lid' on angle section

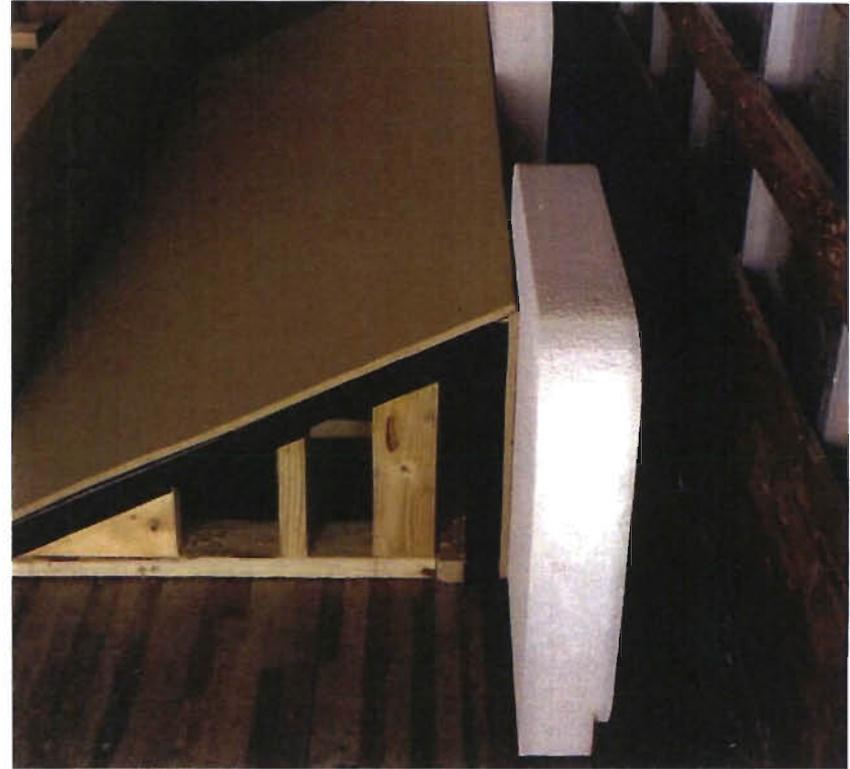


- Letterforms are glued and screwed through from rear of letter through front face of angle boxes using butterfly screw devices and wood glue / screws
 - Rubber weather seal applied at all connecting junctions and edges
-

CONSTRUCTION & ASSEMBLY METHODOLOGY



- 1 of 2 base boxes that make up lower section of the sculpture demonstrating structural frame, cladding and rubber weather seal



- 1 of 2 angled top boxes that make up upper section of the sculpture demonstrating structural frame, cladding, rubber weather seal and attached letterforms
-

FINISHING



- Both box and letterform sections have been undercoated (2 coats) with exterior acrylic and then top coated with an additional 2 coats of exterior textured paint
PRODUCT USED : Rust-oleum Deck & Concrete Restore

Maximize your HomeDepot.com experience. Let us use your location to find your nearest store.

THE HOME DEPOT More saving. More doing.
Your Store: **Cumberland #121** [\(Change\)](#)
Tool & Truck Rental | Installation Services and Repair | Gift Cards

Rainguard Model # VG-7003 Internet # 204800171
VandlGuard One 1-gal. VandlGuard One Non-Sacrificial Anti-Graffiti Coating
[Write the First Review](#)



PRODUCT OVERVIEW Model # VG-7003 Internet # 204800171

Put an end to the graffiti problem with Rainguard's VandlGuard products. Easy to apply, this product will allow you to just wipe away the graffiti problem. Rainguard is leader in the prevention of graffiti damage since 1982 and is approved by the City of Los Angeles. This permanent coating can be applied to virtually every surface and easy to apply, but will stop taggers in their tracks. For application to new masonry, stucco or concrete surfaces, a first coat of Rain Guard water repellent(s) protector

- Protects interior and exterior vertical surface such as concrete, stucco, EIFS, brick, wood, metal, plastic and even painted ones
- Coverage depends on the substrate being applied on porous or non-porous coverage range from 180-300 sq. ft. per gallon
- Clear, flat sheen, non-yellowing formula - does not change the look of the building
- Safe to use low VOC, low odor and water based formula
- Retards growth of mildew, mold, fungus, bacteria
- Easy application - no need for priming, spray, brush or roll according to instructions
- 1 year material and labor warranty
- Meets Master Painters Institute (MPI) specification #105 - Graffiti - Protection Topcoat

- Two coats of anti-graffiti coating have been applied all over to provide addition protection to the exterior surface

PRODUCT USED : VandlGuard One Non-Sacrificial Anti-Graffiti Coating

