

TOWN OF CHAPEL HILL ROUTING FORM

Vendor/Contractor Name: Mikyoun Kim

Document Name/Title: Agreement for Commission of Public Art (Second Agreement)

Department: Manager
Contact Person: Jeff York, Public Art Admin
Phone Number: 968-2750

Return To: ✓ Jeff York, Public Art Admin.
Department: Manager

| | Date Received | Date Forwarded | Initials |
|--|---------------|----------------|----------|
| Department Head | | 7/23/08 | JA |
| Purchasing & Contracts Manager | 7/24 | 7/24/08 | cy |
| Finance Officer (Per Budget Act) | 7/25/08 | 7/25/08 | (JA) |
| Town Attorney (Legal Form) | 7/25/08 | 7/29/08 | RSK |
| Assistant/Deputy/Town Manager | 7/29/08 | 7/30/08 | FAM |
| Town Clerk (Attest, Date, and Notarize) | | 7-31 | SK |
| Purchasing & Contracts Mgr (Distribution and Mailing) | 8/1 | 8/1/08 | cy |

| | | |
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| Deadline for Signing: ASAP | G/L Account Number(s): 44015-80405 | Contract Dollar Amount(s): \$527,000.00 |
| Special Distribution Instructions original executed contract to Clerk original executed contract to Ram Development Co. original executed contract to Mikyoun Kim copy of executed contract to Jeffrey York | Notes/Explanation Three copies to sign - this is a three party contract among the Town, Ram, and the Artist for Lot 5 A first contract has been completed for preliminary design services. This second contract is for detailed design, fabrication, delivery and installation. Written contract for full amount. Budget amendment 2008-04-14/O-1 approved by Council. ✓ 8/12/08 Rec'd Business License * Will hold signed contract until business license has been purchased - 8/1/08 still hasn't rec'd | |
| Vendor Mailing Address 1. John Florian, Ram Development Company 516 West Peace Street Raleigh, NC 27603 2. Mikyoun Kim Design 33a Harvard Street, #300 Brookline, MA 02445 | | |

7/25/08 - Returned to Finance Director For Signature on - all 3 orig. top

**NORTH CAROLINA
ORANGE COUNTY**

**AGREEMENT FOR COMMISSION OF PUBLIC ART
(Second Agreement for Detailed Design, Fabrication, Delivery, and Installation)**

THIS AGREEMENT, made and entered by and among the Town of Chapel Hill, a North Carolina Municipal Corporation (the “Town”), Ram Development Company (“the Developer”), and Mikyoung Kim Design, (the “Consultant”) residing at 33a Harvard Street, #300, Brookline, MA (collectively the “Parties”). This Agreement concerns all services and deliverables related to the detailed design, fabrication, delivery, installation of the public artworks (the “Artworks”) to be created for and installed at the Lot 5 Downtown Project, bounded by West Franklin, Church and West Rosemary Streets (the “Site”), including coordination with the Artist selected for Art Area II.

WITNESSETH

WHEREAS, the Town has established and contracted with the Chapel Hill Public Arts Commission (the “Arts Commission”) to facilitate and manage the implementation of public artworks within the Town;

WHEREAS, on December 2, 2005, the Arts Commission convened an Art Consultant Selection Committee which selected Mikyoung Kim: (1) to serve as the lead Consultant for the Public Art Conceptual Design of the Lot 5 Downtown Redevelopment Project, (2) to help select an additional artist(s) for this project and to oversee that artist’s work, and (3) to design, fabricate, deliver, and install public artwork for one project at the Site;

WHEREAS, on December 14, 2005, the Arts Commission endorsed the selection and on December 15 announced the selection of Mikyoung Kim as the Lead Art Consultant for a conceptual design for the project; and executed a contract for an Arts Masterplan with Mikyoung Kim;

WHEREAS, on March 20, 2006, the Arts Commission presented the Arts Masterplan report of Mikyoung Kim to the Council at the concept plan review stage of the project;

WHEREAS, on February 12, 2007, the Town Council authorized the Manager to sign a Development Agreement with Ram Development Company which included a provision that the project include 1% of the total development budget for public art;

WHEREAS, the Development Agreement contemplates an Agreement among the Town, the Developer, and an Art Consultant chosen to implement the public art provisions of said contract;

WHEREAS, on June 27, 2007 after a review of the selection process of the Arts Commission, the Town Council of Chapel Hill authorized the Town Manager to execute a contract between the Consultant and the Town to develop public artworks for the Lot 5 Downtown Project and to help with the selection of an additional artist(s) for the site.

WHEREAS, on September 27, 2007, the Town, the Developer and the Consultant entered into an initial agreement for the revision of the Arts Masterplan to reflect the deletion of the Wallace Deck site, preliminary design, and artist selection;

WHEREAS, the revised Arts Masterplan calls for the Consultant to be responsible for Art Area I and an additional artist responsible for Art Area II;

WHEREAS, that agreement contemplated that the parties would enter into a second agreement for the detailed design and construction of the Artworks, and for collaboration with the Artist selected to work on Art Area II;

NOW, THEREFORE, based upon the mutual promises contained herein and other valid and sufficient consideration, the Parties agree as follows:

ARTICLE 1: SCOPE OF WORK

The Consultant will act as Consultant for the Lot 5 Downtown Project Site, Chapel Hill, North Carolina. The Consultant will prepare a detailed design, and fabricate, deliver and install public Artworks for the Area I Lot 5 Downtown Project Site, Chapel Hill, North Carolina. Specific elements of the Consultant's Scope of Work include:

1. All stainless steel and structure for sculpture above paving level.
2. Shipping and installation of the sculpture.
3. Materials and installation of fog system components, heads and tubing (stub-out sleeves prepped by the Developer).
4. Electrical lines from electrical stub-outs above paving level.
5. Materials cost: control panel and timers for lighting and fog system components (to be installed by the Developer).
6. Insurance for sculpture, shipping and installation.
7. Plumbing and structural engineering for the sculpture.

The following items which may be performed by the Developer's building contractor at the Consultant's option are included in the Artworks contract amount:

- a. Containment reservoir for water to be used by fog sculpture.
- b. Pump for getting water from reservoir to fog control room.
- c. Plumbing and piping for getting water from containment reservoir to fog system in control room.
- d. Plumbing stub-out sleeves and waterproofing for fog lines that pass through the garage roof.
- e. Electrical Engineering and connections to fog control room.
- f. Electrical Engineering and connections to sculpture lighting.
- g. Electrical panel and Installation.
- h. Building and fit-out of fog control room.
- i. Installation of Fog Control Panel and Timer (material cost by MYK).
- j. Installation of Lighting Control Panel and Timer (material cost by MYK).

The Scope of Work for the Consultant does not include the following items within the Public Space: all paving surfaces, plant material, steps, ramps, retaining walls, landscape lighting, planters, drainage, irrigation, railings, bollards, curbs and site furnishings. These items shall be considered Public Space and, under the terms of Section 2.3 (c) of the Development Agreement, shall be included in the Developer's submission to the Town for special approval rights.

The Consultant will coordinate the overall design with an additional artist selected for Art Area II as detailed in this Agreement to maintain the vision and art concept of the Arts Masterplan revised per the

Agreement of September 27, 2007. Coordination will include reviewing and providing comment regarding the Artist's work. The Consultant will give guidance as needed for interfacing and integrating the Artworks in Art Area I and Art Area II. There will be a separate contract among the additional artist selected for Art Area II, the Town, and the Developer.

The Consultant will undertake this work in conjunction with a Public Art Review Committee, as defined below, and adhere to the guidelines of the Town's Percent for Art Ordinance.

ARTICLE 2: PROJECT LOCATION IN THE ARTS MASTERPLAN

The Lot 5 Site is approximately 1.73 acres located in downtown Chapel Hill, North Carolina, at the intersections of West Franklin, Church, and West Rosemary Streets. The portions of the Site appropriate for consideration of the installation of public art include the publicly accessible open space and surrounding streetscape, and the underground parking deck structure level one. The Arts Masterplan identifies two art areas; the Consultant will be responsible for Art Area I and coordination with of the additional artist selected for Art Area II (see map in Attachment 1).

Privately leased but publicly accessible portions of the site may be appropriate for the installation of public art if agreed to by the Developer and the Town. In this event, the Town and Developer will consider the use of easements or other appropriate legal mechanism to ensure public accessibility to the artwork and develop agreements concerning the ongoing maintenance and repair of such artwork. Adjustments or amendments to the Ground Lease of the site between the Town and the Developer may also be needed to ensure public access and permit the Town to maintain the work.

ARTICLE 3. COMMUNICATIONS AND COOPERATION

The Work shall be completed in stages, as defined in Article 4, STAGES OF WORK. Articles 4 through 11 of this Agreement establish the schedule for the detailed design and construction of the Artworks and compensation to the Consultant. As specified in Section 4.2, the Consultant shall develop a schedule for Phase II to Phase IV upon approval of Design Development. The Consultant agrees to cooperate with the Public Art Review Committee whose membership is to be comprised of representatives of the Town, the Developer, the Arts Commission and outside arts professionals (Attachment 2). The Public Art Review Committee will monitor all design efforts and products developed throughout the life of this contract.

The Public Art Administrator or his designee shall serve as the Arts staff liaison and primary contact for the Consultant and forward all communications to members of the Public Art Review Committee insofar as these communications between the Consultant and the Arts staff have direct relevance for project research and design. The Arts staff liaison will be informed of and/or copied on any communications among the Consultant, the Developer and the Town.

The Consultant agrees to be available as reasonably necessary for phone and digital consultation with the Town, the Developer, the Developer's design professionals, the Arts staff, the additional Artist selected for Art Area II, and the Public Art Review Committee, during all stages of the work.

The Town and the Arts staff liaison will arrange for and coordinate all necessary consultation among the Town, the Developer, the Public Art Review Committee, the Consultant and the selected additional Artist, the architect, and the general contractor during all stages of the Work.

The Consultant will work in coordination with the artist selected for Art Area II, in accordance with targets and schedules set forth in Article 34, SCHEDULE FOR RENDERING SERVICES.

ARTICLE 4. STAGES OF WORK

It is understood by the Consultant, the Developer, the Town, and the Public Art Review Committee that time is of the essence and revised work products shall not significantly delay the design and construction processes of the overall Lot 5 Downtown Economic Development Initiative Project.

4.1. Phase I: Design Development

The consultant will submit work for review and approval at the completion of products: Auto Cad Design Development drawings, plans with general dimensions and materials, two detailed sections, material samples, preliminary specifications and resolution of coordination with the landscape. The Consultant shall present the above deliverables to the Public Art Review Committee for its review and approval; and review this information with public constituents as recommended by the Committee. Phase I work will be completed within 90 days.

4.2. Phase II: Construction Documents

Upon written approval by the Public Art Review Committee of Phase I Design Development, the Consultant shall commence Phase II Construction Documents. The Consultant shall develop a schedule for Phase II to Phase IV upon approval of Design Development.

Phase II Construction Documents shall consist of construction-level drawings of the Artworks showing material selections and finish specifications; final color and material samples; proposed methods of fabrication; a second cost estimate that details the final costs associated with completing the Work, including design, fabrication, on-site construction, transportation, delivery installation, and post-installation maintenance of the Artworks as recommended by the Consultants; a proposed Delivery and Installation Schedule, and a written Final Recommendation of all of the required processes and an estimate of annual costs to maintain the Artworks in “like new” condition in the climate and environment of Chapel Hill, North Carolina. In addition, the Consultant shall submit a preliminary maintenance schedule, which will include approximate labor-hours for typical custodial/grounds workers, materials, special equipment and attention or inspection by Art Experts; and, a written description of the Artworks appropriate for public dissemination. Any necessary building code review will be completed during this phase of work. Phase II Construction Documents drawings shall detail all interface between the Artworks and building architecture, structure, mechanical electrical & plumbing systems, and other construction elements as may be required. It is understood by the parties that refinements to the Artworks will continue during Construction Documents phase based on structural and material requirements

The Consultant shall submit the above deliverables to the Public Art Review Committee at 50% and 100% completion. The Public Art Review Committee shall have the authority to accept, reject, or request modifications to Phase II Construction Documents proposals. Each rejection or modification to design shall award the Consultant a sufficient number of days to complete and submit a second proposal for review by the Public Art Review Committee. In the event that a

second final design proposal is not accepted by the Public Art Review Committee, the Consultant, or the Developer and the Town, will have the option to terminate this Agreement in accordance with the provisions of Article 16, TERMINATION.

Once Phase II Construction Documents has been accepted, the Public Art Review Committee will notify the Consultant in writing concerning the start date for the Fabrication of the Artworks.

The Town will have the option to request that the design proposals, or elements thereof, remain in the permanent collection of the Town of Chapel Hill, deliverable by the date of project completion.

4.3. Phase III: Fabrication

After the Consultant has received notification to begin the fabrication of the Artworks, the Consultant will have thirty (30) calendar days to deliver to the Public Art Review Committee a final fabrication, delivery, and installation schedule for the Artworks. The schedule and any deadline for delivery of the Artworks to the Lot 5 Downtown Project site will be coordinated with the Public Art Review Committee, and the on-site representatives of the Developer and the Town, and the artist selected for Art Area II.

It is understood that Fabrication of the Artworks is a complex process that requires cooperation with the Developer and the Town during this Phase of work. The Developer and the Town agree to provide the Consultant with all relevant specifications and construction drawings for the specific areas at the Sites where the Artworks will be installed. The Consultant will be responsible for creating and/or obtaining and forwarding to the Public Art Review Committee all design drawings and calculations for the fabrication and subsequent installation of the Artworks working with the Project's production architect or the firm responsible for producing construction drawings. If relevant, the drawings will illustrate the support system for the Artworks and the building structure to which the Artworks will be attached. The Consultant will rely on approved project construction documents from which to make calculations and specifications for fabrication and installation of the Artworks.

The schedule for fabrication will be reviewed by the Public Art Review Committee and, if acceptable, approved by written notice to the Consultant. Such schedule may be amended by written agreement among the Developer, the Town, and the Consultant. Should the Public Art Review Committee determine that the Artworks are not proposed to be Fabricated according to approved and accepted design proposals, the Developer and the Town shall be entitled to reject the Artworks, cease payment, and pursue all legal remedies as defined in Article 31, OTHER REMEDIES.

The Consultant shall fabricate the Artworks in accordance with the design proposals and budgets at 100% Construction Documents approved by the Public Art Review Committee. It is understood by the parties that refinements to the Artworks will continue to be made during final fabrication. Any significant change or deviation in scope, design, color, size, material, texture, or location of the Artworks must be approved in advance and in writing by the Public Art Review Committee, particularly if such change or deviation would affect installation, scheduling, or site preparation. The Committee shall have the right to review the Artworks at reasonable times during final fabrication.

The Consultant shall provide the Public Art Review Committee with progress reports of fabrication completion at 50%, 75% and 100%, which will include photographs, or other images of the Artworks for the Site. A visit to the fabricator's studio by one of more members of the Public Art Review Committee will be arranged to coincide with Consultant's visit to fabrication shop at 50% and 100% completion. During the 50% and 100% studio visits, final detail decisions will be approved by the Public Art Committee.

4.4. Phase IV: Delivery, Installation, and Construction

The Consultant shall notify the Public Art Review Committee when the Artworks are fabricated and ready for delivery to the Site. The Consultant shall be responsible for providing detailed descriptions and installation instructions for the Artworks, including recommended equipment and site preparation so that the Artwork installation can be coordinated with other ongoing work at the Lot 5 Downtown Project site. The Consultant will approve the means of delivery of the artwork and will cause to be supervised by her/his subcontractors the packing, crating, and transportation of the components of the Artworks to the Site. The Consultant will oversee and manage installation and/or construction of the Artworks at the Site. If the Artworks do not conform to the accepted design proposals, the Public Art Review Committee shall be entitled to reject the Artworks, and recommend that the Developer and the Town cease payment, and pursue all remedies available to a purchaser of goods under applicable law.

The Consultant shall be responsible for the safe delivery of the components of the Artworks to the Site in accordance with the approved Delivery and Installation Schedule. The approved schedule shall remain in effect except for delays attributable to the Developer, the Town, the general contractor, the architect, acts of God, or reasonable circumstances beyond the Consultant's control.

The Consultant shall coordinate the delivery, installation, and/or construction of the Artworks on site with the Town and Developer's designated construction managers and with the artist selected for Art Area II.

The cost for storage of the Artworks pursuant to the approved Delivery and Installation Schedule will be considered a cost of the "Public Art." Should changes in the approved Delivery and Installation Schedule caused by the Developer necessitate that the Artworks be stored beyond the anticipated storage time, the Developer agrees to be responsible for all costs associated with the storage of the Artworks and the additional cost of its transportation (if any) to and from the storage facility to the Site. If changes in the Delivery and Installation schedule are caused by the Consultant, and not previously nor mutually agreed to by the Public Art Review Committee, the Consultant will be responsible for all such costs. It is agreed that the storage site will be approved in advance by the Consultant, Developer and insurer of the Artwork.

The Consultant will notify the Town and Developer in writing when the installation of the Artworks is completed. Within seven (7) calendar days of receiving such notice, the Developer and the Town will inspect the Artworks and provide the Consultant and Subconsultants a punch list of items to be addressed. After completion of the punch list to the Developer's and the Town's satisfaction that the Artworks are in conformance with the approved final design, plans and specifications, the Town and Developer will issue a notice of the completed inspection in writing to the Consultant and Subconsultants.

The Consultant and Subconsultants will have a reasonable opportunity to address any requests or concerns of the Developer and the Town as mutually agreed upon between the Parties. The Developer and the Town shall either issue a notice of the completed inspection or notify the Consultant of nonconformities or failure to provide all services required. The Consultant and Subconsultants shall then be given a reasonable period of time not exceeding thirty (30) calendar days to correct such nonconformities and provide required services, or to come to agreement with the Developer and the Town on the steps to correct such non-conformities according to a mutually acceptable schedule. If the Developer and the Town do not notify the Consultant and Subconsultants of nonconformities or failure to provide all services required within fourteen (14) calendar days of receiving notice from the Consultant of completed installation, they shall be deemed to have determined there are no nonconformities or services required, except for warranty items in accordance with Article 12, WARRANTIES.

ARTICLE 5. LIEN WAIVERS

Within thirty (30) calendar days of notifying the Town and Developer of the completion of the Installation, the Consultant shall secure and deliver to the Town and Developer a final release and waiver of lien including lien waivers in a form acceptable to the Town for all of the Artist's subcontractors, sub-subcontractors and material suppliers.

ARTICLE 6. DOCUMENTATION OF ARTWORKS

Within thirty (30) calendar days of the Town and Developer issuing a notice of completed inspection of the Artwork, the Consultant shall provide to the Town a completed Materials and Installation Specifications Document (see Attachment 4) and a set of three different views of the Artwork in the .TIF digital format at a resolution of 3,000 pixels by 2,400 pixels. If such products are not of sufficient quality to serve as a guide to future conservation, the Town may require that they be resubmitted.

ARTICLE 7. FINAL REPORT, FINAL APPROVAL, AND ACCEPTANCE OF ARTWORKS

Within thirty (30) calendar days of the Town and Developer issuing a notice of completed inspection of the Artworks, the Consultant shall deliver to the Town a Title for the Artworks, an invoice for final payment, a Final Report that documents all materials used in the fabrication of the Artworks, and a manual for their care and long-term preservation, which shall include the recommended maintenance plan and schedule. The Town shall be responsible for appropriate maintenance and preservation of the Artworks as prescribed and documented by the Consultant. Once the Title and all required documentation have been received, and all other requirements of this Agreement have been completed satisfactorily to the Town and the Developer, the Town will issue written Final Acceptance of the Artworks and complete the final payment.

The Consultant shall be available to travel to Chapel Hill, North Carolina for any inauguration or presentation ceremonies relating to the transfer of the Artworks to the Town or another public meeting, outreach meeting, or outreach function (see Attachment 3). The Town shall use its best efforts to arrange for publicity for the completed Artworks as soon as practicable following Final Acceptance of the Artworks.

ARTICLE 8. TITLE

Title to the Artworks shall pass to the Town upon Final Acceptance and payment in full to the Consultant. Such Title shall recognize the de-accessioning policies of the Town's Percent for Art Ordinance.

ARTICLE 9. PROJECT BUDGET

Per the terms of the Development Agreement between the Town of Chapel Hill and Ram Development Company, the Developer shall expend one percent (1%) of the total development budget (with carve outs to the extent consistent with the town's Percent for Public Art Program) of the Project in order to fund the purchase and incorporation of public art that will be sited on or incorporated into the Project.

The Project Budget as defined in the Development Agreement and as approved by the Town shall be used as the total development budget for purposes of calculating the final amount to be expended for public art. If there are changes to the Project Budget, the parties may consider amending this Agreement for Commission of Public Art.

The minimum estimated amount budgeted for Art Area I and Art Area II is \$671,000. Eighty-five percent (85%, \$571,000) of the amount budgeted for art is allocated for Art Area I; this amount shall include the \$15,000 expended by the Developer for the original Masterplan work, and the \$29,000 expended for the Masterplan revision, preliminary designs for Art Area I, and selection of an artist for Art Area II. Therefore, the estimated budget for Art Area I in this contract is \$527,000 (see Attachment 5).

The amount budgeted for art shall include alterations and work performed on the project necessitated by the Public Art whether this work is performed by the Consultant or other vendors employed by the Developer.

ARTICLE 10. PAYMENT PROCEDURES

The Consultant shall submit (2) duplicate copies of invoices to the Town and the Developer for payment approval. The Developer shall indicate its approval and forward it to the designated staff person of the Chapel Hill Public Arts Commission. The Art staff liaison shall approve the completeness of work per the terms of this Agreement, and authorize the Town to pay the invoice.

Invoices for services and expenses shall be submitted according to the scheduled completion of submissions. The Town will pay approved invoices within 30 days after receipt of the invoice. Ram shall reimburse the Town within 30 days of its approval of the invoice. A services charge of 1.5% per month will be applied to the unpaid balance after 60 days. The Town and the Developer agree to pay all costs of collection, including reasonable attorneys' fees.

ARTICLE 11. COMPENSATION AND PAYMENT SCHEDULE

The Town and the Developer make no representations concerning the applicability of sales taxes to the purchase of materials by the Consultant for the Artworks. Any sales, use, or excise taxes or similar charges relating to services and materials provided under this Agreement, shall be paid

by the Consultant and identified in writing to the Town and the Developer with each invoice for payment. The Consultant shall be responsible for the payment of all mailing or shipping charges on submissions to the Town and the Developer, and the costs of all travel by the Consultant and the Consultant's agents and employees necessary for the proper performance of the services required under this Agreement.

The Town and the Developer shall pay the Consultant \$527,000 of the budget for public art as defined in Article 9, PROJECT BUDGET, which shall constitute full compensation for all services and materials to be performed and furnished by the Consultant under this Agreement. This fee shall represent total compensation for all services performed or required to be performed by this contract.

The fee shall include raw materials, fabrication supplies, installation expenses, artist fee for design and fabrication, and the first year of maintenance of the finish of the Artworks for normal wear (not including damage from fire, flood and similar extreme natural causes, vandalism, and similar negligent or purposeful acts), and photo documentation.

The Consultant shall bear the risk of increased costs due to late delivery or defective performance on the part of the Consultant. In providing services under this Agreement, the Consultant will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. The Consultant makes no warranty, either express or implied, as to the professional services rendered under this Agreement.

Payments shall be made to the Consultant within thirty (30) calendar days of receipt of accurate invoices. The fee shall be paid in nine installments, each installment to represent full payment for all services and materials provided prior to the due date thereof.

- a. Five percent (5%) upon signing of this Agreement, for work done in connection with developing the Agreement.
- b. Five percent (5%) upon the acceptance by the Public Art Review Committee of Phase I: Design Development.
- c. Six percent (6%) upon the submission of 50% Construction Documents.
- d. Four percent (4%) upon the submission and acceptance by the Public Art Review Committee of 100% Construction Documents.
- e. Thirty percent (30%) upon the acceptance by the Public Art Review Committee of Phase III: Fabrication Schedule.
- f. Twenty percent (20%) upon 50% completion of Phase III: Fabrication with submission of photos of sculpture in progress.

- g. Fifteen percent (15%) upon 100% completion of Phase III: Fabrication with submission of photos and approval by Consultant.
- h. Ten percent (10%) upon approval by the Developer and the Town of Phase IV: Delivery and Installation of the Artworks at the Lot 5 Downtown Redevelopment Project site.
- i. Five percent (5%) upon completion of the scope of services of this Agreement, submission of Lien Waiver, Final Acceptance, and transfer of Title.

Provided, however, that in the event the Consultant does not complete the above scope of services as specified in this Agreement as it may be amended by the Parties, the Developer and the Town shall be entitled to prorated reimbursement for all installment payments made after payment “a” above for work that was not completed. If the Developer or the Town, however, chooses to terminate the agreement through no fault of the Consultant, the Consultant will retain all payments made up to the point of termination.

ARTICLE 12. WARRANTIES

The Consultant represents and warrants that (a) the Artworks are solely the result of the artistic effort of the Consultant; (b) except as otherwise disclosed in writing to the Town, the Artworks are unique, editions of one, and original and do not infringe upon any copyright such that the Consultant obtains rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq.; (c) the Consultant has not transferred or licensed any interest in the copyright; (d) that the Artworks, or duplicates thereof, have not been accepted for sale elsewhere; (e) the Consultant nor the Consultant’s agents will execute or authorize another to execute another work of the same or substantially similar image, design, dimensions, and materials as the Artworks; (f) the Artworks are free and clear of any liens from any source whatever; and (g) the Consultant will oversee and administer construction of the Artwork by the Subconsultants in order to secure compliance by the Subconsultants with the terms of this contract, and to the plans and specifications.

The Town warrants that (a) the Sites to receive the Artworks are in conformance with the specifications set forth in the approved and accepted Delivery and Installation Schedule and Installation instructions; (b) the Town has obtained all necessary permits and licenses for the Installation of the Artworks; and (c) the Town has informed the Consultant of any and all requirements necessary for Installation of the Artworks at the Site.

The Consultant affirms that reasonable maintenance of the Artworks will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Consultant, and affirms that the Artworks will not pose a danger to public health or safety in view of the possibility of reasonable misuse, if such misuse is in a manner that was reasonably foreseeable during any phase of design.

The Consultant shall arrange for the Subconsultants to warrant the materials, fabrication, and functionality of the Artwork and to carry insurance for any damage that occurs during fabrication, shipping or installation for the full material and construction cost of the arts project. The Consultant shall arrange for the Subconsultants to provide the Town with copies of all written warranties and insurance policies associated with construction, fabrication, and

installation of the Artworks. Such warranties and insurance policies will name the Town as beneficiary and contain warranties that the Artwork will be executed and fabricated in a professional manner.

The Consultant shall arrange for the Subconsultants to represent and warrant to the Town that (a) the execution and fabrication of the Artworks will be performed in a professional manner; (b) the Artworks, as fabricated and installed, will be free of defects in material and workmanship, including any defects consisting of “inherent vice” or qualities which cause or accelerate deterioration of the Artworks; and (c) that the Artworks will not pose a danger to public health or safety in view of the possibility of reasonable misuse, if such misuse is in a manner that was reasonably foreseeable during any phase of fabrication and installation.

The Subconsultants’ warranties described above shall survive for a period of one (1) year after the Final Acceptance of the Artworks. The Town shall give notice to the Artist of any observed breach with reasonable promptness. The Consultant shall, at the request of Town, and at no cost to Town, promptly correct the breach of any warranty which is correctable and which correction is consistent with professional conservation standards (including for example, repair or refabrication of the Artworks).

ARTICLE 13. RISK OF LOSS

The Consultant shall demonstrate that insurance in the amount of 100% of the replacement cost of the art work is in place. The risk of loss or damage to the Artwork shall be borne by the Consultant until the Artwork is installed on the site, the Consultant and Subconsultants have completed all punch list items, and the Town and Developer have issued a notice of completed inspection. The Consultant shall take such measures as are necessary to protect the Artwork from loss, damage, or vandalism until such time. Notwithstanding the above, the Artwork shall be covered by the Town’s insurance once the Consultant and Subconsultants have completed all punch list items and the Town and Developer have issued a notice of completed inspection.

ARTICLE 14. INSURANCE

The Consultant shall purchase and maintain professional liability Insurance and the Subconsultants shall purchase and maintain General liability insurance until the Town and Developer have issued a notice of completed inspection. The Consultant and the Subconsultants shall purchase and maintain insurance from an insurance company acceptable to the Town and authorized through the term of this contract to do business in the State of North Carolina. Consultant shall agree to insure the Artworks against loss by fire, theft, vandalism, or any damage during fabrication, storage, transportation, and installation of the Artworks until midnight of the day on which the Town and Developer have issued a notice of completed inspection.

The Town of Chapel Hill will not compensate the Consultant for loss or damage of the Artworks before they are installed at the Lot 5 Downtown Redevelopment Project site and Final Acceptance has been made. In the event of loss or damage, it will be the responsibility of the Consultant to cover costs associated with the replacement of the Artworks. In the event of loss or damage and where any insurance proceeds are paid to the Developer and the Town, the Developer and the Town shall make a determination as to whether the Artworks shall be restored, reconstructed, recreated, or abandoned. If the Developer and the Town determine that

the Consultant shall restore, reconstruct, or recreate the Artworks, all insurance proceeds received by the Developer and the Town shall be paid to the Consultant to the extent the proceeds are necessary for such restoration, reconstruction, or recreation.

Such insurance shall include comprehensive general liability insurance covering, bodily injury and property damage in the amount of at least \$1,000,000.00 bodily injury, each occurrence/aggregate, and at least \$1,000,000.00 property damage, each occurrence/aggregate, and at least \$2,000,000.00 bodily injury and property damage combined single limits, each occurrence/aggregate, which insurance includes coverage for contractual liability, personal injury liability and products/completed operations. The Developer and the Town shall be named as additional insured on all such policies. The Consultant shall furnish the Town with a Certificate of Insurance, which shall contain a provision that Town shall be given thirty (30) days written notice prior to any amendment or termination of the policy by either the insured or the insuring company.

The Consultant certifies and the Developer and the Town acknowledge that the Consultant will have employees during the duration of the contract and is therefore under obligation to procure Worker's Compensation, Accident, and/or Unemployment Insurance according to the statutory requirements of the appropriate jurisdictions(s). Consultant also agrees to bind contractually under written agreement any American subcontractor of the Consultant retained for fabrication of the Artworks to comply with appropriate Worker's Compensation requirements.

ARTICLE 15. INDEMNIFICATION

The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Town and the Developer, their officers, directors and employees, against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Consultant's negligent performance of professional services or any other act under this Agreement and that of subconsultants or anyone for whom the Consultant is legally liable.

Additionally, the Consultant shall indemnify and hold harmless the Town and the Developer from and against any lien claim of the Consultant, the Consultant's subcontractors, and their respective subcontractors and material suppliers, or any other source.

To the extent allowed by law, the Developer shall indemnify and hold harmless the Consultant for all claims against the Consultant for personal injury or wrongful death or property damage arising out of the negligence of any officer or employee of the Developer. To the extent allowed by law, the Town shall indemnify and hold harmless the Consultant for all claims against the Consultant for personal injury or wrongful death or property damage arising out of the negligence of any officer or employee of the Town.

ARTICLE 16. TERMINATION

In the event of termination of this Agreement by either party, the Town and the Developer shall, within fifteen (15) calendar days of termination, pay the Consultant for all services rendered and all reimbursable costs incurred by the Consultant up to the date of termination and approved pursuant to Article 11, COMPENSATION AND PAYMENT SCHEDULE, in accordance with payment provisions of this Agreement.

The Town and the Developer jointly may terminate this Agreement for their convenience and without cause upon giving the Consultant not less than seven (7) calendar days' written notice.

Either the Consultant or the Town and the Developer acting jointly may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days' written notice for the following reasons:

- Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
- Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
- Material changes in the conditions under which this Agreement was entered into, the Scope of Services, or the Lot 5 site parameters as defined in Article 2, PROJECT LOCATION IN THE ARTS MASTERPLAN; or the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

In the event of any termination that is not initiated by the Consultant or is without cause, the Town and the Developer shall pay the Consultant, in addition to payment for services rendered and reimbursable costs incurred and approved pursuant to Article 10, PAYMENT PROCEDURES, for reasonable overhead expenses consistent with other charges associated with work completed by the Consultant.

ARTICLE 17: SUSPENSION OF PERFORMANCE BY DELAY

Delay beyond the control of the Consultant that prohibits or impedes performance by the Consultant of his/her contractual obligations will excuse the Consultant from performing for so long as such event occurs, including, but not limited to: previously scheduled use of the space; the state of construction of the Site should such sitework directly affect the delivery and installation of the Artworks; or the failure of the Developer's or Town's contractors and staff to adequately and timely perform their coordination functions and deliveries and may authorize reimbursement of additional expenses. The Parties agree to notify each other in writing of any such delays that may affect the delivery of the work products as set forth in the approved schedule. If such a Delay exceeds ninety days (90) calendar days, the Parties will have the option to amend the schedule for the delivery of work products and renegotiate the terms of the Compensation and Payment Schedule to the Consultant as set forth in Article 11, COMPENSATION AND PAYMENT SCHEDULE. However, the Parties affirmatively acknowledge that timely completion of the Lot 5 Downtown Redevelopment Project shall take precedence over the completion of the installation of the Artworks should it be that delays created by the Consultant will delay completion of the Lot 5 Downtown Initiative Project.

The Parties agree that the terms agreed to in the contract may be suspended upon mutual agreement if performance is prevented by a condition beyond the control of the Parties such as acts of God, war, civil insurrection, government action, or public emergency insofar as these conditions effect the Site. The duration of Suspension shall last only as long as such unforeseen occurrence exists. The Consultant agrees to commence work he has agreed to perform, and

which is binding under this Agreement, when informed in writing by the Town that he may resume his contractual obligations.

ARTICLE 18. ILLNESS, INJURY, DEATH, OR INCAPACITY

Should the Consultant become ill, injured, die, or otherwise incapacitated such that the Consultant is unable to work for any period of time not exceeding thirty (30) consecutive days, any delay arising out of such Incapacity will be allowed by the Developer and the Town whenever it is practical to do so, considering the facts and circumstances of the incapacity; the status of the Artworks; the architect; the general contractor; and, the Developer and the Town. The Developer and the Town reserve the right to require the Consultant to provide medical certification of any claimed Incapacity. In the event that the Consultant is incapacitated for a period exceeding thirty (30) consecutive days, the Developer and the Town may, at their option, undertake to complete and install the Artworks in the Consultant's absence with the cooperation of the Consultant's heirs and/or assigns only insofar as such options and acts do not violate any terms and conditions set forth in this Agreement. It is agreed that should the Developer and the Town undertake to complete and install the Artworks, this work will be completed by the Consultant's designated fabricators.

It is mutually understood that the work to be completed by the Consultant is unique and personal to the Consultant, and aspects of development and design of the Artworks may not be capable of being completed by anyone other than the Consultant. The Developer and the Town may, at its option and depending upon the Phase of Work underway during the moment and time of Incapacity, undertake to complete the final Artworks should such action result in a substantially similar product to that designed by the Consultant. If the Developer and the Town undertake to complete the Artworks, the Developer and the Town shall give due consideration to the Consultant's suggestions and the Consultant shall preserve the right to disclaim authorship of the Artworks. If the Developer and the Town exercise their option to implement the Artwork in the Consultant's absence, any compensation payable to the Consultant shall be reduced by the costs and expenditures of the Developer and the Town in completion and installation of the Artworks.

ARTICLE 19. COPYRIGHT PROVISIONS

Following Installation and Final Acceptance of the Artworks, the Town shall have and own all right, title, and interest in and to the physical media embodying or encompassing the Artworks. Both before and after such Installation and Acceptance, the Consultant shall retain all rights he may have under the Copyright Act of 1976, USC 101 et seq., and all other intellectual property rights in and to the Artworks, the design proposal and all elements thereof, and incidentals except, as expressly provided in this Agreement.

The Consultant hereby grants to the Town and the Developer, and any agency thereof, nontransferable, non-exclusive licenses authorizing the Town and the Developer to:

- (a) Make and authorize the making of photographic or other two-dimensional reproductions of the Artworks, including film, video, electronic, photographic, and other reproductions of the Artworks in whole or in part, and to utilize such reproductions that faithfully depict the Artworks in conjunction with and as part of educational, public relations, arts, promotional, advertising, and other commercial-retail-revenue-generating purposes in any and all media now known or hereafter invented provided that the Town and the Developer shall not sell such reproductions without the prior consent of the

Consultant. The Town and the Developer will reach an agreement with the Consultant regarding compensation for sale of catalogues, books, slides, photographs, postcards, calendars, magazines, books, and news services featuring Artworks;

(b) Register the Artworks under the Copyright Act or renew any registration so long as such registration includes the Consultant as the owner of the Copyright of the Artworks, and;

(c) Initiate and prosecute any suit for the infringement of the Copyright of the Artworks. The Town and the Developer shall not be obligated to pay any royalty for such licenses. The Town and the Developer shall give credit to all reproductions by or on behalf of the Town (to the extent authorized herein.) The credit shall contain a credit to the Consultant and Copyright notice as follows:

“Copyright © 200[-] Mikyoung Kim. All Rights Reserved.”

The Consultant agrees to the following covenants limiting the retained Copyright of the Consultant as follows:

(d) The Consultant shall not transfer any Copyright interest or privilege in and to the Artworks without the prior consent of the Town and the Developer;

(e) The Consultant shall not display any reproduction of the Artworks for commercial purposes without the prior consent of the Town and the Developer;

(f) The Consultant shall provide credit to the Town and the Developer in all reproductions and displays (to the extent authorized herein) reading substantially, “Original Artworks commissioned by the Town of Chapel Hill, North Carolina.”

ARTICLE 20. CREDITS

The Town agrees to place plaque(s) the size and materials of which are to be approved by the Public Art Review Committee, in areas adjacent to the Artworks that identify the name of the Artist, the titles of the Artworks, and the year of their completion.

ARTICLE 21. OWNERSHIP OF INSTRUMENTS OF SERVICE

The Town/and Developer acknowledges the Consultant's construction documents, including electronic files, as instruments of professional service. Nevertheless, the final construction documents prepared under this Agreement shall become the property of the Town upon completion of the services and payment in full of all monies due to the Consultant. The Town/Developer shall not reuse or make any modification to the construction documents without the prior written authorization of the Consultant. The Town and Developer agree, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the construction documents by the Town/ Developer; or if, as a result of any negligence or intentional error by the Town/Developer, by any other person or entity that acquires or obtains the construction documents without the written authorization of the Consultant.

ARTICLE 22. REPAIR AND MAINTENANCE

The Consultant shall provide the Town a written maintenance plan and instructions for the Artworks. The Consultant shall describe in this plan any unique materials, cleaning products

needed, and techniques for on-going maintenance. The Town will be responsible for the routine inspection and maintenance of the Artworks in accordance with the written maintenance plan and instructions provided. The Town will consult with the Consultant in the event that the Artworks require repair or renovation. However, the Town retains the right to determine when and if repairs and restorations to the Artworks will be made. The Consultant will not be responsible for damage or degradation of the sculpture due to negligence in maintenance of the piece as outlined in the Consultant's Final Report and recommended maintenance plan as required by Article 7, FINAL REPORT, FINAL APPROVAL, AND ACCEPTANCE OF ARTWORKS.

The Town shall also make every reasonable effort to give the Consultant an opportunity to approve all material repairs and restorations, or to commission the Consultant make said repairs, including replacement of broken or worn components being fabricated by the same fabricator that originally provided them.

Both Parties agree that neither the Town nor the Consultant shall unreasonably withhold or delay the determination of the scope and expense of repairs. If the Consultant cannot be located at the notice address or unreasonably fails to approve any repair or restoration, the Town shall have the right to make such repair or restoration without consulting the Consultant. To a reasonable extent, the Consultant shall be given the opportunity to make or personally supervise significant repairs and restorations. Nevertheless, the Town shall have the right to make any repairs it deems fit to the Artworks if reasonable efforts to work with the Consultant are not successful. Any compensation to be paid to the Consultant for repairs, if at all, shall be the subject of another agreement.

In the event of damage or the determination of a hazardous condition which results in the removal of the Artworks from the Site, the Town, subject to available funding and approval by the appropriate Town Officials, will to its best ability work with the Arts Commission and the Consultant to maintain, reconstruct, or replace the Artworks. To a reasonable extent, the Town will consult with the Consultant and work to the best of its ability to maintain, reconstruct, or replace the Artworks.

ARTICLE 23. DESTRUCTION OR REMOVAL OF THE ARTWORKS

The Town attests that it will first notify the Consultant if it plans to dismantle or remove the Artworks from the Site. Such notification shall be made twenty-one (21) days prior to any such action. During the Consultant's lifetime, the Consultant will have the right to approve such action, and to propose alternatives to the Town's potential action. Should the Parties not be able to reach a mutually satisfactory and agreeable course of action for the modification, destruction, or removal of the Artworks, the Parties agree to consider that the issue be submitted to mediation pursuant to the provisions of Article 32, MEDIATION. The consultant will not be held liable for any damages or hazardous conditions due to the removal of the artwork from the site.

In the case that the Site is no longer appropriate for the Artworks, but that the function of the Artworks as symbolic, historic, and/or decorative remains, the Town will to the best of its ability work with the Arts Commission and the Consultant to relocate the Artworks within the Town of Chapel Hill.

The Town reserves the right to deaccession the Artworks if it determines it is not possible to reconstruct, maintain, or replace the Artworks or if the Artworks are determined to be detrimental to public safety. The Consultant or the Consultant's estate will have the first option to reclaim the Artworks from the Town in accordance with applicable law regulating the disposition of such property by the Town.

It is the Consultant's responsibility to notify the Town at the Town's address listed in Article 33, NOTICES, each and every time the Consultant changes address. The Town recommends that after a period of ten (10) years the Consultant notify the Town in writing with the Consultant's most recent contact information (address, telephone, etc.) even if such information has not changed. After the ten (10) year notice the Town recommends that the Consultant notify the Town every five (5) years.

ARTICLE 24. NO AGENCY

The Consultant shall perform all work as an independent contractor and not as an agent or an employee of the Developer or the Town. The Consultant shall not be supervised by any employee or official of the Developer or the Town nor shall the Consultant exercise supervision over any employee or official of the Developer or the Town.

ARTICLE 25. WAIVER

No waiver of performance by either party shall be construed or operate as a Waiver of any subsequent default of any terms, covenants, and conditions of this Agreement. The payment or acceptance offers for any period after a default shall not be deemed a Waiver of any right or acceptance of defective performance.

ARTICLE 26. GOVERNING LAW

This Agreement, regardless of where executed or performed, shall in all respects be governed by and construed in accordance with the laws of the State of North Carolina, excluding any choice of law rule which would select the application of the law of another jurisdiction.

ARTICLE 27. BINDING EFFECT

This Agreement shall be binding upon and shall inure to the benefit of the Developer, the Town, and the Consultant and their respective successors and assigns as permitted under this Agreement.

ARTICLE 28. ASSIGNMENT

This Agreement may not be assigned without the prior written approval of all of the Parties. Any purported assignment of this Agreement without such approval shall be absolutely void.

ARTICLE 29. NON-DISCRIMINATION

In matters of employment, provision of services, and contracting, the Art Consultant agrees to act without regard to race, color, sex, religion, age, national origin, sexual orientation, gender identity, gender expression, or handicapped status.

ARTICLE 30. AMENDMENTS

This Agreement may only be amended by written amendments signed by all of the Parties.

ARTICLE 31. OTHER REMEDIES

The specification of Remedies in this Agreement shall not be deemed to be exclusive. The Developer and the Town retain the right to pursue any remedies available for defective or delayed performance, including specifically the right to withhold payments for any damages for defective or delayed performance against any sum due the Consultant under this Agreement.

ARTICLE 32. MEDIATION

All disputes or controversies that may arise between the Parties with respect to the performance, obligations, or rights of the Parties under this Agreement, including disputes as to the physical acceptability of the Artworks or any alleged breach thereof, shall be settled by a Mediated Dispute Settlement process to be held in Orange County, North Carolina. However, consideration of artistic merit being a matter for the exclusive determination of the Art Consultant, no dispute or controversy may arise with respect thereto. If the parties to the dispute are able to agree on a mediator or a process for selection of a mediator for the conference, they shall also schedule a date for the Mediation, which shall be conducted within forty-five (45) days of the request for mediation. If the Parties to the dispute are unable to agree on a mediator for the conference, the mediator shall be selected according to the following procedure:

- a. The name of a certified mediator in the North Carolina Judicial District 15-B shall be selected at random from among a list of all mediators certified in District 15-B according to the local rules for Civil Superior Court, Judicial District 15-B.
- b. In the event the mediator selected to serve is unable to serve, the random selection process shall continue until a mediator is selected who can serve.
- c. Upon selection of a mediator by the method, the mediator shall schedule a date for Mediation, which shall be conducted within forty-five (45) days of the selection.

In the event the dispute resolution process does not lead to a full resolution of the matters in dispute, all parties may use other legally available procedures to seek resolution of the disputed matters. The cost of the dispute resolution process shall be divided equally among the Parties involved in the dispute.

ARTICLE 33. NOTICES

All notices, requests, demands, and other communications, which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given

upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, at the following addresses or such other address as specified in writing from time to time by the party receiving notice:

a. if to RAM DEVELOPMENT COMPANY, to:

John Florian
RAM Development Company
516 West Peace Street
Raleigh, NC 27603
(919) 834-5595, Ext. 4390

b. if to the TOWN, to:

Roger Stancil, Town Manager
405 Martin Luther King, Jr. Blvd.
Chapel Hill, NC 27514
(919) 968-2744

c. if to the ART CONSULTANT, to:

Mikyoung Kim
33a Harvard St no.300
Brookline, MA 02445
(617) 738-9130

ARTICLE 34. SCHEDULE FOR RENDERING SERVICES

Time is of the Essence with respect to the obligations of the Parties hereunder. The Consultant has prepared and submitted for the Town and the Developer's approval the attached schedule for the performance of the Art Consultant's services, including coordination of the phases of work (see Attachment 3). This schedule includes reasonable allowances for review and approval times required by the Town and the Developer, performance of services by the Town and the Developer's consultants, and review and approval times required by public authorities having jurisdiction over the Project. This schedule shall be equitably adjusted as the Project progresses, allowing for changes in scope, character or size of the work as requested by the Town and the Developer, or for delays or other causes beyond the Consultant's reasonable control.

This Contract is between the Town of Chapel Hill, Ram Development Company, and Mikyoung Kim for the detailed design, fabrication, delivery, and installation of Public Artworks at the Lot 5 Downtown Project.

IN WITNESS WHEREOF, the parties hereunto cause this agreement to be executed in their respective names.

MIKYOUNG KIM

[Signature]
SIGNATURE

Mikyoung Kim
PRINTED NAME & TITLE

[Signature]
ATTEST

Wileen Kao, Designer
PRINTED NAME & TITLE

RAM DEVELOPMENT COMPANY

[Signature]
SIGNATURE

JOHN E. FLORIAN, SR VICE PRESIDENT
PRINTED NAME & TITLE

[Signature]
ATTEST

JONATHAN M. KEENER Development Manager
PRINTED NAME & TITLE

TOWN OF CHAPEL HILL

Florentine Miller, Deputy
ASSISTANT/DEPUTY/TOWN MANAGER



ATTEST BY TOWN CLERK:

[Signature]
TOWN CLERK

TOWN SEAL HILL

Town Clerk attests date this the 31 day of July, 2008.

Approved as to Form and Authorization

[Signature]
TOWN ATTORNEY

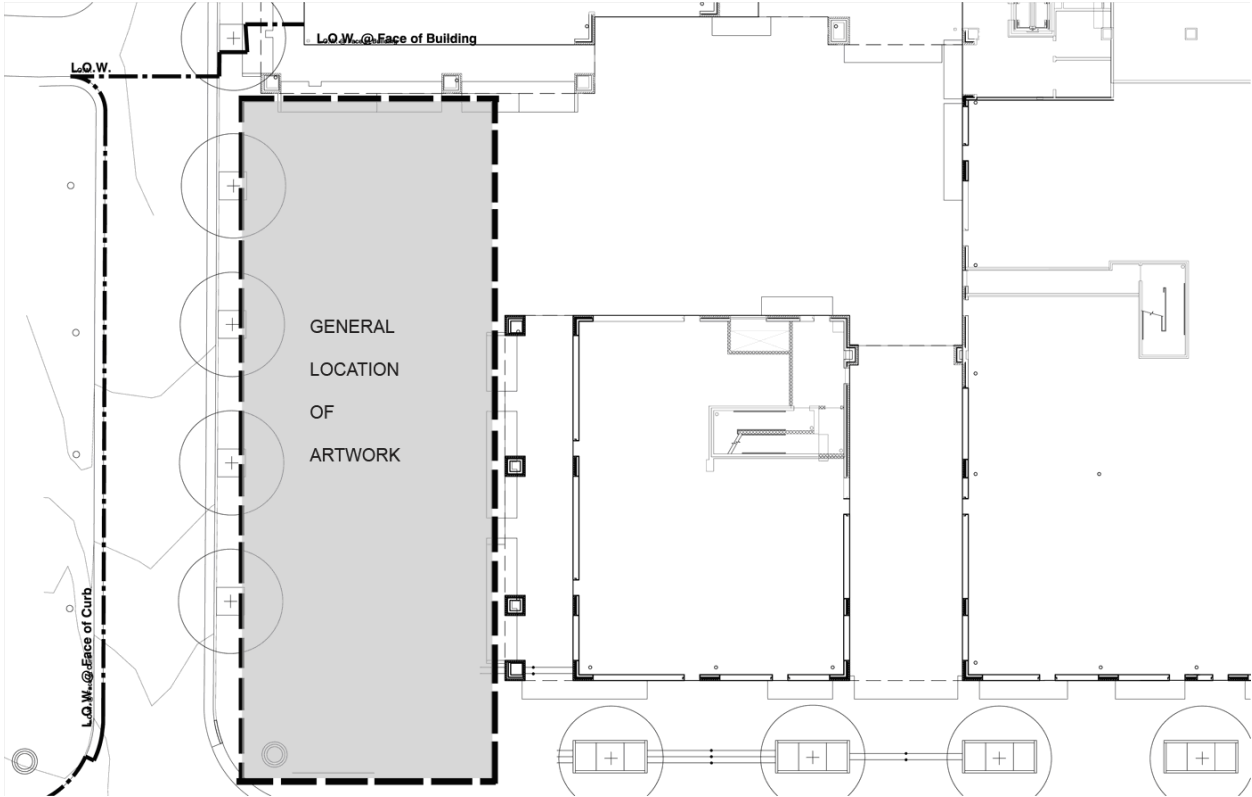
This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

[Signature] 7/28/08
FINANCE DIRECTOR

[Signature]
ASSISTANT TOWN MANAGER

**ATTACHMENT 1
SITE PLAN OF LOT 5 SHOWING ART AREA**

This area show the specific area where the art is installed, the arts budget is not covering any of the work done in the street or in the inner courtyard.



ATTACHMENT 2
LOT 5 DOWNTOWN PUBLIC ART REVIEW COMMITTEE

Bruce Heflin
Assistant Town Manager
Town of Chapel Hill
405 Martin Luther King, Jr. Blvd.
Chapel Hill NC 27514
T: 919.968.2742
E: bheflin@townofchapelhill.org

George Small
Engineering Director
405 Martin Luther King, Jr. Blvd.
Town Hall, 3rd Floor
Chapel Hill, NC 27514
T: 919.968.2833
E: gsmall@townofchapelhill.org

Peter D. Cummings, Chairman
Ram Development Company
4801 PGA Boulevard
Palm Beach Gardens, FL 33418
T: 561.630.6110
E: pcummings@ramrealestate.com

John Florian
Vice President, Development
Ram Development Company
516 West Peace Street
Raleigh, NC 27603
T: 919.645.4390
E: jflorian@ramrealestate.com

John E. Felton
Cline Design
125 N. Harrington Street
Raleigh, North Carolina 27603
T: 919-833-6413
E: johnF@clinedesignassoc.com

Dail Dixon
Dixon Weinstein Architects, PA
431 West Franklin Street, Suite 25
Chapel Hill, NC 27516
T: 919.968.8333
E: dail@dixonweinstein.com

Gerald D. Bolas
508 Hawthorne Lane
Chapel Hill, NC 27517
T: 919.923.2331
E: gdbolas@nc.rr.com

Haig Khachatoorian
Chapel Hill Public Arts Commission
304 North Boundary Street
Chapel Hill, NC 27514
T: 515-8331
E: haig_khachatoorian@ncsu.edu

Jeffrey York
Public Art Administrator
405 Martin Luther King, Jr. Blvd.
Chapel Hill, NC 27514
T: 919.968-2750
E: jyork@townofchapelhill.org

ATTACHMENT 3

Schedule for Performance of the Work

Phase I: Design Development (60 days)

Trip #1: Presentations to Public Art Review Committee and Public Constituents. Chapel Hill, NC

Phase II: Construction Documents

Schedule for Phase II to Phase IV will be submitted by the consultant upon approval of Design Development.

Conference Call coordination of Sculpture to Landscape

Trip #2: Meeting at Fabricators for work session

Submission of 50% and 100% CD's to Public Arts Review Committee

Phase III: Fabrication

Trip #3 Meeting at Fabricators for 50% completion approval with Representative from Chapel Hill/RAM

Trip #4 Meeting at Fabricators for 100% completion

Submission of Shop Drawings and Refinement Drawings to Public Art Review Committee

Phase IV: Delivery + Installation

Trip #5: Meeting on Site with Fabricator and Design Team in Chapel Hill

Review of Maintenance requirements

Trip #6: Meeting on Site for final approval and punchlist. Photography

Public Opening

Trip #7: Upon Completion attendance for Inauguration Ceremony

Submission of Final Report and Final Documentation/ Photos

ATTACHMENT 4

MATERIALS AND INSTALLATION SPECIFICATIONS DOCUMENT (To Be Completed 30 Days After Acceptance)

[PROJECT NAME INSERTED HERE]

Note: Please add attachments to provide comprehensive information for the following:

I. Artist Information:

- A. Name
- B. Date of Birth
- C. Place of Birth
- D. Address
- E. Phone
- F. Email
- G. One paragraph biography of artist

II. Work of Art:

- A. Title
- B. Media
- C. Dimensions
- D. Artist's Statement
- E. Date(s) artwork was executed

III. Fabrication Information:

- A. Material(s) (Artwork)
- B. Material Finish
- C. Materials used in the presentation of the artwork
- D. Fabricator (name, address, phone)
- E. Fabrication method (attach diagrams or drawings)

IV. Installation:

- A. Installation executed by (name, address, phone)
- B. Installation Method (attach diagram of substructure, footings)
- C. Date of installation

V. External Factors:

- A. Describe physical positioning of the artwork
- B. Describe existing environmental factors which may affect the condition of the artwork
- C. If the work is site-specific, describe the relationship of the work to its site

VI. Purchase Information:

- A. Date of Completed Installation
- B. Purchase Price
- C. Estimated Value

VII. Maintenance:

- A. Short-term
- B. Long-term
- C. Note desired appearance of the artwork

Signature

ATTACHMENT 5
Estimated Budget for Art Area I

(See attached Concept Design Statement of Probable Construction Cost, June 24, 2008 by Mikyoung Kim)

| | | | | |
|---|---|------------------|-----------------------------------|---------------------|
| 140 West Commissioned Art, Chapel Hill, North Carolina | | | | |
| CONCEPT DESIGN STATEMENT OF PROBABLE CONSTRUCTION COST | | | | |
| Artist: Mikyoung Kim | | | | |
| 24 June 2008 | | Prepared by: MMG | | Checked by: MYK/WM |
| NO. SUMMARY | | | | |
| 1.00 | Project Administration | | | \$122,810.00 |
| 2.00 | Plaza Art | | | \$354,150.00 |
| 3.00 | Insurance | | | \$1,110.00 |
| 4.00 | Photography | | | \$6,000.00 |
| | | | Subtotal Construction Cost | \$484,070.00 |
| 4.00 | Construction Contingency - 6% | | | \$28,407.90 |
| 5.00 | Project Escalation - 3% (1 Year Time Period) | | | \$14,522.10 |
| | | | TOTAL PROJECT COST | \$527,000.00 |
| | Note: 2.00 Plaza Art Includes Coordination Items Listed Below | | | |
| | Containment reservoir for water to be used by fog sculpture, Plumbing and piping for getting water from reservoir to containment reservoir and then to fog system in control room, Plumbing stub-out sleeves for fog lines that pass through the garage roof, Electrical for fog control room, Electrical for sculpture lighting, Electrical panel and Installation, Building and fit-out of fog control room, Fog Control Panel and Timer and Installation, Lighting Control Panel and Timer and Installation. | | | |

| 140 West Commissioned Art, Chapel Hill, North Carolina | | | | | |
|---|----------|-----------------|-------------------------------------|---------------------|--------------------|
| PRELIMINARY DESIGN STATEMENT OF PROBABLE CONSTRUCTION COST | | | | | |
| Artist: Mikyoung Kim | | | | | |
| 11 June 2008 | | Prepared by: MG | | | Checked by: MYK/WM |
| 1.00 PROJECT ADMINISTRATION AND DESIGN | | | | | |
| ITEM | QUANTITY | UNIT | UNIT COST | SUBTOTAL | |
| Travel: Airfare (6 Trips- 2 people) | 6 | EA | \$700.00 | \$4,200.00 | |
| Travel: Car (6 Days) | 6 | EA | \$200.00 | \$1,200.00 | |
| Travel: Hotel (6 Nights - 2 People) | 6 | EA | \$560.00 | \$3,360.00 | |
| Travel: Food (6 Days - 2 People) | 6 | EA | \$100.00 | \$600.00 | |
| Reimbursable Materials: Drawing Reproduction and Xerography | 1 | LS | \$1,000.00 | \$1,000.00 | |
| Reimbursable Materials: Models, Mock-ups, Material Studies | 1 | LS | \$4,000.00 | \$4,000.00 | |
| Art: Design | 1 | LS | \$76,750.00 | \$76,750.00 | |
| Art: Fabrication | 1 | LS | \$19,200.00 | \$19,200.00 | |
| Consultants: Initial Fabricator Project Review (Mock-ups, etc.) | 1 | LS | \$8,000.00 | \$8,000.00 | |
| Consultants: Electrician for Installation | 1 | LS | \$1,500.00 | \$1,500.00 | |
| Consultants: Plumbing Engineer | 1 | LS | \$2,500.00 | \$2,500.00 | |
| Consultants: Lighting Designer | 1 | LS | \$500.00 | \$500.00 | |
| | | | | | |
| | | | Total Project Administration | \$122,810.00 | |
| 2.00 PLAZA ART | | | | | |
| ITEM | QUANTITY | UNIT | UNIT COST | SUBTOTAL | |
| AMUNEAL SCOPE (Material, Install, and Coordination) | | | | | |
| Sculpture Type A | 1 | EA | \$23,000.00 | \$23,000.00 | |
| Sculpture Type B | 5 | EA | \$48,000.00 | \$240,000.00 | |
| 3/16" Thick Stainless Steel Skin with Custom Perforations, 6" Overlap | | | | | |
| Mounting Posts for Anchoring to the Ground | | | | | |
| Sculpture Cap, Both Ends | | | | | |
| Delivery to Site | | | | | |
| Installation on Site | | | | | |
| Review and Seal by Structural Engineer | | | | | |
| Inner Structural Support | | | | | |
| Non-Directional Finish | | | | | |
| Site Cleanup | | | | | |
| | | | | \$263,000.00 | |
| MYKD SCOPE (Material, Install, and Coordination) | | | | | |
| Light Fixtures in Sculptures | 6 | EA | \$400.00 | \$2,400.00 | |
| Lighting Electrical Connections/Modificaitons | 1 | LS | \$5,000.00 | \$5,000.00 | |
| Lighting Contol Panel | 1 | LS | \$500.00 | \$500.00 | |
| Fog Emitter: Filtration and Treatment (Manufacturer: Truefog, Inc.) | 1 | EA | \$8,000.00 | \$8,000.00 | |
| Fog Emitter: Pump (Manufacturer: Truefog, Inc., Model: TFEZ2545E) | 1 | EA | \$4,000.00 | \$4,000.00 | |
| Fog Emitter: Water Conduit (Flexible Nylon Hose and SS Nozzles) | 550 | LF | \$25.00 | \$13,750.00 | |
| Fog Control Panel | 1 | LS | \$700.00 | \$700.00 | |
| Fog Line Installation/Modificaitons (2 people @\$85 hr) | 5 | DAY | \$1,360.00 | \$6,800.00 | |
| | | | | \$41,150.00 | |
| RAM SCOPE (Material, Install, and Coordination) | | | | | |
| Addition to P-2 Level Storage Vault for Fountain Reservoir | | | | | |
| Pump from Vault to Fountain Mechanical Room | | | | | |
| Plumbing and Piping for Getting Water from Storage Vault to Fog System | | | | | |
| Plumbing Stub-Out Sleeves and Waterproofing for Fog Lines, Through Garage Roof to Plaza Level | | | | | |
| Electrical Supply to Control Room | | | | | |
| Electrical Supply to Sculptures | | | | | |
| Electrical Panel in Control Room | | | | | |
| Build and Fit-Out of Fountain Mechanical Room | | | | | |
| | | | | \$50,000.00 | |
| | | | Total Plaza Art | \$354,150.00 | |
| 3.00 INSURANCE | | | | | |
| ITEM | QUANTITY | UNIT | UNIT COST | SUBTOTAL | |
| Contractor Insurance (Transporting and Storing Sculpture) | 1 | LS | \$1,110.00 | \$1,110.00 | |
| | | | Total Insurance | \$1,110.00 | |
| | | | Subtotal Construction Cost | \$484,070.00 | |