



## **Art in Public Places Advisory Committee Meeting Agenda**

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Monday, June 24, 2024, 5:00 PM  
EXECUTIVE CONFERENCE ROOM - 3RD FLOOR  
1 Civic Center Circle  
Brea, CA 92821

**Kristin St. Clair**, Chair      **Margee Hills**, Vice Chair      **Pat Fox**, Committee Member      **Judy Randlett**,  
Committee Member

**Joseph Covey**, Committee Member      **Robyn Price**, Committee Member      **Irene Rifilato**, Committee Member

This agenda contains a brief general description of each item the Commission will consider. The Community Services Department has on file copies of written documentation relating to each item of business on this Agenda available for public inspection. Contact the Community Services Department at (714) 990-7738 or view the Agenda and related materials on the City's website at [www.cityofbrea.net](http://www.cityofbrea.net). Materials related to an item on this agenda submitted to the Commission after distribution of the agenda packet are available for public inspection in the Community Services Department at 1 Civic Center Circle, Brea, CA during normal business hours. Such documents may also be available on the City's website subject to staff's ability to post documents before the meeting.

### **Procedures for Addressing the Committee**

The Commission encourages interested people to address this legislative body by making a brief presentation under Matters from the Audience. State Law prohibits the Commission from responding to or acting upon matters not listed on this agenda.

The Commission encourages free expression of all points of view. To allow all persons the opportunity to speak, please keep your remarks brief. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Commission rules prohibit clapping, booing or shouts of approval or disagreement from the audience. Please silence all cell phones and other electronic equipment while the Commission is in session. Thank you.

Written comments may be submitted in advance of the meeting by emailing [ashleyr@cityofbrea.net](mailto:ashleyr@cityofbrea.net). Written comments received by 3 p.m. on the day of the meeting will be provided to the Commission, will be made available to the public at the meeting, and will be included in the official record of the meeting.

### **Special Accommodations**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Community Services Department at (714) 990-7738. Notification 48 hours prior to the meeting will enable City staff to make reasonable arrangements to ensure accessibility. (28CFR 35.102.35.104 ADA Title II)

### **1: Call to Order/Roll Call**

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### **2: Matters from the Audience**

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### **3: Action Items**

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3A. Approval of May 20, 2024 Minutes

3B. Brea Mall Sears Redevelopment (1066 Brea Mall) APP Sculpture Application #1

3C. Brea Mall Sears Redevelopment (1066 Brea Mall) APP Sculpture Application #2

#### **4: Discussion Items**

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4A. Cultural Arts Master Plan - Art in Public Places Policy Recommendations Follow-Up

#### **5: Adjournment**

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*Date Posted: June 20, 2024*





## **Art in Public Places Advisory Committee Communication**

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### **Approval of May 20, 2024 Minutes**

Meeting	Agenda Group
Monday, June 24, 2024, 5:00 PM	Action Items Item: 3A
FROM	
Carrie Hernandez, Deputy Director of Community Services	

### **RESPECTFULLY SUBMITTED**

Carrie Hernandez, Deputy Director of Community Services

Prepared by: Carrie Hosozawa, Executive Assistant

### **Attachments**

[May 20, 2024 Draft Minutes.pdf](#)

**\*\* The following document is a draft of the minutes and the not the official approved minutes**

**\*\***

## **Minutes for the Art in Public Places Advisory Committee**

1 Civic Center Circle, Brea, CA 92821

May 20, 2024, 5:00 PM

**Roll Call:** *(The following members were in attendance)*

- Chair St. Clair - Chair
- Margee Hills - Vice Chair
- Pat Fox - City Council Appointee
- Judy Randlett - City Council Appointee
- Joseph Covey- Planning Commission Appointee
- Irene Rifalato - Parks, Recreation & Human Services Appointee

Absent: Robin Price

### **1. Call to Order/Roll Call**

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Chair St. Clair called the meeting to order at 5:01 pm.

### **2. Matters from the Audience**

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None.

### **3. Action Items**

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#### **3A. Approval of the Minutes of the Meeting of May 22, 2024**

Committee Member Covey moved to approve Item 3A, seconded by Committee Member Hills.  
The motion was approved by a vote of 4-0-3.

Ayes: St. Clair, Hills, Covey, Randlett

Absent: Fox, Rifilato, Price

### **4. Discussion Items**

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#### **4A. Cultural Arts Master Plan Discussion**

Senior Management Analyst Jenn Colacion updated the Committee regarding the recommendations from the Cultural Arts Master Plan consultant's review of APP. This information resulted in several detailed policy recommendations designed to refresh the program and bring it

to current best practice standards. A discussion ensued, and there were differing opinions on the direction to take moving forward.

The Committee discussed the Brea Art Fund and what recommendations they'd like to make to Council on how best to use it. Staff will return with definitions of acceptable uses of the Brea Art Fund monies and a refined definition of "Public artwork."

## **5. Adjournment**

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Chair St. Clair adjourned the meeting at 6:15 pm.



## Art in Public Places Advisory Committee Communication

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### Brea Mall Sears Redevelopment (1066 Brea Mall) APP Sculpture Application #1

Meeting	Agenda Group
Monday, June 24, 2024, 5:00 PM	Action Items Item: 3B
TO	FROM
Chair and Members of the Arts in Public Places Advisory Committee	Carrie Hernandez, Deputy Director of Community Services

### **RECOMMENDATION**

Approve sculpture application #1 with the following conditions:

1. Applicant must submit to City staff a copy of the final lighting installation plans prior to sculpture permit issuance;
2. Applicant must submit to City staff a copy of the installation plan approved by a licensed Structural Engineer prior to sculpture permit issuance;
3. Applicant must submit to City staff a copy of a signed contract with the artist within thirty (30) days of Sculpture Application approval by the Art in Public Places Advisory Committee;
4. Applicant must submit to City staff a copy of a final Sculpture Maintenance Plan prior to issuance of Certificate of Occupancy.

### **BACKGROUND/DISCUSSION**

**Applicant:** Simon

**Address:** 1066 Brea Mall

**Artist:** Michael Szivos/SOFTlab

**Title of Sculpture:** *Afterimage*

**Material:** Aluminum/Colored Acrylic

**Description:** Illuminated aluminum/acrylic sculpture

**Location:** Wall-mounted; installation to be placed adjacent to new public street approach off of Randolph Ave.

### **ARTWORK PROPOSAL**

**Scale**

The proposed artwork by Michael Szivos of Softlab consists of multiple aluminum and colored acrylic "fins," integrated with lighting to depict an abstract composition of the Brea Hills. The dimensions are as follows: 46' W x 16' H x 2' D. The lowest point of the sculpture will be 8 feet above grade.

### **Materials**

The sculpture will be made of powder coated aluminum and colored acrylic "fins," and will incorporate lighting behind the sculpture to achieve the artist's desired effect. While the lighting instruments have been specified in their application, a final lighting installation plan has not been submitted. This would be a required submittal, if the application is approved.

### **Liability and Safety**

An installation plan has not been approved by a licensed structural engineer. If the art application is approved, this is recommended to be submitted as a condition of approval.

### **Artist Education, Experience, and Value Verification**

According to the APP Policy Manual, qualified artists' portfolios should include monumental outdoor public art installations. The art application includes the resume of artist Michael Szivos of Softlab, which demonstrate his ability to fabricate pieces of this scale.

### **Sculpture Site, Landscaping, Lighting and Plaque**

*Afterimage* is proposed to be wall-mounted on a corner facing the Brea Mall entry off of Randolph Avenue. The proposed location is within the 50 feet requirement from a publicly accessible street. The proposed location will be viewed by many at this prominent entry location.

The proposed adjacent landscaping includes shrubs and grasses that will not grow to impede the view of the sculpture, which is proposed to sit approximately 8 feet above grade.

Lighting is proposed to be a key element to the sculpture, aiding in creating a nighttime experience to match that of the daytime experience. A plaque will be installed per City policies.

The location meets all APP guidelines of being publicly accessible.

### **Contract of Sale**

A draft contract has been included in the application and, if the application is approved, will be required to be submitted as a condition of approval.

### **Maintenance Instructions**

A final maintenance plan will be conditioned upon application approval. Tentatively, basic instructions include using mild soap and water to gently clean the sculpture regularly. Power washing is not recommended.

## **RESPECTFULLY SUBMITTED**

Carrie Hernandez, Deputy Director of Community Services

Prepared by: Jenn Colacion, Senior Management Analyst





## Art in Public Places Advisory Committee Communication

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### Brea Mall Sears Redevelopment (1066 Brea Mall) APP Sculpture Application #2

Meeting	Agenda Group
Monday, June 24, 2024, 5:00 PM	Action Items Item: 3C

FROM
Carrie Hernandez, Deputy Director of Community Services

### **RECOMMENDATION**

Approve sculpture application #2 with the following conditions:

1. Applicant must submit to City staff a copy of the final lighting installation plans prior to sculpture permit issuance;
2. Applicant must submit to City staff a copy of the installation plan approved by a licensed Structural Engineer prior to sculpture permit issuance;
3. Applicant must submit to City staff a copy of a signed contract with the artist within thirty (30) days of Sculpture Application approval by the Art in Public Places Advisory Committee;
4. Applicant must submit to City staff a copy of a final Sculpture Maintenance Plan prior to issuance of Certificate of Occupancy.

### **BACKGROUND/DISCUSSION**

**Applicant:** Simon

**Address:** 1066 Brea Mall

**Artist:** Susan Zoccola

**Title of Sculpture:** TBD (Working title: *Dappled (Komorebi)*)

**Material:** Stainless Steel

**Description:** 5 large scale steel "tree-like" sculptures

**Location:** Brea mall lawn/public pavilion

### **ARTWORK PROPOSAL**

#### **Scale**

The proposed artwork by Susan Zoccola consists of five "tree-like" sculptures with the leaf elements ranging from 10 feet and 28 feet above grade, with leaf canopies ranging between 20 feet and 24 feet wide.

#### **Materials**

The sculptures will be made of stainless steel with a bronze-appearing finish. The tree canopies, inspired by native Cottonwood trees, will be cut by waterjet to create the artist's desired pattern

### **Liability and Safety**

An installation plan has not been approved by a licensed structural engineer. If the art application is approved, this is recommended to be submitted as a condition of approval.

### **Artist Education, Experience, and Value Verification**

According to the APP Policy Manual, qualified artists' portfolios should include monumental outdoor public art installations. The art application includes the resume of artist Susan Zoccola, which demonstrate her ability to fabricate pieces of this scale.

### **Sculpture Site, Landscaping, Lighting and Plaque**

The sculpture is proposed to be located in a newly developed public plaza area, surrounded by new shopping and dining locations.

The proposed adjacent landscaping includes synthetic turf and concrete walkways. There is one nearby planter that has a single Sycamore tree, and other drought-tolerant grasses and plants that will be low growing and will not impede on the view of the piece. The openness of the plaza area will allow multiple vantage points of the pieces, therefore the single Sycamore tree is not expected to limit the public view of the piece in totality.

Up-lighting is conceptually proposed in several areas surrounding the sculptures. A final lighting installation plan has not been submitted, and would be required as a condition if the application is approved. A plaque will be installed per City policies.

The location meets all APP guidelines of being publicly accessible.

### **Contract of Sale**

A draft contract has been included in the application and, if the application is approved, will be required to be submitted as a condition of approval.

### **Maintenance Instructions**

A final maintenance plan will be conditioned upon application approval. Tentatively, it is proposed that no regular maintenance would be required aside from as-needed paint touch up.

## **RESPECTFULLY SUBMITTED**

Carrie Hernandez, Deputy Director of Community Services

Prepared by: Jenn Colacion, Senior Management Analyst

### **Attachments**

[Brea Mall Sears Redevelopment Art Application II 6.7.24.pdf](#)





## **Art Application Part II**

# **Brea Mall – Sears Redevelopment**



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# **Part I: Project Overview & Artist Qualifications**



**Art Application Part 1**

# **Brea Mall – Sears Redevelopment**



# 1. Art in Public Places Application Coversheet

APPENDIX C

City of Brea Art in Public Places Program  
ART IN PUBLIC PLACES APPLICATION COVERSHEET

Date Submitted: 06/02/2023
Estimated Minimum Sculpture Allocation:\$1,055,090    Total Building Valuation: \$105,509,015
Project Name: Brea Sears Redevelopment
Project Location/Address: 1066 Brea Mall, Brea, CA 92821
Developer: Simon Property Group, Inc.    Contact Person: Wayne Chubb
Address: 225 West Washington Street, Indianapolis, Indiana 46204
Phone:317.666.2563    Email: wayne.chubb@simon.com
Property Owner: Simon Property Group, Inc.
Address: 225 West Washington Street, Indianapolis, Indiana 46204
Phone: 317.666.2563    Email: wayne.chubb@simon.com
Art Consultant: NINE dot ARTS
Address: 3734 Osage St. Denver, CO 80211
Phone: 720.939.3302    Email: molly@ninedotarts.com
Artist: Susan Zoccola / SOFTlab
Address: 4136 Meridian Ave N., Seattle WA 98103 / 34 West 27th Street 8FL New York, NY 10001
Phone: 206.856.6644 / 917.975.7693    Email: susan@susanzoccola.com / mszivos@softlabnyc.com

## 2. Developer Acknowledgement of APP Requirement

### City of Brea Art in Public Places Program Developer Acknowledgment of APP Requirement

The Art in Public Places (APP) program provides developers a way to make a lasting and visible contribution to the community to mitigate impacts of development. The current APP Ordinance No. 1050 was adopted by Brea City Council in 2001. The current APP Manual was adopted by City Council Resolution No. \_\_\_\_ on \_\_\_\_\_. The APP requirement is also found in City of Brea Zoning Code section 20.408.040 subsection C.4.

APP requirements are described in Brea's APP Policy Manual. Projects valued at \$1,500,000 or more must allocate 1 percent of the total project building valuation (based on ICC Building Valuation Data tables in effect at the time building permits are issued) to install permanent outdoor sculpture by a qualified artist at the project site. Sculpture is to remain on the property in perpetuity, with a covenant approved by the City, executed and filed with the County of Orange Recorder binding on successors to title of the subject property, which describes sculpture ownership responsibilities, the sculpture maintenance funding source, and includes a copy of the Comprehensive Maintenance Plan provided by the artist. Projects with a total project building valuation of between \$1,500,000 and \$3,999,999 have the option of contributing to the sculpture allocation to Brea's Art Fund. Projects with a total building valuation of \$4,000,000 million or more must install permanent on-site outdoor sculpture designed and fabricated by a qualified artist selected by the developer and approved by the City.

All requirements are described in Brea's current APP Manual. Satisfaction of the APP requirement is a multi-step process with deadlines that should be considered when developing a construction schedule. As part of the process, developers are required to:

- A. Meet with Cultural Arts Division staff to discuss their project and the sculpture requirement and satisfy part 1 of the sculpture application or, for projects with a total building valuation between \$1.5 and \$3.99 million who opt to contribute sculpture allocation funds, submit a Notification to Contribute Sculpture Funds, prior to issuance of Building Permits for their project.
- B. Submit part 2 of the sculpture application with all required materials and schedule a Committee review date or, for projects with a total building valuation between \$1.5 and \$3.99 million who opt to contribute sculpture allocation funds, contribute the confirmed sculpture allocation amount to Brea's Art Fund, within 6 months of issuance of building permits. Noncompliance will result in the issuance of a stop work notice.
- C. Install approved sculpture and related components, satisfy part 3 of the sculpture application, and complete the sculpture inspection requirement or, for projects with a total building valuation between \$1.5 and \$3.99 million who opt to contribute sculpture allocation funds, contribute any outstanding sculpture allocation amount to Brea's Art Fund, prior to issuance of Certificates of Occupancy for the project.

Project Name: Brea Mall - Mixed-use Redevelopment Project Location: 1065 Brea Mall Ste 2065

Developer: Simon Property Group Phone: 734-666-2563

Address: 225 W Washington St Email: wayne.chubb@simon.com  
Indianapolis, IN 46204-3438

Estimated Art Allocation: \$1,055,090 .00

I attest to the fact that I have read and understand, and agree to be bound by, the requirements of Brea's Art in Public Places Program as a condition of approval of my Project.

Signature Wayne Chubb Date May 18, 2023



### 3. Description of Development Plan

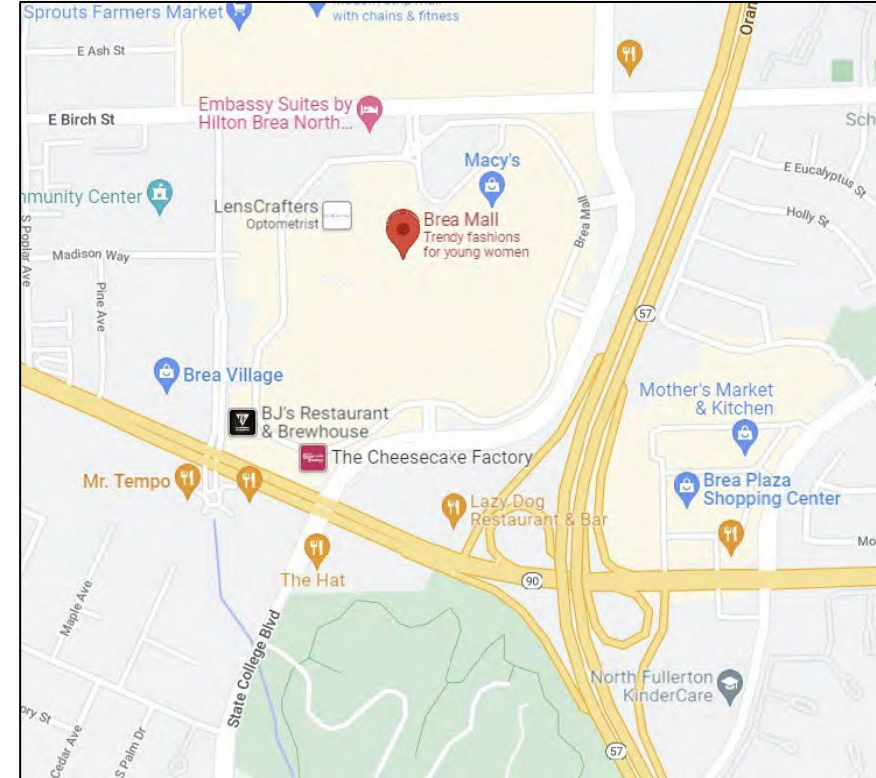
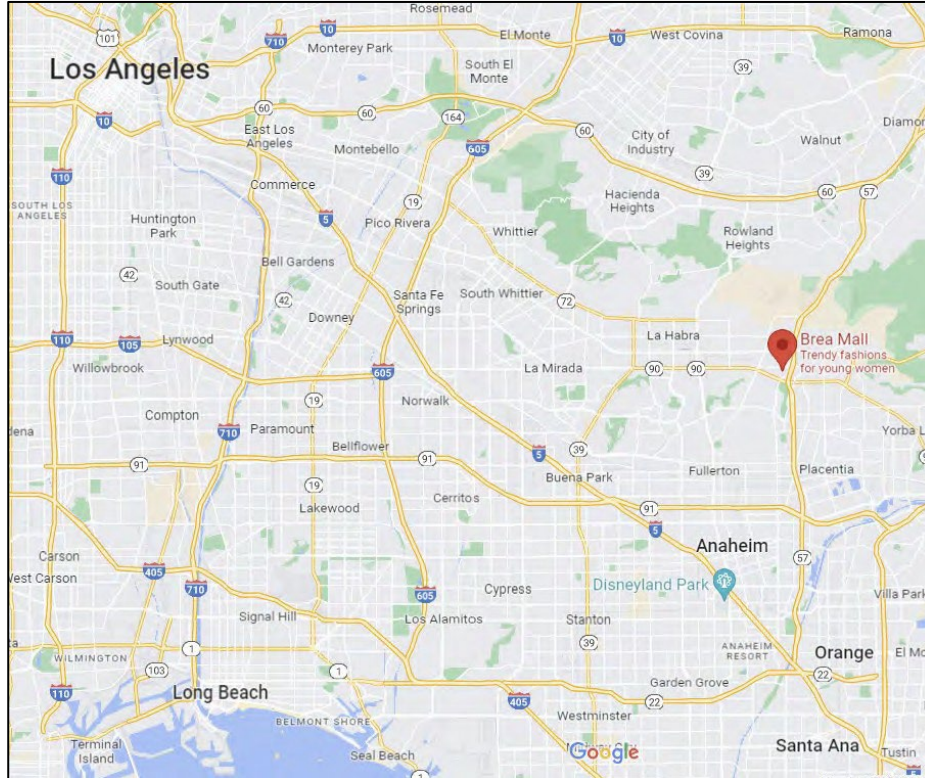
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Brea Mall's redevelopment of the vacant Sears department store into a mixed-use campus of new retail, dining, fitness and living surrounding a community green space.

The architecture reinterprets mid-century modern forms with sinuous shapes in both the park and mall entry design, creating a new dynamic presence and connection with the existing center.

# 3. Description of Development Plan

## Location





# 3. Description of Development Plan

## Existing Site





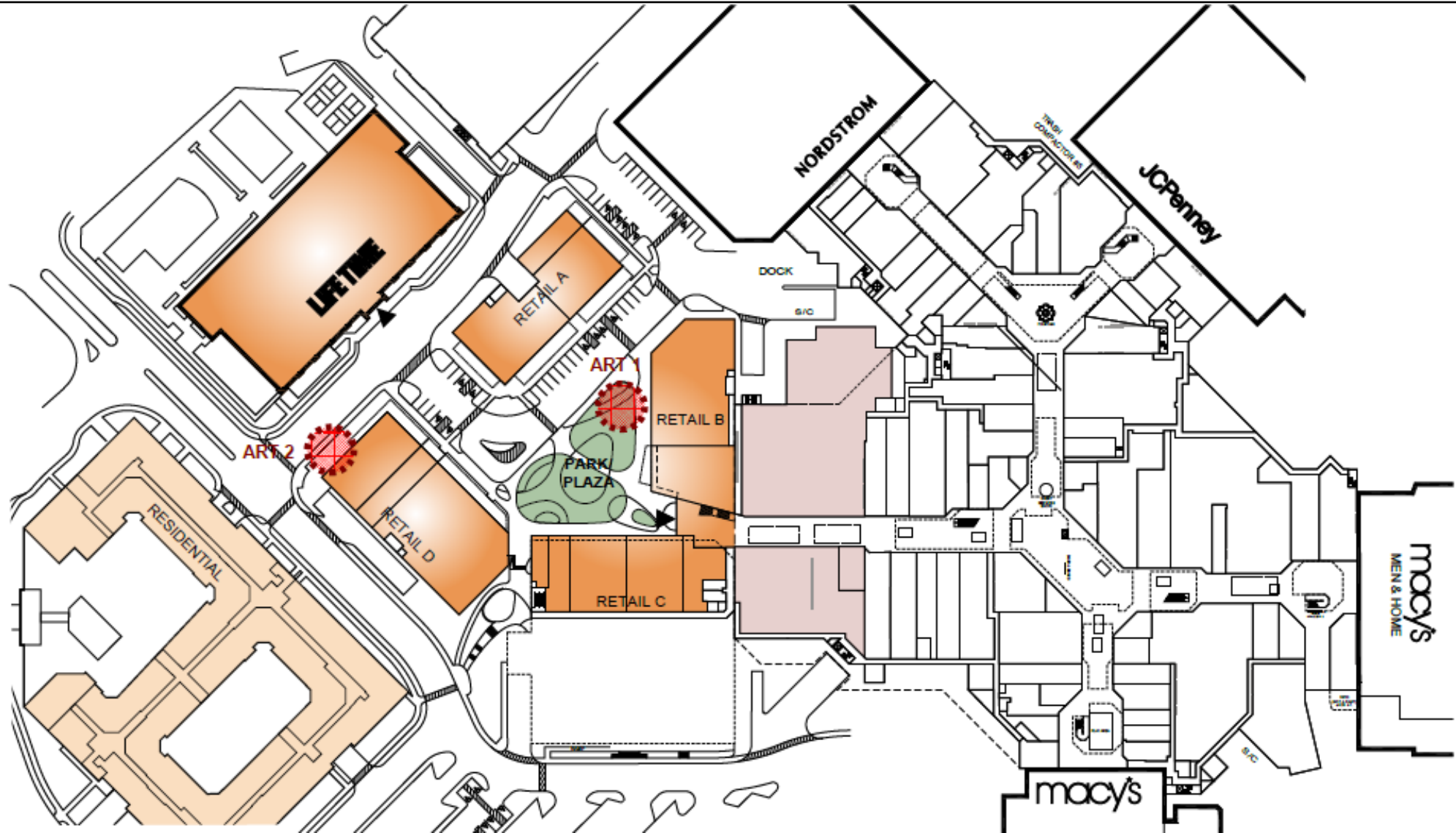
# 3. Description of Development Plan

## Redevelopment Rendering



## 4. Site Plan

### Proposed Art Locations

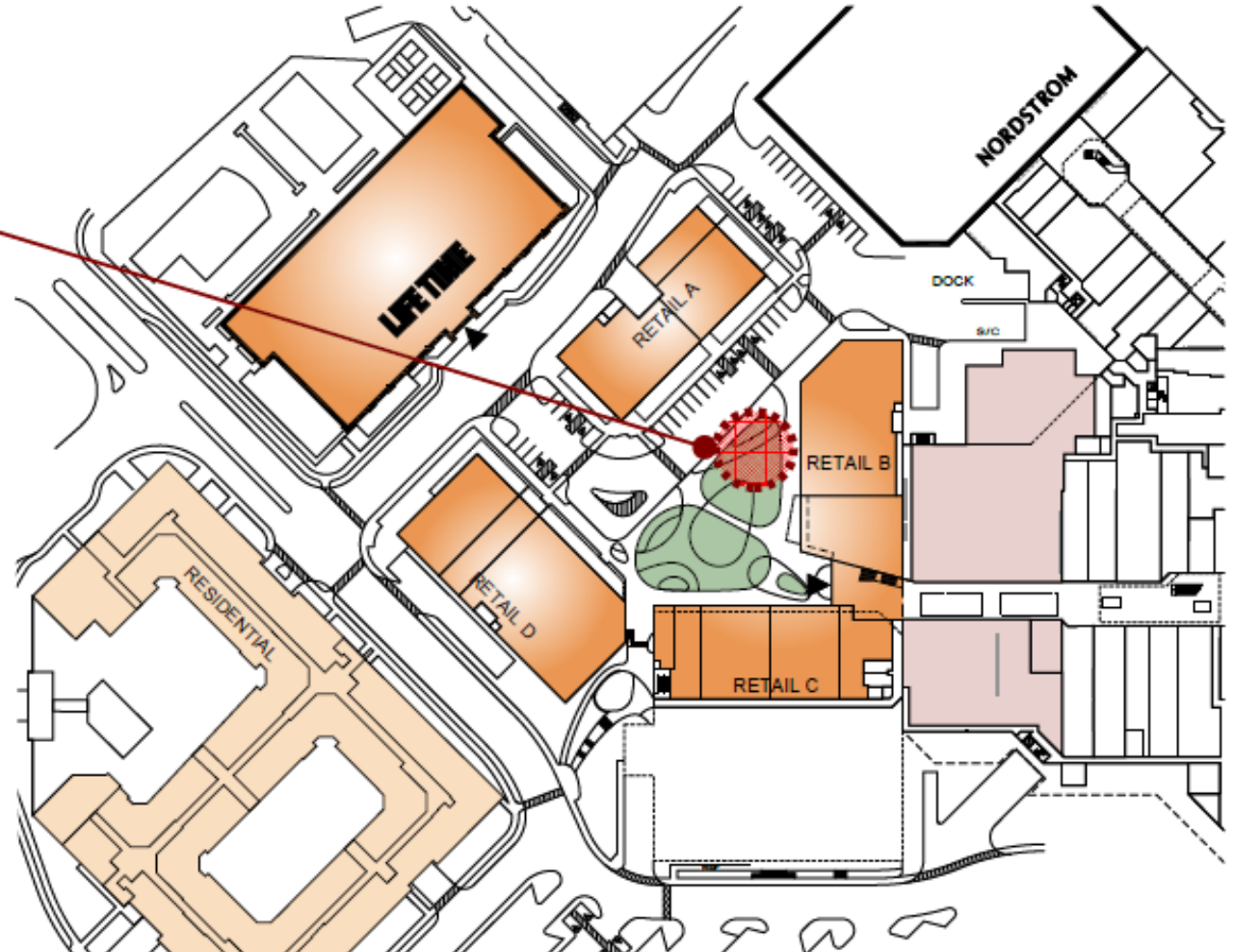




# 4. Site Plan

## Art Location #1

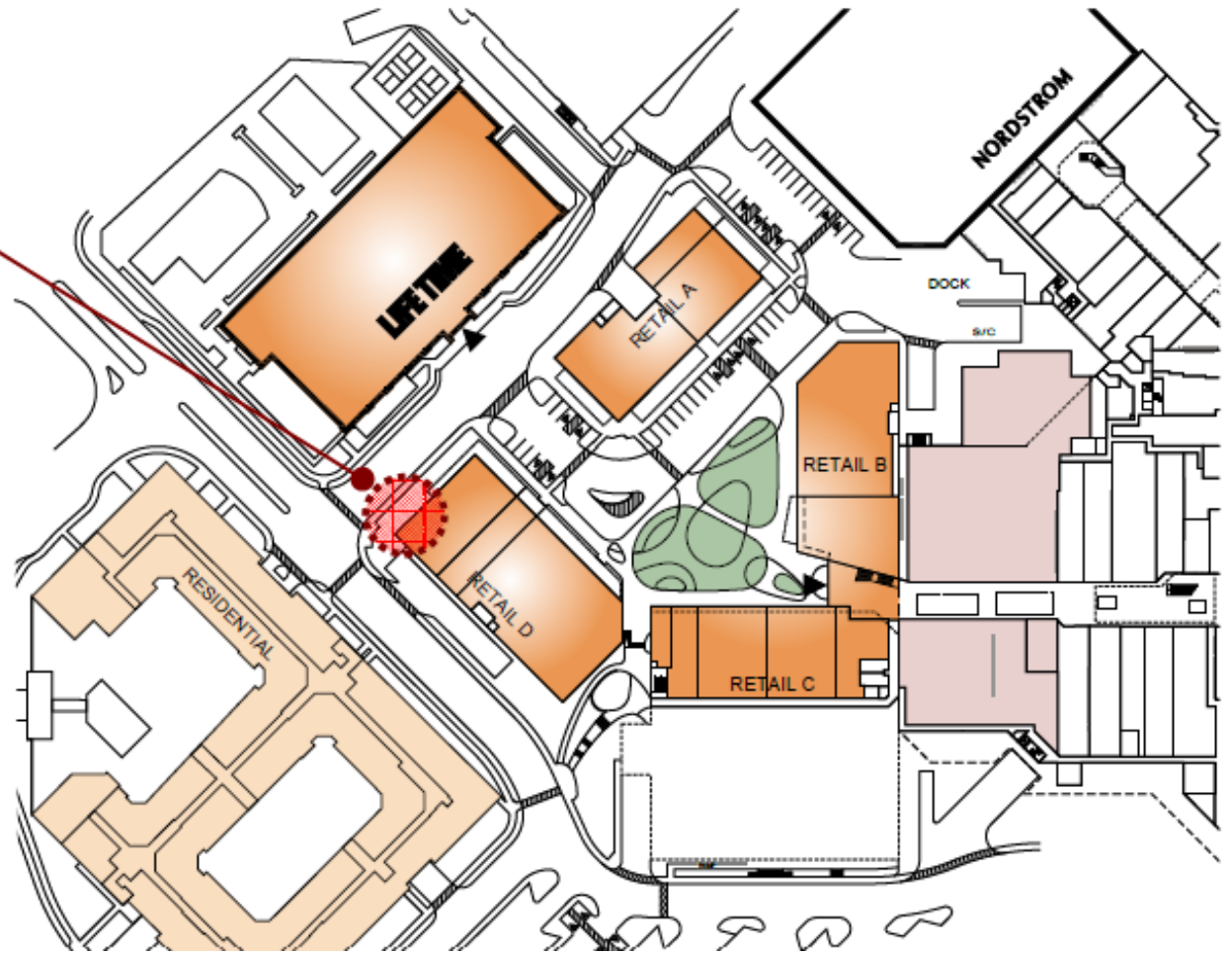
### Art Location # 1: Park



## 4. Site Plan

### Art Location #2

#### Art Location #2: Site Entry/ Building D





# 5. Photographs of proposed site

## Art Location #1





# 5. Photographs of proposed site

## Art Location #1





# 5. Photographs of proposed site

## Art Location #1





# 5. Photographs of proposed site

## Art Location #2



## 6. Signage Plan

### Monumental and Tenant Signage





## 6. Signage Plan

### Monumental and Tenant Signage



# 7. Estimate of Sculpture Allocation

BREA SEARS REDEVELOPMENT  
ART IN PUBLIC PLACES  
ART CONTRIBUTION CALCULATION

18-May-23

		February 2023 ICC BVD				
Building Phase / Description	Square Footage	ICC Type IIB Cost/SF	ICC Type IA Cost/SF	ICC Type IIIA Cost/SF	Valuation	Comments
<b>Retail Expansion Plan (Entitlement Package)</b>						
Sears Demo (ICC - Mercantile Group) Type IIB	-161,990	\$ 180.67			\$ (29,266,733)	Per Brea APP V.B.2
Sporting Goods (ICC - Mercantile Group) Type IIB	50,000	\$ 180.67			\$ 9,033,500	SF Based upon approved Entitlements
Fitness (ICC - Mercantile Group) Type IIB	90,000	\$ 180.67			\$ 16,260,300	SF Based upon approved Entitlements
Level 1-Shops/Restaurants (ICC - Mercantile Group) Type IIB	69,415	\$ 180.67			\$ 12,541,208	SF Based upon approved Entitlements
					\$ -	
<b>Retail Expansion Subtotals</b>	<b>47,425</b>				<b>\$ 8,568,275</b>	
<b>Residential Expansion</b>						
Residential Occupancy - Five story (including Amenity) Type IIIA (ICC-R2 Residential, Multiple Family)	388,346			\$ 177.77	\$ 69,036,268	SF Based upon approved Entitlements
Residential Deck (3 Levels, Type IA, Incl Ground Level & Amenity Deck) - (ICC-Utility Group)	360,918		\$ 115.48		\$ 41,678,811	SF Based upon approved Entitlements
Subtract Ground Level (P1) Residential Deck - (ICC-Utility Group)	-119,279		\$ 115.48		\$ (13,774,339)	Per Brea APP V.B.1
<b>Residential Expansion Subtotals</b>	<b>629,985</b>				<b>\$ 96,940,740</b>	
<b>TOTAL VALUATION</b>					<b>\$ 105,509,015</b>	
<b>ESTIMATED SCULPTURE ALLOCATION (1% of Valuation)</b>					<b>\$ 1,055,090</b>	



# 8. Artist Resume

## Art Location #1

### Susan Zoccola

Seattle, WA

#### Artist Bio

Susan Zoccola resides in Seattle, WA and has been a practicing artist for over 25 years. Susan's work is fundamentally inspired by natural forms and systems and often references the intersections of art and science. Susan is moved by the beautiful similarities between patterns in nature, such as trees, seedpods, vascular systems, microscopic dendrites of neurons etc., which all indicate points of connection. She is fascinated by the physical resemblance and functional complexity of these systems, big and small, and feels their patterns limn the innumerable divisions by which living things survive, demonstrating how the endless branching that we can see becomes an endless branching of what we cannot.

Susan studied at the San Francisco Art Institute and at the University of Washington. She has completed many major public and private art commissions, including "Bower" a large canopy sculpture for the S.E. Park Avenue light rail plaza in Portland, OR, "River" for the R.W. Baird & Co. headquarters in Chicago, IL, and "Grassblades" at the Seattle Center, with RBF Architects, which was awarded an AIA Design Award. Other notable commissions include the Seattle Aquarium and a series of eleven light sculptures in Everett WA. Her work can be found in many private and public collections, including the City of Portland, SeaTac International Airport, and Valley Medical Center. She has exhibited her studio work nationally. Throughout her career, Susan has received numerous awards (Artist Trust, Pilchuck Glass School's Anderson Award) and residencies (Sculpture Space, Utica, NY, Centrum Foundation, and Pratt Fine Arts Center, Seattle, WA).

[susanzoccola.com](http://susanzoccola.com)



# 8. Artist Resume

## Art Location #1

### SUSAN ZOCCOLA

4136 Meridian Avenue North  
Seattle, Washington 98103 USA  
(206) 856 6644 [susan@susanzoccola.com](mailto:susan@susanzoccola.com)  
[WWW.SUSANZOCCOLA.COM](http://WWW.SUSANZOCCOLA.COM)

### EDUCATION

San Francisco Art Institute, San Francisco, CA  
University of Washington, Seattle, WA

### PUBLIC ART COMMISSIONS

2024	Dale Drive Station, Purple Line, Maryland Transit Authority. Lightrail platform art. Budget: \$160,000.
2024	University of Oregon, Huestis Hall, Eugene, OR. Exterior facade sculpture. Budget: \$345,000.
2023	Holladay Village Plaza, Holladay, UT. Plaza sculpture. Budget: \$175,000.
2023	"Vespertine", Phoenix Valley Metro, Phoenix, AZ. Exterior parking garage sculpture. Budget: \$400,000
2023	"Chronology", Wenatchee Valley College, Wenatchee, WA. Interior wall sculpture. Budget: \$80,000.
2022	Marysville Civic Center, Marysville, WA. Suspended sculpture. Budget: \$50,000.
2022	"5 Point Spin", Ft. Wayne, IN. Traffic roundabout sculpture. Budget: \$95,000.
2022	"Blue Lupine", Convention Center, Toledo, OH. Exterior sculpture. Budget: \$250,000.
2022	"Passage", Charleston/Arastradero Corridor, Palo Alto, CA. Streetscape public art. Budget: \$110,000
2020	"Rose Canyon", N. Univ. City Fire Station 50, San Diego, CA. Façade sculpture. Budget: \$150,000
2020	"Thea", Tacoma, WA. Exterior sculptures. Budget: \$70,000
2019	"Wheels" West End Plaza, Spokane, WA. Gateway sculptures. Budget: \$65,000.
2019	"Gyre" Southeast 62nd Street Public Art. Issaquah, WA. Streetscape public art. Budget: \$175,000
2018	"Threshold" Gateway Island, Ashland OR. Exterior sculpture. Budget: \$100,000
2017	"Palouse" Cheney Middle School, Cheney, WA. Interior suspended sculpture. \$35,000
2016	"Pinion" Peoria Crossing Station, Denver, CO. Exterior sculptures. Budget: \$113,000
2016	"Grow" Campbell Avenue Portals, Campbell, CA. Light sculptures. Budget: \$75,000
2015	"Cascade" Student Rec Ctr, Whatcom Community College, Bellingham, WA. Suspended sculpture. \$45,000
2015	"Bower" SE Park Avenue Station, Tri-Met, Portland, OR. Plaza sculpture. Budget: \$240,000
2013	"Inflorescence", Hoyt Street Arts District, Everett, WA. Light sculptures. Budget: \$110,000
2012	"Grove", Kent Municipal Courthouse, Kent, WA. Glass art wall. Budget: \$35,000
2011	"Tesla", Spokane Community College, Spokane, WA. Suspended interior sculpture. Budget: \$100,000
2011	"Flow", Yakima Convention Center, Yakima, WA. Suspended interior sculpture. Budget: \$10,000
2011	"3 Drops", Lynnwood Recreation Center, Lynnwood, WA. Entry light sculpture. Budget: \$130,000
2010	"Confluence", Kenmore City Hall, Kenmore, WA. Suspended sculpture, interior & exterior. Budget: \$129,000
2008	"Swing & Flight", Auburn Municipal Golf Course, Auburn WA. Entry sculpture. Budget: \$35,000
2007	"Wave Wall", Seattle Aquarium, Seattle, WA. Sculptural wall & donor wall sculpture. Budget: \$130,000
2006	"Samara", Laurelhurst Community Center, Seattle, WA. Entry light sculpture. Budget: \$25,000
2004	"Stem", Seattle/Tacoma International Airport, Seatac, WA. Glass mosaic column.
2006	"Bloom", Metro/King County Atlantic Central Base, Seattle, WA. Shear wall sculpture. Budget: \$35,000
2003	"Grass Blades", Seattle Center, Seattle, WA. Harrison St. Screenwall, with R/B/F Architects. Budget: \$200,000

# 8. Artist Resume

## Art Location #1

### SELECTED PRIVATE COMMISSIONS

2020	"Murmuration", Pacific Place, Seattle, WA. 4-Story suspended sculpture. Budget: \$360,000
2019	"River", R.W. Baird & Co., Chicago, IL. 2-Story sculpture. Budget: \$200,000
2018	"Nebula", Seattle, WA. Stratus residential high-rise lobby
2014	"Viktoria", Seattle, WA. Suspended sculpture in luxury high-rise lobby
2011	Novelty Hill/ Janiuk Winery, Redmond, WA. Entry plaza sculptures
2010	Valley Medical Center, Renton, WA. Sculptures in Wintergarden.
2007	Overlake Hospital & Medical Center, Bellevue, WA. Paintings (with NBBJ Architects).
2006	Valley General Medical Center, Renton, WA. Paintings (with NBBJ Architects).
2005	Valley General Medical Center, Renton, WA. Paintings and sculpture (with NBBJ Architects).
2004	Overlake Hospital, Bellevue, WA., Outpatient Surgery Clinic (with NBBJ Architects.)
2003	SouthCentral Foundation Hospital, Anchorage, AK.
2001	"Lumen", Seattle Center, Seattle, WA. Light sculpture.
2001	ATL Ultrasound, Redmond, WA. Site-specific temporary installation.
1998	Overlake Hospital, Bellevue, WA. Critical Care Unit (with NBBJ Architects).
1998	Chapel of St. Ignacius, Seattle University, Seattle, WA. Stephen Holl Architect (Olson Sundberg project managers). Gold leafed & patinaed altar with Betsy Eby.)

### SELECTED COLLECTIONS

City of Ashland, City of Campbell, City of Denver, City of Everett, City of Issaquah, City of Lynnwood, City of Portland, City of San Diego, City of Seattle, City of Spokane, City of Tacoma, City of Tacoma Portable Works, City of Yakima, Overlake Hospital Medical Center, R.W. Baird & Co., Seattle Cancer Care Alliance, Seattle Center, Seattle City Light Portable Works, Seattle/Tacoma International Airport, State of Washington, Valley Medical Center, Renton, WA.

### SELECTED EXHIBITIONS & INSTALLATIONS

2016	"9e2", King Street Station, Seattle, WA.
2013	"Object Abuse", Spinach Project, London, UK.
2011	"3 Dimensional Line" Kirkland Art Center, Kirkland, WA.
2010	"Neural Plexis", Artopia, Seattle, WA. Site-specific installation.
2009	"Dig: 2009 Invitational", Soil Gallery, Seattle, WA.
2008	"New Directions", Winston Wächter Fine Art, Seattle, WA.
2007	"Crud" Soil Gallery, Seattle, WA.
2007	Group Show, Winston Wächter Gallery, Seattle, WA.
2006	"Isolated Reflections 2", Chapel of the Chimes, Oakland CA. Video & sound installation with Ellen Fullman.
2005	"Isolated Reflections", Consolidated Works, Seattle, WA. Video, sound, dance installation & performance with Ellen Fullman, Tonia Lochlear & others.
2003	"Well-Heeled", Kirkland Arts Center, Kirkland, WA. Curated by Deborah Payne.
2002	"Art Outside", Port Angeles Fine Arts Center, Port Angeles, WA.
	"Natural Causes", Gallery One, Ellensburg, WA.
2000	"Biomorphic", O'Kane Gallery, University of Houston, TX. "A Gift of Light and Time", Bank of America Gallery, Seattle, WA. "Vinculum Opus", Broadway Performance Hall, Seattle, WA. "Abstraction From Nature", Seattle Art Museum Rental Sales Gallery, Seattle, WA.
1999	"Albus", HorseHead International, Seattle, WA. Outdoor Installation. "Phresh", Pacific NW Arts Council of Seattle Art Museum, Bumbershoot, Seattle, WA. Curated by Trevor Fairbrother. "Pacific Northwest Annual", Bellevue Art Museum, Bellevue, WA.
1998	"Looking to Nature", Archer Gallery, Clark College, Vancouver, WA. "Panacea", Window Installation, SAM Rental Sales Gallery, Seattle, WA.
1998	"Shoes As Muse", Pratt Fine Arts Center, Seattle, WA. Lorinda Knight Gallery, Spokane, WA. Two-person Exhibition.

# 8. Artist Resume

## Art Location #1

### SELECTED EXHIBITIONS & INSTALLATIONS, Cont

- 1997 "Pure Form: The Intensity of Process", The Art Gym at Marylhurst College, Portland, OR.  
Alysia Duckler Gallery, Portland, O.R.  
"Pacific Northwest Annual", Bellevue Art Museum, Bellevue, WA.  
"Printworks", Kirkland Art Center, Kirkland, WA. Curated by Sean Elwood.  
"Pratt Artists-In-Residence", Center On Contemporary Art, Seattle, WA.  
"Beeswax", SOIL Gallery, Seattle, WA.  
"PONCHO Invitational", Seafirst Gallery, Seattle, WA.  
"Art Works For AIDS", Seattle Center Pavilion, Seattle, WA.  
"Works on Paper", SOIL Gallery, Seattle, WA.
- 1996 William Traver Gallery, Seattle, WA. Solo Exhibition.
- 1995 "Pacific Northwest Annual", Bellevue Art Museum, Bellevue, WA.  
"Folie a Deux", Center on Contemporary Art, Seattle, WA.
- 1991/4 "True Stories: Pleas & Thank Yous", Tacoma Art Museum, Tacoma, WA;  
Cheney Cowles: Memorial Museum: Spokane, WA; Port Angeles Fine Art Center, Port Angeles, WA; Boise Art Museum, Boise, ID; Galleria Potatohed, Seattle, WA; Western Gallery, Western WA University, Bellingham, WA;  
Clatsop Community College, Astoria, OR; Salem College, Winston-Salem, NC; Steensland Gallery, St. Olaf College, Northfield, MN; Art Dept. Gallery, University of Nebraska; Omaha, NE.
- 1994 "The Bridge", Kirkland Art Center, Kirkland, WA.
- 1991 "War In the Gulf: An Artists Perspective" William Traver Gallery, Seattle, WA.

### GRANTS & AWARDS

- 2021 San Diego Architectural Foundation: Orchid Award (FS 50 Station)
- 2003 AIID Design Award for SouthCentral Foundation, (with NBBJ team – Stacey Bender).
- 2002 AIA Design Award for "Grass Blades", Seattle Center, (with R/B/F Architecture).
- 2000 Sculpture Space, Utica, NY. (Residency)
- 1999 GAP Grant Fellowship, Artist Trust, Seattle, WA.
- 1999 Pilchuck Glass School, Dale and Doug Anderson Award Scholarship, Stanwood, WA.
- 1998 Artist In Residence at Centrum Foundation, Port Townsend, WA.
- 1997 PONCHO Artist-in-Residence at Pratt Fine Arts Center, Seattle, WA.

### ARTS RELATED EXPERIENCES

- 2012 Juror: CONRAC at Austin Int'l Airport, Austin, TX.
- 2008 Guest Curator: "3 Dimensional Line", Drop City Gallery, Seattle, WA.
- 2008 Juror: "Sculpted Green", Bellevue Arts Commision, Bellevue, WA.
- 2000 Board member/VP since 1998 - Contemporary Art Council Seattle Art Museum, Seattle, WA.
- 1997 Guest Curator: "Sutures and Other Handwork", Kirkland Arts Center, Kirkland, WA.
- 1992 Assisted Ann Hamilton with installation "accountings", Henry Art Gallery, Seattle, WA.



# 8. Artist Resume

## Art Location #1

### SELECTED PUBLICATIONS

#### ART

The Journal Gazette, "New Fort Wayne roundabout sculpture...", Rosa Salter Rodriguez, Oct 19, 2022  
WANE 15, "Fort Wayne selects sculpture artists ...", WANE.com, August 24, 2021  
Spokesman Review, "Towering art piece adds color to downtown ...", Azaria Podplesky, June 12, 2019  
Issaquah Reporter, "Issaquah installs public art sculptures at SE 62nd St ...", Evan Pappas, April 8, 2019  
Ashland Daily Tidings, "Gateway Island Project Installed", Tran Nguyen, Jan. 21, 2018  
Curbed, "Now this is how you design a freeway underpass; A California city turns a dark tunnel into an inviting walkway", Alissa Walker, Aug. 11, 2016  
San Jose Mercury News, "East Campbell Avenue Portals finally finished", Jasmine Leyva, July 19, 2016  
Ashland Daily Tidings, "'Gather' to grace Gateway Island", Alec Dickinson, Sept. 15, 2015  
Everett Herald, "New lights shine on Everett's art district", Julie Muhlstein, Feb. 27, 2013  
Crosscut.com, "Art vs. Transportation: Grehound move hits an obstacle", C.B. Hall, Dec. 18, 2012  
The Oregonian, "Trimet art committee selects new artist....", Victoria Edwards, July 18, 2012  
Seattle Weekly, "Fantastic Voyage: Susan Zoccola creates....", Brian Miller, June 23, 2010  
Auburn Reporter News, "Artist creates unique steel sculptures for Auburn..", Robert Lippens, June 14, 2009  
Seattle Post-Intelligencer, "'Crud' artists capture...", Nate Lippens, June 29, 2007 p.33  
The Seattle Times, "Hothouses of Imagination", Gayle Clemans, June 22, 2007 p.47  
The Stranger, "Crud", Jen Graves, June 21, 2007 p.64  
Seattle Weekly, "On the Pull", Adriana Grant, June 20-26, 2007 p.45  
ARCADE Architecture/Design in the NW, "Seattle Artist Susan Zoccola...", Kent Greene, Summer 2003 p.45  
Asian Art Magazine, Lundin Liu, Li, 1999  
Sculpture Magazine, Matthew Kangas, Dec. 1999, pp. 78-9  
The Seattle Times, "HorseHead..", July 19, 1999  
Eastsideweek, "Through the Eye of the Needle", Aug. 27, 1997  
The Oregonian, "PICA...", Jan. 17, 1997  
The Seattle Times, "Susan Zoccola's exhibit: Fragments of visual poetry", Nov. 19, 1996  
Seattle Post-Intelligencer, Regina Hackett, Nov. 22, 1996  
The Seattle Times, Nov. 28, 1996, photo etc.  
Art Access, "Body Conscious at Pratt... ", Sept. 1996  
Journal American, "The BAM Annual", July 29, 1995

#### DESIGN

Interior Design, January 2004 "Healing Properties" ,p. 187+  
Northwest Home & Garden, Fall 2003, p. 20  
Women's Day Decorator Edition, August 2000  
Seattle Homes & Lifestyles, Jan/Feb. 1997

# 8. Artist Resume

## Art Location #2

### SOFTlab

New York City, NY

#### Artist Bio

SOFTlab is a design studio based in New York City. The studio combines a research-based design practice with an interest in how technology, craft, and materials come together in ways that explore the boundaries between architecture, other disciplines, and the public.

We are a mix of artists, listeners, geeks, dreamers, teachers, believers, programmers, and architects. Above all, we are curious designers. Our curiosity is driven by the idiosyncratic nature of the world and the expectations people have of how they engage with that world and each other. Rather than rationalize or give order to that world we are inspired by its peculiar messiness and seek to reframe it through our work. While technology can be seen as simply an alibi for innovation or progress, we see technology as an opportunity to enable new perspectives of where we might find unexpected possibilities, playfulness, and beauty in an increasingly complex world. Ultimately, we strive for our projects to elicit a sense of wonder and a rethinking of our relationship to each other and the world around us.



# 8. Artist Resume

## Art Location #2

SOFTlab is a studio based in New York City led by Michael Szivos. The studio operates at the intersection of architecture, art, video, and interactive design. We approach projects by exploring contextual conditions and effects. By examining local conditions, we create interventions that become an extension of something existing on site that might not be readily apparent. We develop our work as a translation of these often dynamic phenomena on the site. In that way, our work forms an experiential contextualism, rather than a literal one. The specificity of the connection to the site is made through active engagement. This allows us to achieve projects which are unexpected, yet become appropriate as they unfold.

Through our public work we strive to strengthen the connections between people and the places they share by combining new ways to engage with making, agency, and community. The studio blurs the lines between design and production through our interest in both vernacular and advanced digital craft. We consider our projects open ended through their ability to elicit excitement in visitors and public to create their own interpretations through dynamic extensions of the site. In that way they become observer, participant, and author as they are contributing their own memories of the place.

In 2012 SOFTlab was awarded the Architectural League Prize for Young Architects & Designers, and previously in 2010 the studio was selected for the New Practices New York award by the AIA Chapter of New York along with 7 other young studios. The studio has produced a wide range of design projects and collaborated with various artists, designers, publications and institutions including MoMA, IBM, Adobe, The Metropolitan Museum of Art, New York Hall of Science, Eyebeam, New Museum, 3M, Vice Media, Intel, The New York Times, Van Alen Institute, EPFL, Pratt Institute, and Columbia University. The studio has exhibited work in galleries throughout New York City. The studio continues to work on many projects in New York while taking on new projects and clients in Europe and Asia.

# 8. Artist Resume

## Art Location #2

We have produced projects for a number of clients and in cities around the world over the past ten years. You can browse our work by year, location, and client below:

**Year:** [2010](#) / [2011](#) / [2012](#) / [2013](#) / [2014](#) / [2015](#) / [2016](#) / [2017](#) / [2018](#) / [2019](#) / [2020](#) / [2021](#) / [2022](#) / [2023](#)

**Location:** [Alexandria](#) / [Atlanta](#) / [Austin](#) / [Bangkok](#) / [Barcelona](#) / [Cologne](#) / [Dallas](#) / [Dubai](#) / [Frankfurt](#) / [Hong Kong](#) / [Hualien City](#) / [Kansas City](#) / [Las Vegas](#) / [Lausanne](#) / [Lexington](#) / [London](#) / [Los Angeles](#) / [Lyon](#) / [Melbourne](#) / [Mexico City](#) / [Miami](#) / [Milan](#) / [Mountain View](#) / [Munich](#) / [New Haven](#) / [New York](#) / [Ningbo](#) / [Orlando](#) / [Paris](#) / [Perth](#) / [Philadelphia](#) / [Prague](#) / [Raleigh](#) / [San Antonio](#) / [San Francisco](#) / [Santo Domingo](#) / [Seoul](#) / [Shenzhen](#) / [Singapore](#) / [Sydney](#) / [Venice](#)

**Client:** [21c Museum Hotel](#) / [23rd Street Partnership](#) / [2x4](#) / [3M](#) / [Adobe](#) / [Audemars Piguet](#) / [Behance](#) / [Blue Marlin](#) / [Center for Architecture](#) / [City of Alexandria](#) / [Disney](#) / [Elga Wimmer Gallery](#) / [EPFL+ECAL Lab](#) / [Etsy](#) / [Eyebeam](#) / [Facebook](#) / [Frankfurter Kunstverein](#) / [Glass Trösch](#) / [Google](#) / [HP](#) / [IBM](#) / [Innisfree](#) / [Instagram](#) / [Intel](#) / [K11](#) / [Kansas City International Airport](#) / [Lincoln](#) / [Metropolitan Museum of Art](#) / [New Museum](#) / [New York Hall of Science](#) / [Pentagram](#) / [Philadelphia Redevelopment Authority](#) / [Pratt Institute](#) / [RAB Lighting](#) / [Signal](#) / [Sonos](#) / [Southbank Centre](#) / [Storefront for Art and Architecture](#) / [The Architectural League of New York](#) / [The Atlantic](#) / [The Creators Project](#) / [The Lake & Stars](#) / [Two Bridges Neighborhood Council](#) / [University Health](#) / [Van Alen Institute](#) / [Vice](#) / [Vornado Realty Trust](#) / [Wexford](#)



# 9 & 10. Artist's History of Public Sculpture Commissions

## Art Location #1

SUSAN ZOCCOLA  
BREA MALL  
HISTORY OF PUBLIC SCULPTURE COMMISSIONS  
MAY 2023

Selection of past work similar to the Brea Mall artwork:



**“VESPERTINE”**. PHOENIX VALLEY METRO, METRO CENTER STATION PARKING GARAGE. 2023. Phoenix, AZ. \$400,000.  
Commissioned by Valley Metro.

Steel, epoxy paint, stainless steel mesh (WebNet). Seven locations on 3-story building.

This artwork was inspired by the night blooming datura plant native to the Sonoran Desert. I worked with the design team and community to develop this site-specific artwork for this new light rail station park and ride garage.

**Dianne Cripe**  
Public Art Coordinator  
Valley Metro  
101 N. 1st Ave.  
Suite 1400  
Phoenix, AZ 85003  
Tel 602-256-5819  
[dcripe@valleymetro.org](mailto:dcripe@valleymetro.org)



# 9 & 10. Artist's History of Public Sculpture Commissions

## Art Location #1

Susan Zoccola



**“BLUE LUPINE”**. GLASS CITY CONVENTION CENTER. 2022. Toledo, OH. Steel, aluminum, coatings. 30' x 20' x 20'. \$250,000.  
Commissioned by City of Toledo.

This large gateway sculpture in front of the new Glass City Convention Center in downtown Toledo, was inspired by their native blue lupine. The sculpture is comprised of 4 freestanding elements.

### **Nathan Mattimoe**

Director, Art in Public Places

The Arts Commission

1838 Parkwood Ave.

Suite 120

Toledo, OH 43604

Tel 419-254-2787 Ext. 1011

[nmattimoe@theartscommission.org](mailto:nmattimoe@theartscommission.org)



# 9 & 10. Artist's History of Public Sculpture Commissions

## Art Location #1



**“5 POINT SPIN”**. 2022. Ft. Wayne, IN. Steel, powdercoat, paint. 25 ft x 20 ft. \$95,000. Commissioned by City of Ft. Wayne.

Sculpture at the center of the new roundabout at the Five Points Intersection was inspired by the history of the neighborhood, particularly the historical Lincoln Highway. For this unique spot, I wanted to help to create a colorful visual anchor which enhances this major gateway to Fort Wayne, that celebrates, uplifts and unifies the City, and greets residents and visitors throughout the year 24/7. This wheel-inspired sculptural “tree” references machine and automotive wheels; also that Fort Wayne is a city in upward motion full of activity, energy, and movement.

### **Russell Garriott**

Senior Planner  
City Of Fort Wayne, IN  
Community Development  
Tel 260-427-2138

[Russell.Garriott@cityoffortwayne.org](mailto:Russell.Garriott@cityoffortwayne.org)

Project: “5 Point Spin”



# 9 & 10. Artist's History of Public Sculpture Commissions

## Art Location #1

Susan Zoccola



**“PASSAGE”**. 2022. Palo Alto, CA. \$110,000. Steel, epoxy paint, powdercoat. Five sculptures, various sizes, maximum 15' x 12'. Commissioned by City of Palo Alto.

A series of five sculptures placed along three miles of Arastradero Blvd and Charleston Ave, a busy family commuting route for bikes, pedestrians, and cars, with three of the sculptures placed in front of schools.

### Elise DeMarzo

Public Art Program Director

1313 Newell Road

Palo Alto, CA 94303

Tel 650-617-3517

[elise.demarzo@cityofpaloalto.org](mailto:elise.demarzo@cityofpaloalto.org)

Project: “Passage”, Charleston/Arastradero Corridor, streetscape public art.





# 9 & 10. Artist's History of Public Sculpture Commissions

## Art Location #1

Susan Zoccola



**“INFLORESCENCE” HOYT AVENUE LIGHT SCULPTURES.** 2013-21 (11 sculptures in 2013, 5 additional sculptures commissioned in 2021). Everett, WA. Painted steel, Acrylic, LEDs, Gobo projections. Each sculpture is 21 ft high. \$160,000. Commissioned by City of Everett.

16 light sculptures spanning 7 City blocks that act as beacons, creating an identity for the Arts District in the City of Everett. They are inspired by festival lanterns and seedpod shapes; a fun and ebullient artwork that appeals to both drive-by and pedestrian visitors, changing from night to day.

### **Carol Thomas**

Former Cultural Arts Manager

City of Everett

Current contact info:

Tel 360-840-1351

[carolthomas17460@gmail.com](mailto:carolthomas17460@gmail.com)



# 9 & 10. Artist's History of Public Sculpture Commissions

## Art Location #1

Susan Zoccola



**“BOWER”** PORTLAND TRI-MET ORANGE LINE. 2015. Portland, OR. Steel, Paint, Powdercoat, Lights. 30 ft x 20 ft x 20 ft. \$240,000. Commissioned by TriMet.

Plaza sculpture for the Park Ave/Oak Grove light rail station in Portland. This arching canopy sculpture is sited in a large plaza and serves as an iconic gathering place for the community. I worked with community groups, project designers, and TriMet staff to develop this artwork. The laser jet cut metal of the canopies has patterns of oak leaf venation, which creates terrific shadows. The artwork has LED lighting integrated into the plaza pavement, making for a dramatic presence at night.

### Michelle Traver

Public Art Project Manager  
TriMet Public Art Program  
Harrison Square Ste. 300  
1800 SW First Ave.  
Portland, OR 97201  
Tel 503-962-2159

[TraverM@trimet.org](mailto:TraverM@trimet.org)

Project: “Bower”, Portland Tri-Met Orange Line.



# 9 & 10. Artist's History of Public Sculpture Commissions

## Art Location #2

SOFTlab



### Project 1

**Title:** *Halo*

**Medium:** Stainless Steel, Aluminum, Acrylic, LEDs, Various Electronics

**Dimensions:** 21'x21'x20

**Purchaser:** Google **Contact:** Gloria Beck

**Phone Number:** (415) 307-4562

**Email:** [gloria.beck@burningman.org](mailto:gloria.beck@burningman.org)

**Date of Commision:** 2019

**Date of Completion:** 2023

**Commission Amount:** \$350,000





# 9 & 10. Artist's History of Public Sculpture Commissions

## Art Location #2

SOFTlab



### Project 2

**Title:** *Cloud Gazing*

**Medium:** Aluminum, Nylon Straps, UV Printed Acoustical Tiles

**Dimensions:** Varying from 80'x25'x2' to 55'x15'x2'

**Purchaser:** Kansas City International Airport and the City of Kansas City

**Contact:** James Martin

**Phone Number:** (818) 513-3422

**Email:** [james.martin@kcmo.org](mailto:james.martin@kcmo.org)

**Date of Commision:** 2021

**Date of Completion:** 2022

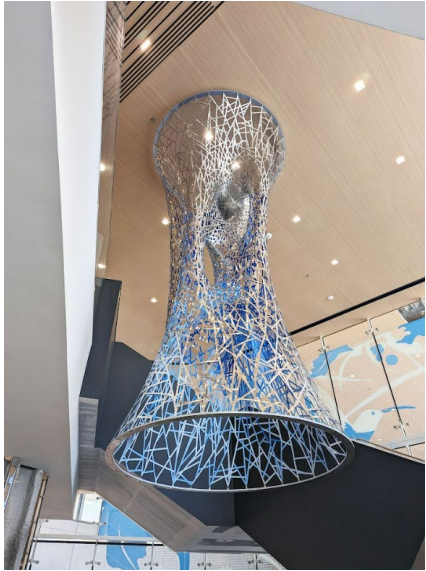
**Commission Amount:** \$325,000



# 9 & 10. Artist's History of Public Sculpture Commissions

## Art Location #2

SOFTlab



### Project 3

**Title:** *Nest*

**Medium:** Aluminum, Nylon Straps, UV Printed Acoustical Tiles

**Dimensions:** 8'x8'x18'

**Purchaser:** University Health

**Contact:** Allison Lane

**Phone Number:** (210) 743-6839

**Email:** [allisonhays.lane@uhtx.com](mailto:allisonhays.lane@uhtx.com)

**Date of Commision:** 2021

**Date of Completion:** 2022

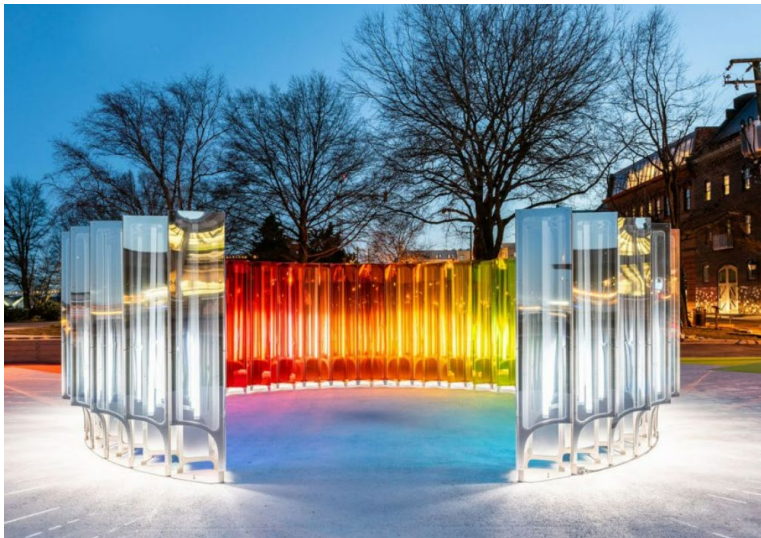
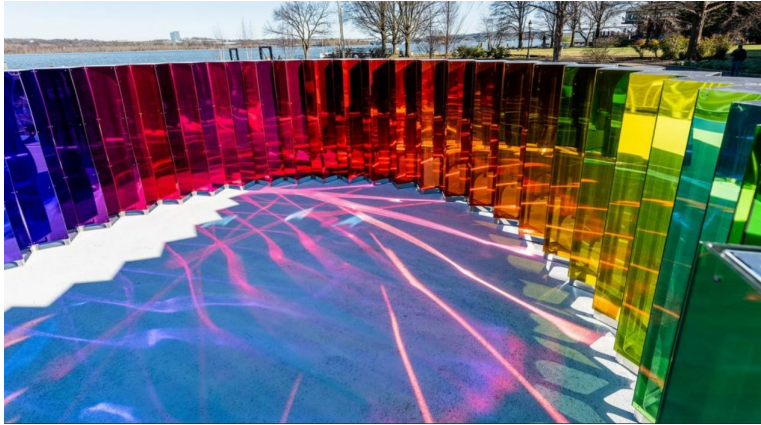
**Commission Amount:** \$150,000



# 9 & 10. Artist's History of Public Sculpture Commissions

## Art Location #2

SOFTlab



### Project 4

**Title:** *Mirror Mirror*

**Medium:** Aluminum, Steel, Acrylic, LEDs, Various Electronics

**Dimensions:** 25' x 25' x 8'

**Purchaser:** Alexandria Office of the Arts

**Contact:** Meridith McKinley

**Phone Number:** (314) 324-3278

**Email:** [mckinley@viapartnership.com](mailto:mckinley@viapartnership.com)

**Date of Commision:** 2018

**Date of Completion:** 2019

**Commission Amount:** \$120,000



# 9 & 10. Artist's History of Public Sculpture Commissions

## Art Location #2

SOFTlab



### Project 5

**Title:** *Spectral Grove*

**Medium:** Powder Coated Aluminum, Stainless Steel

**Dimensions:** 44' x 46' x 14'

**Purchaser:** Wexford Science + Technology, the University City Science Center, and the Philadelphia Redevelopment Authority

**Contact:** Julia Guerrero

**Phone Number:** (215) 209-8619

**Email:** [julia.guerrero@pra.phila.gov](mailto:julia.guerrero@pra.phila.gov)

**Date of Commission:** 2016

**Date of Completion:** 2019

**Commission Amount:** \$235,000

# 11. Other Collateral

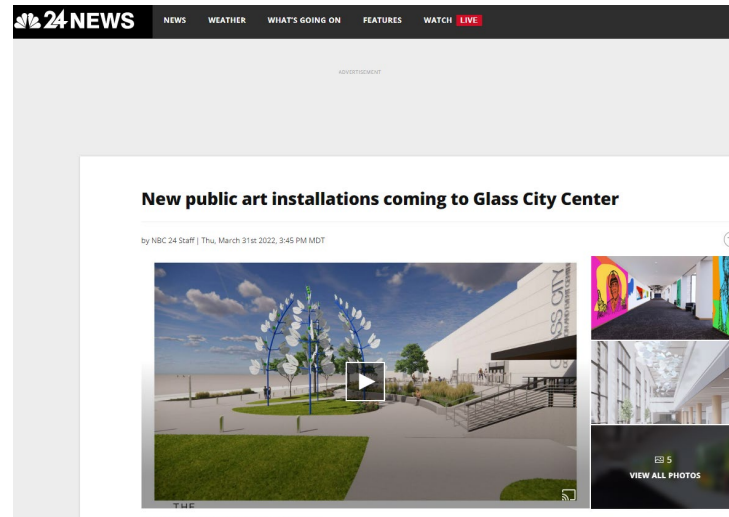
## Art Location #1

Susan Zoccola

seattlerefined

### Artist of the Week: Susan Zoccola

by JOCELYNN BLACKSHEAR | March 14, 2020



GREATER FORT WAYNE  
Business Weekly

Oct. 18 - Fort Wayne Public Works commemorates '5 Point Spin' with sculpture





# 11. Other Collateral

## Art Location #2

SOFTlab

home > SOFTlab

 **designboom®**

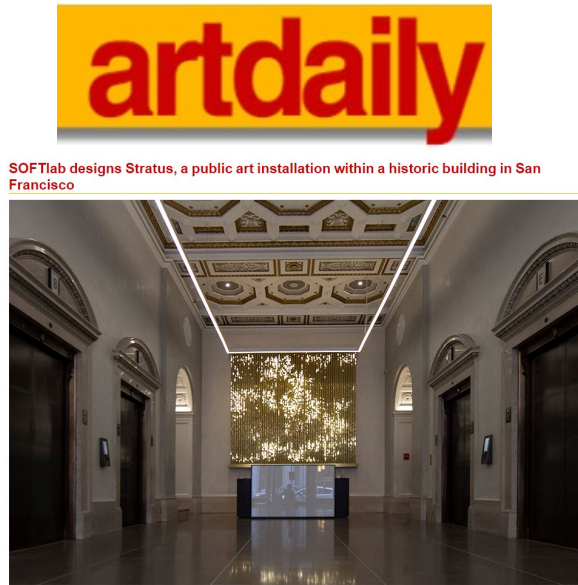
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new installation uses old lighthouse tech to beam prisms of colorful light

art [+9K shares](#) [connections: +1140](#)

mirror mirror, an interactive public artwork designed by SOFTlab, for the city of alexandria, virginia opens march 30. the artwork and its many colorful lights will be on view at the new kings street park, at the waterfront through november, 2019, and is the first artwork commissioned for *site/see: new views in old town*, a series of ephemeral installations on alexandria's waterfront.



**AD**

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FIND A PRO ARCHITECTURE + DESIGN REAL ESTATE AD IT YOURSELF CLEVER CELEBRITY STYLE LIFESTYLE AD PRO VIDEO

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INNOVATIVE DESIGN

## Behance's New York City Headquarters Feature a Dazzling Installation

Designed by New York City-based SOFTlab, the fixture resembles a three-dimensional stained-glass window

By Nick Mafi  
Photography by Alan Tansey  
January 21, 2016

# 12. Artist Contract

NINE dot ARTS

DRAFT

## COMMISSIONED ARTWORK PURCHASE AGREEMENT

This COMMISSIONED ARTWORK PURCHASE AGREEMENT (this "Agreement"), dated \_\_\_\_\_, 20\_\_\_\_, is between NINE dot ARTS Corp., a Colorado corporation ("NDA"), and \_\_\_\_\_ (the "Artist"). NDA and the Artist are sometimes referred to herein, individually, as a "Party" and, collectively, as the "Parties."

### BACKGROUND

- A. NDA is providing consulting service to \_\_\_\_\_ (the "Owner") with respect to artist selection, final design, schedule, and coordination for the commission, creation, construction, and installation of certain artwork to be installed at \_\_\_\_\_ (the "Site").
- B. Prior to the date hereof, the Artist submitted to NDA a design concept (the "Design Concept") for the artwork described therein (the "Artwork"), which Design Concept and Artwork were selected and approved by NDA for installation at the Site.
- C. The Parties have entered into this Agreement to set forth the terms and conditions on which they will work together to install the Artwork at the Site.

Accordingly, the Parties agree as follows:

1. **The Services.** The services to be performed by the Artist (collectively, the "Services") and the rights and obligations of the Artist and NDA with respect thereto are set forth below and in the Exhibits to this Agreement, which Exhibits are hereby incorporated in and made a part of this Agreement. The Artist shall perform all Services and furnish all supplies, materials, labor, and equipment necessary for the performance of the Services unless otherwise expressly set forth herein. The Services shall be performed and delivered in a good, diligent, skilled and workmanlike manner consistent with the highest standards of care and quality in the industry, in accordance with all applicable laws, rules, regulations, ordinances, and other directives (collectively, "Applicable Law") of all applicable governmental or regulatory authorities (each, a "Governmental Authority"), and in strict compliance with the Specifications and all terms and conditions set forth in this Agreement.

#### (a) Prefabrication.

(1) The Design Concept is preliminary, and modifications to the Design Concept may be required prior to final approval by NDA. NDA may provide guidance to the Artist and request revisions to the Design Concept in order to comply with Applicable Laws or for other reasons, including, but not limited to, ensuring the physical integrity of the Artwork or the installation of the Artwork at the Site. The Artist and NDA shall cooperate to modify and finalize the Design Concept as mutually agreed. Upon finalization of the Design Concept, the same shall be signed by the Parties attached hereto as Exhibit A (the "Design").

(2) In connection with or promptly following finalization of the Design, the Artist shall prepare and deliver to NDA presentation quality materials depicting the Artwork (the "Final Design Materials"), which Final Design Materials shall include: colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork and how it will be installed at the Site, mock-ups, final color and materials samples, proposed fabrication methods, feasibility studies, and final cost estimates for completion of the Services. The Final Design Materials shall fix and describe

the size and character of the Artwork with respect to its relationship to the Site, including architectural, structural, mechanical, and electrical systems, materials and other elements as may be appropriate.

(3) The Artist shall determine the artistic expression, design, dimensions, and materials of the Artwork, subject to review and acceptance by NDA and any Governmental Authority with project oversight. The Artist shall ensure that the materials to be used for fabrication of the Artwork are not currently known to be harmful to public health and safety. The Artist shall be responsible for ensuring that the Artwork, as installed, will not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, safety devices and procedures, and other needs and functions of the Site as defined by NDA, Applicable Law, or Governmental Authority prior to fabrication of the Artwork.

(4) The Artist shall submit documents for construction and/or installation of the proposed Design (such documents, the "Construction Documents") to NDA, which Construction Documents must be signed and stamped by requisite design professionals licensed in the State in which the Site is located, as required by Applicable Law, including all applicable building code(s).

(5) The Artist shall review all Construction Documents, including any architect's or engineer's design development materials related to the Artwork, for accuracy of the integration of the Design or the Artwork within the Site and provide NDA with written comments and/or corrections, as requested by NDA.

(6) If necessary for proper installation of the Artwork, the Artist shall inspect the Site prior to fabrication of the Artwork and shall notify NDA of any adverse Site conditions that may impact the installation of the Artwork and are in need of correction. The Artist's failure to notify NDA of any such adverse Site conditions shall be deemed acceptance by the Artist of the Site conditions as they exist. If the Artist notifies NDA of any adverse Site conditions, NDA shall work with the Artist and the Owner to determine whether such adverse Site conditions may be sufficiently remedied so as to proceed with the Services.

(7) The Artist shall secure any and all required licenses, permits and similar legal authorizations, at the Artist's expense, as may be necessary for the installation of the Artwork at the Site.

(8) As soon as possible following finalization of the Design, the Artist shall deliver a proposed budget for completion of the Services (the "Proposed Budget"), identifying all fees and costs for completion of all work under this Agreement, including, without limitation, design, determination of preliminary and final engineering requirements, materials and labor for fabrication (including Artist and subcontractors' costs), consultants (including engineers and specifications writers), transportation of Artwork, installation of Artwork, any necessary permits and licenses, potential modifications, and required insurance, for approval by NDA. Calculation of the Budget will take into consideration the possible increase in costs (e.g., inflation) of services and materials between the date of execution of this Agreement and the anticipated completion date. The Artist and NDA shall cooperate to modify and finalize the Proposed Budget as mutually agreed. Upon finalization of the Proposed Budget, the same shall be signed by the Parties attached hereto as Exhibit B (the "Budget"). Unless otherwise expressly agreed in writing, the Budget shall be treated as the fixed price for the Services subject to adjustment only by Change Order.

(9) The Artist shall deliver to NDA an anticipated schedule for the fabrication, transportation, and installation of the Artwork (the "Proposed Completion Schedule"), which must identify a specific date or timeframe for the completion of all deliverables, including a schedule for the submission of progress reports and inspections, if any, required by NDA or any Governmental Authority, including any permitting agency, related to the fabrication and installation of the Artwork at the Site, and a corresponding milestone-based payment schedule, for review and approval by NDA. The Artist and NDA shall cooperate to modify and finalize the Proposed Completion Schedule as mutually agreed. Upon finalization of the Proposed

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# 12. Artist Contract

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Completion Schedule, the same shall be signed by the Parties and attached hereto as Exhibit C (the "Completion Schedule").

(10) The Artist shall deliver to NDA:

- (A) A maintenance manual, including a description of all materials, processes, and products to be utilized in fabrication the Artwork, detailed instructions for the future maintenance and preservation of the Artwork, and recommended procedures for the conservation and preservation of the Artwork, for review and approval by NDA. Such maintenance manual shall indicate anticipated costs associated with future maintenance and conservation work required or recommended to conserve or preserve the Artwork; and shall reflect issues such as the longevity of the materials used and the life span of the Artwork. The Artist and NDA shall cooperate to modify and finalize the maintenance manual as mutually agreed. Upon finalization of the maintenance manual, the same shall be signed by the Parties and attached hereto as Exhibit D (the "Maintenance Manual").
- (B) A list of all subcontractors to be engaged in connection with providing the Services, a description of the work to be performed by such subcontractors, and a copy of each agreement between the Artist and each such subcontractor.
- (C) Proof of required insurance in amounts and with the limits specified in Exhibit E (the "Insurance Requirements").

(11) NDA shall provide the Artist, at no expense to the Artist, with a list of any permits required with respect to the Services of which NDA is aware, and copies of all existing designs, drawings, reports, and other data, relevant to the Services and in NDA's possession.

(12) The Design, the Budget, the Construction Documents, and the Completion Schedule are, collectively, referred to herein, as the "Specifications." The Artist shall not begin fabrication of the Artwork until the Specifications have been agreed to by the Parties in accordance with this Section 1(a) and the Artist has completed the other tasks required by this Section 1(a) unless otherwise agreed in writing by NDA.

(b) Fabrication.

(1) The Artist shall fabricate the Artwork in accordance with the Specifications in all material respects and in accordance with Applicable Law. The Artist may not deviate from the Specifications unless approved in writing by NDA prior to any such deviation, which approval may be withheld in NDA's sole and absolute discretion. If any such deviation from the Specifications is approved by NDA, the Artist shall provide a set of "as built" drawings if requested by NDA.

(2) The Artist shall ensure that no defective or inferior materials (including materials containing any inherent vices or qualities that cause or accelerate deterioration of the Artwork) are used in fabrication of the Artwork.

(3) If the Artwork is being constructed on the Site, the Artist shall ensure that the fabrication is being conducted in a manner that limits the impacts and burdens of such fabrication on the Owner, the Site, and its neighbors and visitors, and without creating a nuisance.

(4) NDA shall have the right to review the Artwork at reasonable times and upon reasonable notice to the Artist during the fabrication thereof. If upon review of the Artwork NDA determines that the Artwork does

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not conform to the Specifications, NDA shall notify the Artist in writing of the nonconformance specifying in reasonable detail the reasons for such nonconformance. If the Artist disputes NDA's determination that the Artwork does not conform to the Specifications, the Artist shall promptly notify NDA in writing of the Artist's determination that the Artwork does conform to the Specifications addressing in reasonable detail each item of nonconformance identified by NDA. The Artist and NDA shall cooperate to resolve any such dispute in good faith as promptly as possible, but final determination of whether the Artwork conforms to the Specifications shall be made by NDA. The Artist and NDA shall cooperate to determine the process for remedying any such nonconformance. Absent an agreement otherwise, the Artist shall cure any such nonconformance within 30 days after its receipt of written notice of such nonconformance.

(5) The Artist shall take all reasonable measures to protect and preserve the integrity of the Artwork, including applying a protective sealant, patina, or anti-graffiti coating to the Artwork, if applicable, unless NDA specifically instructs the Artist otherwise.

(6) Upon request, the Artist shall provide photographic documentation of the completed Artwork in a format mutually acceptable to the Artist and NDA.

(c) Acceptance and Installation of the Artwork.

(1) The Artist shall notify NDA in writing when fabrication of the Artwork has been completed and, if the Artwork was fabricated off-Site, when the Artwork is ready for delivery and installation at the Site.

(2) If the Artwork was fabricated off-Site, then as soon as reasonably possible after its receipt of such notice, and prior to the transportation and installation of the Artwork at the Site, NDA shall inspect the Artwork, either in-person or via electronic video or photographs, to determine whether the Artwork conforms to the Specifications. If NDA determines that the Artwork conforms with the Specifications, it shall give final approval of the fabricated Artwork, and authorize the installation of the Artwork at the Site. NDA shall notify the Artist when the Site is prepared to receive the Artwork. The Parties shall cooperate to remediate any such conditions. If there are no such conditions or following the remediation thereof, the Artist shall arrange for the transportation and installation of the Artwork in coordination with NDA. If the Artist does not install the Artwork itself, the Artist shall be present at the Site to supervise and approve the installation of the Artwork. All installation services shall be performed by qualified professionals and by licensed contractors as required by Applicable Law. The Artist is responsible for timely and proper installation of the Artwork. The Artist shall notify NDA when installation of the Artwork is complete.

(3) Within 30 days after its receipt of such completion notice, or, if the Artwork was fabricated on-Site, after its receipt of notice from the Artist of the completion of the Artwork, NDA shall inspect the Artwork and the installation thereof at the Site to determine whether it conforms to the Specifications in all material respects and all Applicable Laws and whether the Artwork has been safely and securely installed. If NDA determines that the Artwork does not so conform or has not been so installed, it shall provide the Artist with written notice of such nonconformance or deficient installation specifying in reasonable detail the basis for such nonconformance or deficient installation (a "Non-Acceptance Notice").

(4) After receipt of a Non-Acceptance Notice, if the Artist disputes NDA's determination that the Artwork does not conform to the Specifications or was not safely and securely installed, the Artist shall promptly notify NDA in writing of the Artist's determination that the Artwork does conform to the Specifications and was safely and securely installed addressing in reasonable detail each item of nonconformance or safety issue identified by NDA. The Artist and NDA shall cooperate to resolve any such dispute in good faith as promptly as possible, but final determination of whether the Artwork conforms to the Specifications and was safely and securely installed shall be made by NDA. The Artist and NDA shall cooperate to determine



# 12. Artist Contract

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the process for remedying any such nonconformance or deficient installation. Absent an agreement otherwise, the Artist shall cure any such nonconformance or deficient installation within 30 days after its receipt of the Non-Acceptance Notice. The Artist shall notify NDA in writing when it has so cured such nonconformance or deficient installation and the acceptance process described herein shall be repeated until Final Acceptance of the Artwork and its installation. "Final Acceptance" means that NDA has either provided written notice of acceptance the Artwork or has not delivered a Non-Acceptance Notice within 30 days after its receipt of the last notice of completion or correction of non-conformance or deficient work, as applicable.

(d) General Provisions Governing the Services.

(1) NDA shall be responsible for coordination and communication between the Artist and other interested parties (e.g., the Owner, architects, landscape architects, general contractor, and other decision-makers) other than the Artist's subcontractors, including a reasonable number of meetings required to coordinate the Artwork design and installation at the Site with the overall project at the Site.

(2) The Artist shall be available with reasonable advance notice for a reasonable number of meetings as may be required to coordinate design, lighting, landscaping, and overall project implementation, as well as ceremonies and the like.

(3) Each Party shall promptly notify the other Party in writing if it becomes aware of any fact, circumstance or condition that is likely to impede or delay the fabrication or installation of the Artwork in accordance with the Specifications.

(4) The Specifications may be modified only in a writing signed by both Parties (a "Change Order").

(5) Either Party may request a Change Order. Prior to the execution of any Change Order, the Artist shall provide NDA with a written description of any significant or material impact such Change Order will have, including with respect to the Artwork, the Services, the Construction Documents, the Budget, or the Completion Schedule, which notice must include a detailed description of any such impact, including any such impact to the artistic expression, design, dimensions, or materials of the Artwork, the costs to complete the Services, or the dates of completion of any milestones or the installation of the Artwork. If a proposed Change Order is not executed by both parties, the Artist shall continue to fabricate the Artwork in accordance with the Specifications without giving effect to the proposed Changes Order. If the Change Order is signed by both Parties, it shall become part of the Specifications and modify the existing Agreement. If the Artist incurs costs in excess of the amounts listed in the Budget (as modified by any Change Order), the Artist shall pay such excess costs from the Artist's own funds unless the Artist obtains approval in writing for such additional costs from NDA.

2. **Payment.** Subject to the Artist's performance of the Services in compliance with this Agreement, NDA shall make payments to the Artist at such times and in such amounts as are specified in the Completion Schedule. NDA may withhold any payment that may otherwise be due hereunder if the Artist is in breach or violation of this Agreement or has failed to deliver any deliverable or meet any milestone or condition that was to be satisfied prior to the date of such payment. NDA shall deliver any such withheld payment when such breach, violation, or failure has been cured to NDA's reasonable satisfaction.

3. **Term and Termination.** This Agreement shall be effective on the date that this Agreement has been signed by both Parties, and, unless terminated earlier in accordance with the terms hereof, shall extend until Final Acceptance or the Artist has been paid in full for the Services, whichever is later. NDA may terminate this Agreement for any reason or no reason upon 24 hours' written notice to the Artist. Such termination shall not

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extinguish or diminish the rights and obligations of the Parties incurred prior to such termination. If NDA terminates this Agreement prior to completion of the Services other than due to the Artist's breach of this Agreement, NDA shall pay the Artist for all Services performed up to the effective date of the termination, including any expenses incurred by the Artist in connection therewith. If NDA terminates this Agreement for breach or violation of this Agreement, including but not limited to the Artist missing progress report dates, non-responsiveness, inability to complete the Artwork within the agreed upon Completion Schedule, refusal to make requested revisions to the Artwork, or failure to comply with the Specifications, NDA will have no obligation to pay the Artist any remaining balance owed under this Agreement and the Artist shall return or refund to NDA any prepaid amounts or other amounts deposited with the Artist, including any amounts paid in advance of the Artist achieving the milestone or satisfying any other condition to the Artist earning such amounts. Such obligations shall be in addition to, and not in lieu of, any other remedies that NDA may have for breach. Sections 4 through 13 of this Agreement shall survive any termination of this Agreement.

4. **Risk of Loss.** The Artist shall bear the risk of loss or damage to the Artwork until Final Acceptance. During such period, the Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. Until Final Acceptance, any injury to property or persons caused by the Artwork or any damage to, theft of, vandalism to, or other actions affecting the Artwork, are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the fabrication, storage, transportation, installation, or delivery of the Artwork, regardless of where such loss occurs.

5. **Maintenance.** If, within one year after Final Acceptance, the Artwork requires maintenance or preservation substantially in excess of that described in Maintenance Manual, NDA shall notify the Artist of such need with reasonable promptness. Upon receipt of such notice, the Artist shall provide such required maintenance and/or preservation services promptly, satisfactorily, and consistent with professional conservation standards, at no expense to NDA or Owner. If the Artist is unable to provide such maintenance and/or preservation services, the Artist shall be responsible for reimbursing NDA or Owner for any costs, expenses, damages, or losses incurred by NDA in order to otherwise procure such maintenance and/or preservation services. The foregoing is in addition to any other rights NDA or the Owner may have.

6. **Artist as an Independent Artist.** The Artist is an independent contractor, and is not an agent or employee of, and has no authority to bind, NDA. The Artist is not an employee of NDA for federal tax purposes, it being the intent of the parties to rely upon §3508 of the Internal Revenue Code of 1986, as amended. In his or her capacity as an independent contractor, the Artist represents, warrants, and agrees that, subject to NDA's reasonable requirements with respect to the Artist's work: (a) the Artist will not be required to devote his or her full-time to the performance of the Services and has the right to perform services for others during the term of this Agreement so long as the Artist does not otherwise violate the terms of this Agreement or any other agreement between the Artist and NDA; (b) the Artist has the sole right to control and direct the means, manner and method by which the Services will be performed; (c) the Artist has the right to perform the Services at any place or location and at such times as the Artist may determine; (d) the Artist will furnish all equipment and materials used to provide the Services; (e) the Services will be performed by the Artist and NDA shall not be required to hire, supervise or pay any assistants or other persons to help the Artist; (f) the Artist will not receive any training from NDA in the professional skills necessary to perform the Services; (g) the Artist shall ensure that he or she is adequately insured, including with respect to the performance of the Services and, unless otherwise agreed in writing, NDA will not provide insurance coverage of any kind for the Artist; (h) NDA will not withhold any payroll, FICA, FUTA, or other taxes or any kind from compensation payable to the Artist hereunder; (i) the Artist will be solely responsible for reporting and paying all income and employment taxes on all compensation received by the Artist pursuant to this Agreement; and (j) the Artist will not be entitled to any fringe benefits, to receive any vacation or illness payments, or to participate in any plans, arrangements, or distributions by NDA, including any health or welfare plans, 401(k) plans, or any plans pertaining to any bonus, stock option, profit sharing, insurance, or similar benefits for employees of NDA.

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## 7. Representations and Warranties.

(a) Artist Representations and Warranties. The Artist represents and warrants to NDA and the Owner as follows:

- (1) It has the full power and authority to enter into and perform this Agreement and to grant the rights contemplated by this Agreement, and this Agreement is a legal, valid, and binding obligation of the Artist.
- (2) The Services shall be performed and delivered in a good, diligent, and skilled and workmanlike manner consistent with the highest standards in the industry, and in accordance with Applicable Law and the terms and conditions set forth in this Agreement.
- (3) The Artist has and at all times during the term of this Agreement for the duration specified in the Insurance Requirements shall maintain insurance that complies with the Insurance Requirements.
- (4) The Artwork shall conform in all material respects to the Specifications, shall be free from material defects in materials and workmanship, and shall not require material maintenance or preservation efforts in excess of those described in the Maintenance Manual.
- (5) The Artwork is unique and original and, except as otherwise disclosed in writing by the Artist to NDA, is solely the result of the artistic efforts of the Artist.
- (6) Neither the Artwork nor any duplicate or derivative thereof has been or will be made available for sale other than pursuant to this Agreement.
- (7) The Artist has not sold, assigned, transferred, licensed, granted, utilized, or otherwise encumbered the Artwork or any element thereof or any copyright or other intellectual property right therein or related thereto, in any way that may affect or impair the rights granted or purported to be granted pursuant to this Agreement.
- (8) The Artwork does not infringe upon any copyright or any other intellectual property rights of any party.
- (9) The Artwork is free and clear of any liens from any source whatsoever.

(b) NDA Representations and Warranties. NDA represents and warrants to the Artist as follows:

- (1) It has the full power and authority to enter into and perform this Agreement, and this Agreement is a legal, valid, and binding obligation of NDA.
- (2) NDA has authority to act on behalf of the Owner with respect to this Agreement and the Services.

## 8. Intellectual Property Rights.

(a) Title; Waiver of Certain Rights. Title to the Artwork and any other deliverables resulting from the Services (collectively, the “**Work**”) shall pass to the Owner upon Final Acceptance. At such time, the Owner shall be deemed to be the possessor of the Artwork. The Artist agrees to waive and does hereby voluntarily waive all rights to attribution and integrity with respect to the Work and any and all claims as may arise under the Visual Artists Rights Act of 1990, 17 U.S.C. §§106A and 113(d) (“**VARA**”), the California Art Preservation Act (Cal. Civ. Code §§987 and 989 ) (“**CAPA**”), or any other local, state, foreign, or international law, whether now existing or

hereafter enacted, as the same may be amended, that conveys any moral or similar rights (“**Moral Rights Laws**”), with respect to the Work, its display, removal from display, exhibition, installation, conservation, storage, study, alteration, and any other activities conducted by the Owner, its officers, employees, agents, contractors, licensees, successors or assigns. If the Work is incorporated into a building such that the Work cannot be removed from the building without physical defacement, mutilation, alternation, distortion, destruction, or other modification (collectively, “**Modification**”) of the Work, the Artist waives any and all claims it may have under any Moral Rights Laws arising out of or against the Owner and any current or future owners of the site, and its agents, officers, and employees, for Modification of the Work. The Owner has the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the Work, in whole or in part, in the Owner’s sole discretion. The Artist understands the effect of this waiver and hereby acknowledges that the Artist is surrendering the rights described herein with respect to the Work. If the Owner modifies the Work without the Artist’s consent in a manner that is prejudicial to the Artist’s reputation, the Artist retains the right to disclaim authorship of the Artwork in accordance with 17 U.S.C. § 106A (a)(2). This waiver does not extend to the rights of attribution conferred by 17.U.S.C. §106A(a)(1) or §106A(a)(2).

(b) Retention of Documents. One set of presentation materials prepared by the Artist and submitted to NDA under this Agreement shall be retained by NDA for no less than two years following Final Acceptance.

(c) Copyright Ownership. The Artist shall retain all rights under the Copyright Act of 1976, 17 U.S.C. §101 et seq., as the sole author of the Artwork for the duration of the copyright of the Artwork.

(d) Reproduction Rights.

(1) In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate two- or three-dimensional or digital reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the Owner. Provided, however, nothing in this Agreement shall prevent the Artist from creating additional works in the Artist’s manner and style of artistic expression.

(2) The Artist grants to NDA, the Owner, and their respective assignees a perpetual, irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publication, provided that such rights are exercised in a tasteful and professional manner.

9. **Indemnification.** The Artist shall defend, protect, indemnify, and hold harmless NDA, the Owner, and their respective affiliates, directors, officers, agents, employees, equity holders, contractors and subcontractors (collectively, the “**Indemnified Parties**”) from and against any and all claims, costs, damages, expenses, losses, demands, causes of action, judgments, and proceedings, including court costs, reasonable attorneys’ and other professional fees, brought or made against, or suffered or incurred by, and Indemnified Party relating to, arising out of, incident to, or resulting, directly or indirectly, from, (i) the Artist’s negligence, willful misconduct, or breach of its representations, warranties, or covenants made in this Agreement, (ii) the Artist’s or its subcontractors’ and the respective agents’, employees’ or contractors performance of the Services, (iii) any claims and mechanic’s liens asserted by the Artist’s contractors, subcontractors, suppliers, vendors, or service providers, and (iv) any claims that the Works infringe an intellectual property, proprietary, or other rights of any third party.

10. **Alteration of Site; Relocation or Removal of Artwork.** The Owner may alter the Site or relocate or deaccession the Artwork in its sole and absolute discretion at any time following Final Acceptance.



# 12. Artist Contract

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11. **Non-disparagement.** Each Party agrees that it (a) will not do or say anything false that a reasonable person would expect to diminish or constrain the good will and good reputation of the other Party or any of its subsidiaries or affiliates, or their products or services, and (b) will not seek to injure the reputation of the other Party or any of its subsidiaries or affiliates, which includes, without limitation, refraining from making disparaging statements about any of their methods of doing business, the effectiveness of any of their business policies and practices, and the quality of any of their products or services.

12. **Worker's Compensation.** THE ARTIST UNDERSTANDS AND AGREES THAT (1) THE ARTIST IS NOT ENTITLED TO WORKERS' COMPENSATION OR UNEMPLOYMENT INSURANCE BENEFITS UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY THE ARTIST OR AN ENTITY OTHER THAN NDA, AND (2) THE ARTIST (NOT NDA) IS OBLIGATED TO PAY FEDERAL AND STATE INCOME AND EMPLOYMENT TAX ON ANY AMOUNT EARNED BY THE ARTIST PURSUANT TO THIS AGREEMENT.

## 13. General Provisions.

(a) **Entire Agreement.** This Agreement constitutes the entire agreement between NDA and the Artist and supersedes any previous agreements or representations, either oral or written with respect to the subject matter of this Agreement. Amendments may only be made in writing signed by both Parties. In the event of any conflict between the terms and conditions of this Agreement and any other agreement or document, the terms and conditions of this Agreement shall control.

(b) **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A facsimile or other digital transmission of this signed Agreement bearing a signature on behalf of a Party shall be legal and binding on such Party. Each Party agrees that electronic signatures may be used in lieu of hand signatures in the execution of this Agreement.

(c) **Governing Law; Dispute Resolution.** This Agreement will be governed by and construed in accordance with the laws of the state of Colorado, without regard to or application of conflict of law rules or principles. Any controversy or claim arising out of this Agreement, shall be decided by binding arbitration to be conducted in accordance with the rules of the American Arbitration Association ("AAA") by a single arbitrator selected by the Parties, and not by court action, except as provided by Colorado law for judicial review of arbitration proceedings. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator selected by the Parties shall have the power to determine the scope and time constraints of reasonable discovery and the admissibility, relevance, materiality, and weight of any evidence offered by any Party. The arbitrator selected by the Parties to conduct the arbitration shall have the power and authority to grant any and all relief requested by the Parties to the dispute, except those proceedings for any order of attachment, receivership, injunction, or any other provisional remedy. Commencement of court action in pursuance of these excluded matters shall not constitute a waiver of the right to arbitrate under this provision. In the event the Parties to the dispute cannot agree to an arbitrator, the AAA shall select and appoint an arbitrator. Any mediation or arbitration shall be conducted in Denver, Colorado unless otherwise agreed by the Parties. Any costs and fees of arbitration, other than attorney fees associated with the arbitration, shall be shared equally between the Parties. If arbitration or any other legal action is necessary to enforce this Agreement, the prevailing Party shall be entitled to reasonable attorney fees, costs, and expenses.

(d) **Notice.** All notices and other communications given in connection with this Agreement shall be in writing and shall be hand delivered or mailed return receipt requested or sent by reputable overnight courier to the other Party at such Party's address set forth on the signature page hereto or at such other address as may be provided in accordance herewith, or sent by e-mail to the e-mail address set forth on the signature page hereto or otherwise provided by such Party for purposes of receiving such notices.

(e) **No Agency.** Nothing contained herein will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise between the Parties.

(f) **Assignment.** The rights and obligations under this Agreement may not be assigned or transferred by the Artist. NDA may assign the rights and obligations under this Agreement; however, NDA shall retain the obligation to pay the Artist if the assignee fails to pay as required under this Agreement.

(g) **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto, their successors and assigns.

(h) **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and each provision of this Agreement shall be severable and enforceable to the extent permitted by law.

(i) **Waiver.** No provision of this Agreement shall be deemed waived, nor shall there be an estoppel against the enforcement of any such provision, except by a writing signed by the Party charged with the waiver or estoppel. No waiver shall be deemed continuing unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any provision other than that specifically waived.

(j) **Interpretation.** Headings in this Agreement are for convenience only and shall not control the meaning of this Agreement. Whenever applicable, masculine and neutral pronouns shall equally apply to the feminine genders; the singular shall include the plural and the plural shall include the singular. The Parties have reviewed and understand this Agreement, and each has had a full opportunity to negotiate the Agreement's terms and to consult with counsel of their own choosing. Therefore, the Parties expressly waive all applicable common law and statutory rules of construction that any provision of this Agreement should be construed against the Agreement's drafter, and agree that this Agreement and all amendments hereto shall be construed as a whole, according to the fair meaning of the language used.

(k) **Third-Party Beneficiary.** The Artist and NDA agree that the Owner shall be an express third-party beneficiary of this Agreement.

[Signature Page Follows]

Document last updated February 13, 2023



# 12. Artist Contract

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Each of the undersigned, intending to be legally bound, has executed this Agreement as of the date set forth below such Party's signature below.

**ARTIST:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
E-mail : \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NDA:**

**NINE dot ARTS Corp.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
E-mail : \_\_\_\_\_  
Address: 3734 Osage Street  
Denver, CO 80211

# 13. Art Consultant's Resume

about

MOLLY CASEY

Molly Casey's leadership and consulting expertise includes working directly with private and public sector clients - including architects, designers, developers, and communities - on projects ranging from curated corporate art collections to robust public art master plans. As NINE dot ARTS Chief Curator and Co-founder, Molly leads, mentors, and supervises interdisciplinary teams through creative placemaking process, from facilitating widespread public engagement to overseeing the research, curation, acquisition, and installation of a range of national art experiences. Her intimate and longtime connection to the national art community allows her to develop localized collections spanning medium, scale, and subject matter, meanwhile uplifting local creatives.

- 15+ years of consulting experience includes consensus building, stakeholder engagement, and strategic collaboration with community members, city officials, and commercial real estate professionals
- Performs art valuations for collections with over 1,000 pieces as well as relocation, revitalization, and integration of existing artworks
- Advanced public speaker with experience building and leading in-depth presentations to public and private sector clients
- Passionate advocate for artists with relationships worldwide



# 13. Art Consultant's Resume

## Relevant Public Art Projects



### Dairy Block

INDUSTRY: MIXED-USE    REGION: MOUNTAIN WEST

CLIENT: MCWHINNEY

#### SCOPE OF WORK:

Community art plan and public art installation for The Maven Hotel (172 rooms), Dairy Block offices, Kachina Cantina Restaurant, and the city's first activated pedestrian alleyway. NINE dot ARTS has also been hired on retainer to support ongoing artwork updates, maintenance, and engagement activities.

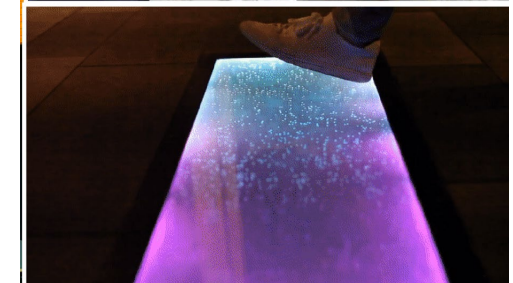
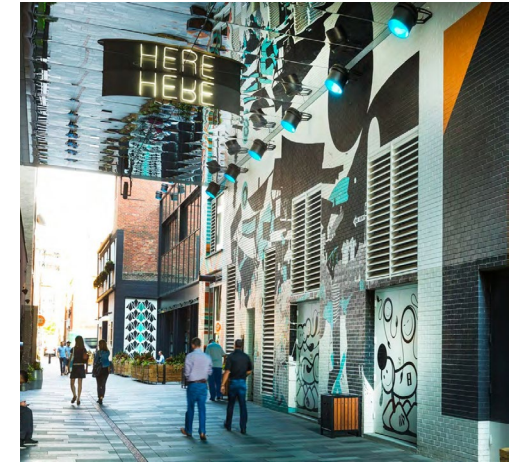
#### CLIENT VISION:

Pay homage to the area's legacy in thoughtful craftsmanship as the site of the historic Windsor Dairy

#### NINE DOT ARTS VALUE ADD:

Honoring the original Windsor Dairy and the concept of "the maker," the collection demonstrates exceptional use of public space and art with impact to engage surrounding retail and entertainment, creating a lively and unforgettable urban experience.

- 10 site-specific, multimedia public art commissions are featured in the length of one city block
- 30-foot tall "Spilt Milk" sculpture serves as a landmark installation, welcoming visitors into the alley
- 500-lb wooden hand hanging from the ceiling of The Maven has become a staple of the Denver arts scene
- Partnerships with the Colorado Crush Mural Festival and Lighthouse Writers Workshop's WriteDenver Program helped recruit local artists and engage the surrounding community in the art collection
- Winner of ULI 2021 Americas Award for Excellence





# 13. Art Consultant's Resume

## Relevant Public Art Projects



### Catbird Hotel

INDUSTRY: HOSPITALITY REGION: MOUNTAIN WEST

CLIENT: SAGE HOSPITALITY GROUP

SCOPE OF WORK:

Artwork and styling for 167 guest rooms and public spaces, including rooftop patio and garage

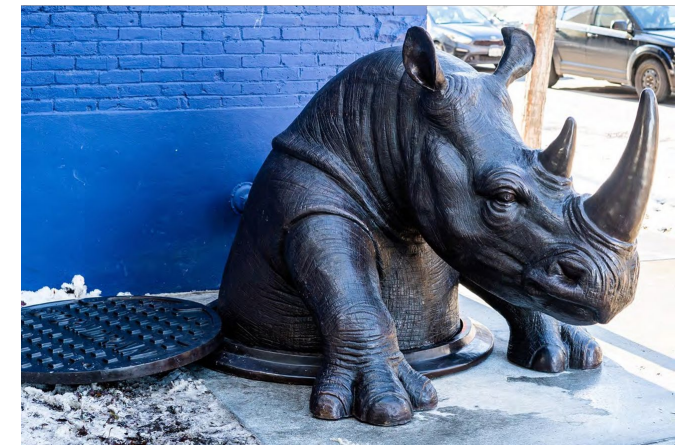
CLIENT VISION:

Use art to enhance the hotel's custom furnishings and eclectic interior design while leaving a lasting impression on guests

#### NINE DOT ARTS VALUE ADD:

Our team worked closely with designers to develop an art collection that would blur the line between hotel and home, encouraging guests to visit for extended periods. Curated as an ode to everyone's favorite eccentric aunt, the art collection merges mid-century modern with quirky chic and keeps guests asking, "what's that?" along every corridor. With a focus on emerging, underrepresented, and international artists, the art collection pushes the boundaries of typical hospitality design through avant-garde expressions that are oddly familiar yet wildly refreshing, distinguishing Catbird as both the place to be and a place where everyone belongs.

- 47-piece art collection features 18 underrepresented artists as well as local, emerging, and international talent
- 200 curated objects in the hotel's den highlight the "cat" and "bird" motifs in honor of the property's namesake
- A 992-lb rhinoceros sculpture made by international artists Gillie and Marc welcomes hotel visitors and raises awareness for endangered species
- Each guest room hosts a unique, 8- to 15-inch handmade ceramic sculpture
- Corridors include unexpected "family portraits" and no two are the same





# 13. Art Consultant's Resume

## Relevant Public Art Projects



## Jackson National Life

INDUSTRY: CORPORATE OFFICE    REGION: MIDWEST

CLIENT: JACKSON NATIONAL LIFE

SCOPE OF WORK:

Artwork for two office buildings and exterior spaces

CLIENT VISION:

Curate artwork for the company's Lansing Home Office expansion project

### NINE DOT ARTS VALUE ADD:

Our team curated a cohesive collection that demonstrates the tremendous benefits of art in the workplace, including its ability to inspire innovation, productivity, and connection across Jackson's employees, clients, partners, and the greater community. Featuring dozens of original, investment-quality commissions and numerous works by local artists, the project reinforces the value of an intentional, high-impact art experience to engage and uplift all who interact with it.

- 1,384 artworks across 228,065 square feet throughout two buildings
- Interior and exterior installations
- Tells a compelling visual story about nature, wellness, and connectivity

# 13. Art Consultant's Resume

## Relevant Public Art Projects



## Denver Water

INDUSTRY: GOVERNMENT / PUBLIC VENUE, CORPORATE OFFICE

REGION: MOUNTAIN WEST

CLIENT: DENVER WATER

SCOPE OF WORK:

Exterior public sculptures for new operations complex

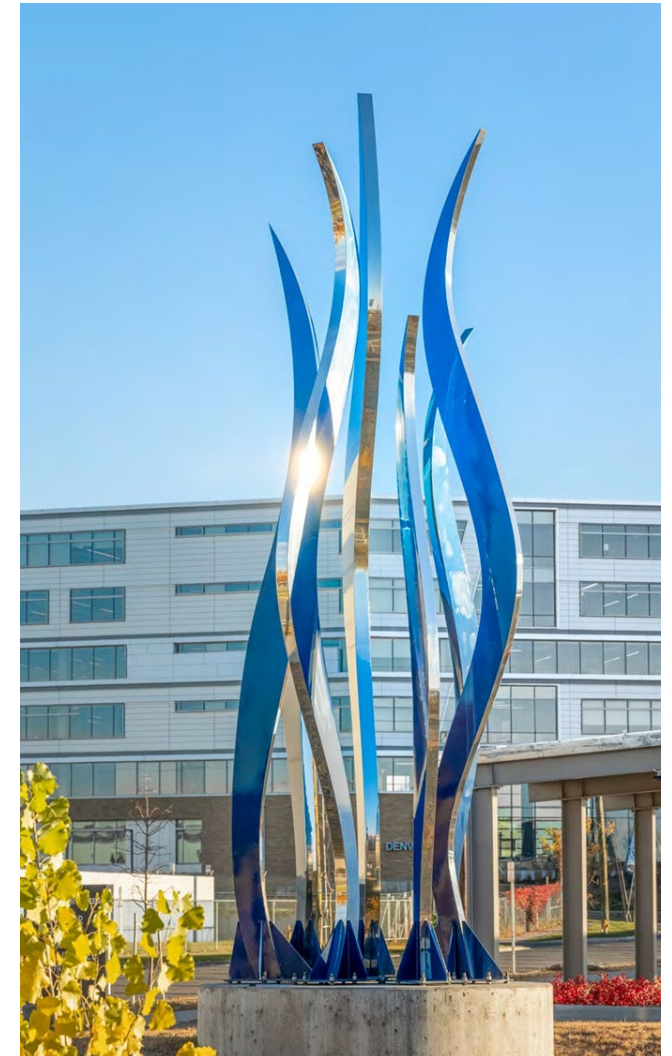
CLIENT VISION:

Curate public facing artwork to help locals and visitors better understand and appreciate Denver Water's mission

### NINE DOT ARTS VALUE ADD:

Our team worked with Denver Water employees to develop a clear art vision and even include them in the creation of one of three site-specific public sculptures for the newly renovated, 35-acre operations complex. Strategically placed outside the campus, each sculpture is internally illuminated to be visible at all times of day, conveying a sense of pride and permanency while reflecting the company's larger impact on the water utility industry. Altogether, the art program marries artistic talent with our clients' vision and historical knowledge of their company, celebrating Denver Water's commitment to sustainable utility operations.

- Two stainless steel sculptures by David Harber resemble the shape and flow of water, each measuring more than 20 feet tall.
- Artist Rik Sargent's sculpture, "Forest to Faucets," was co-created by Denver Water employees, who molded forests, animals, and notable water systems into Sargent's clay model, identifying important landmarks and infusing personal stories into the installation.





# 13. Art Consultant's Resume

## Relevant Public Art Projects



### Parc Mosaic Apartments

INDUSTRY: MULTIFAMILY REGION: MOUNTAIN WEST

CLIENT: AIMCO

SCOPE OF WORK:

Artwork in public, amenity, and exterior spaces across three buildings

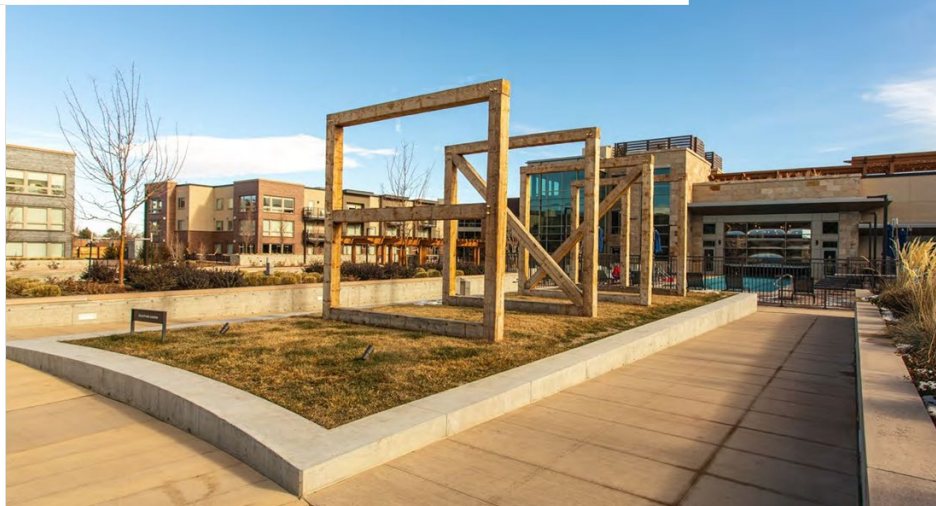
CLIENT VISION:

Curate artwork that will bring the outdoors in, honoring the property's location amongst nature

**NINE DOT ARTS VALUE ADD:**

Consisting of nature-inspired artworks made almost exclusively by Colorado artists, the art collection pays tribute to the surrounding landscape while elevating the feeling of "home" for residents.

- Outdoor public sculptures made of natural materials like wood and metal and provide interesting sightlines for tenants and guests
- Made by Colorado resident Tyler Aiello and UC Boulder Professor Richard Saxton, the exterior sculptures serve as wayfinding tools, helping the property stand out yet remain organic to the landscape
- Interior photography, paintings, and installation-based works give the space a contemporary sophistication that complements its reputation as a sustainable living sanctuary



# 13. Art Consultant's Resume

## Relevant Public Art Projects



## University of Colorado - Colorado Springs

**INDUSTRY:** EDUCATION/PUBLIC VENUE

**REGION:** MOUNTAIN WEST

**CLIENT:** UNIVERSITY OF COLORADO - COLORADO SPRINGS

**SCOPE OF WORK:**

Curate large-scale exterior artwork for entry to the UCCSHybl Sports Medicine and Performance Center

**CLIENT VISION:**

Visually reflect the innovative research and services that UCCS offers in sports medicine and performance art

**NINE DOT ARTS VALUE ADD:**

NINE dot ARTS commissioned a high-impact statement piece by artist Gail Folwell for the exterior of the UCCSHybl Sports Medicine and Performance Center, establishing a memorable sense of place that engages both university locals and neighboring communities. The dynamic installation, "Stay Human," reflects the adrenaline, determination, and power present within athletics and movement, celebrating UCCS' research and scholarship efforts around medicine and performance.



# 13. Art Consultant's Resume



## PROVEN PROCESS

From vision development to art installation and everything in between, we guide you through a proven process to ensure your success, culminating in a high-quality art experience delivered on time and on budget.



### STAGE 1:

#### VISION & ROADMAP

3-4 WEEKS

We connect your story, brand, and goals to visual ideas and concepts. We map your budget to a timeline and deliver a detailed art typology and location plan.



### STAGE 2:

#### RESEARCH & CURATE

6 WEEKS

We partner with developers, designers, and architects to dig deep and understand the space. Our curators then research and present recommended artwork and finalize the art collection.



### STAGE 3:

#### ART ACQUISITION

8+ WEEKS

Our art acquisition team brings everything together through the skillful negotiation and purchasing of all approved art. We carefully manage the project timeline to stay on schedule and on budget while moving forward to framing and shipping.



### STAGE 4:

#### INSTALL & ENGAGE

The art experience comes to life through careful coordination with our clients, artists, and installers. Our team provides complimentary art labels to support identification and engagement.

#### CLIENT DELIVERABLES INCLUDED WITH OUR FEES:

- Concept boards
- Curatorial statement
- Budget allocation by location & priority
- Art acquisition schedule

- Updated location plans
- Art collection presentations
- Commission concept review

- Acquisition of all art and framing
- Updated timeline
- Art coordination and commission implementation

- Art collection installation
- Art identification labels
- Collection summaries

Comprehensive project management throughout

# THANK YOU





# **Sculpture by SOFTlab**

ART LOCATION #2



# Artist Warranties of Title and Originality

Appendix E

## City of Brea Art in Public Places Program Artist Warranties of Title and Originality

The City of Brea's Art in Public Places (APP) Program provides opportunities for artists to integrate their unique perspectives permanently into the cityscape. Sculpture is to be conceptualized, designed, fabricated, and installed by qualified artists (see Artists Qualifications, pages 14-15 of Brea's APP Policy Manual), their staff, and/or contractors. Sculpture is to be original or an edition of 5 or fewer; similar editions may not be displayed within a 50 mile radius of the project site without prior approval by the City. Sculpture requirements are described in Brea's Art in Public Places Policy Manual, City of Brea Ordinance No. 1050, and City of Brea Zoning Code section 20.408.040 subsection C.4.

A. The Artist represents and warrants that:

The Sculpture is solely the result of the artistic effort of the Artist; and

The Artist has full and complete legal authority to create and transfer complete ownership of the Sculpture to the Developer; and

Except as otherwise disclosed in writing to the City and the Developer, the Sculpture is unique and original, or an edition of \_\_\_ of five or less, and does not infringe upon any copyright or other intellectual property right; and

No similar edition is on display within a 50 mile radius of the project site.

Artist Name: Michael Szivos, Founder of SOFTlab

Title of Sculpture: Afterimage


Project Location: Brea Mall

Developer: Simon Property Group

Artist Phone: (212) 481-5759

Artist Address: 34 West 27th Street 9th Floor New York, NY 10001

I declare under penalty of perjury under the laws of the State of California that all of the above information is true and accurate, and that if found to be other than true and accurate, I may be eliminated from current and future consideration for participation in this program.

Signature  Date 6-3-24

# Rendering in Situ



# Rendering in Situ





# Distance Between Sculpture and Street

Approximately 500'



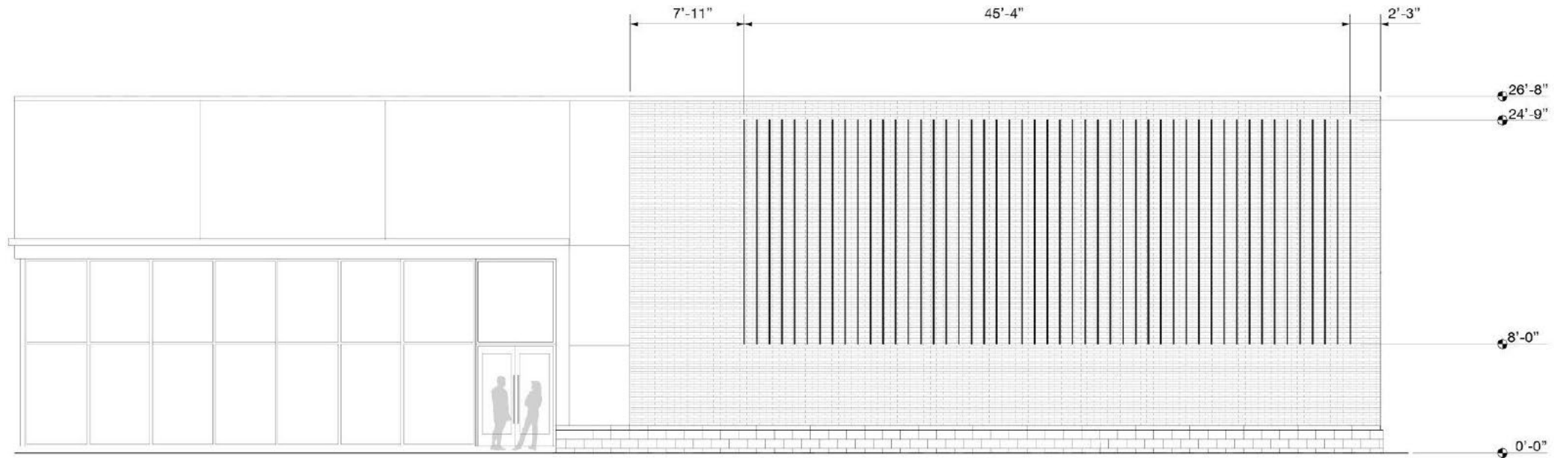
# Sculpture Details

The artwork is 46 feet wide, 16 feet tall, and 2 feet deep. 50% of the artwork is made of powder coated aluminum. The color will match the neutral color of the brick wall the artwork is attached to. The other 50% of the artwork is colored acrylic. There will be integrated lighting and various attachment hardware that will be made of stainless steel.



# Sculpture Details: dimensions

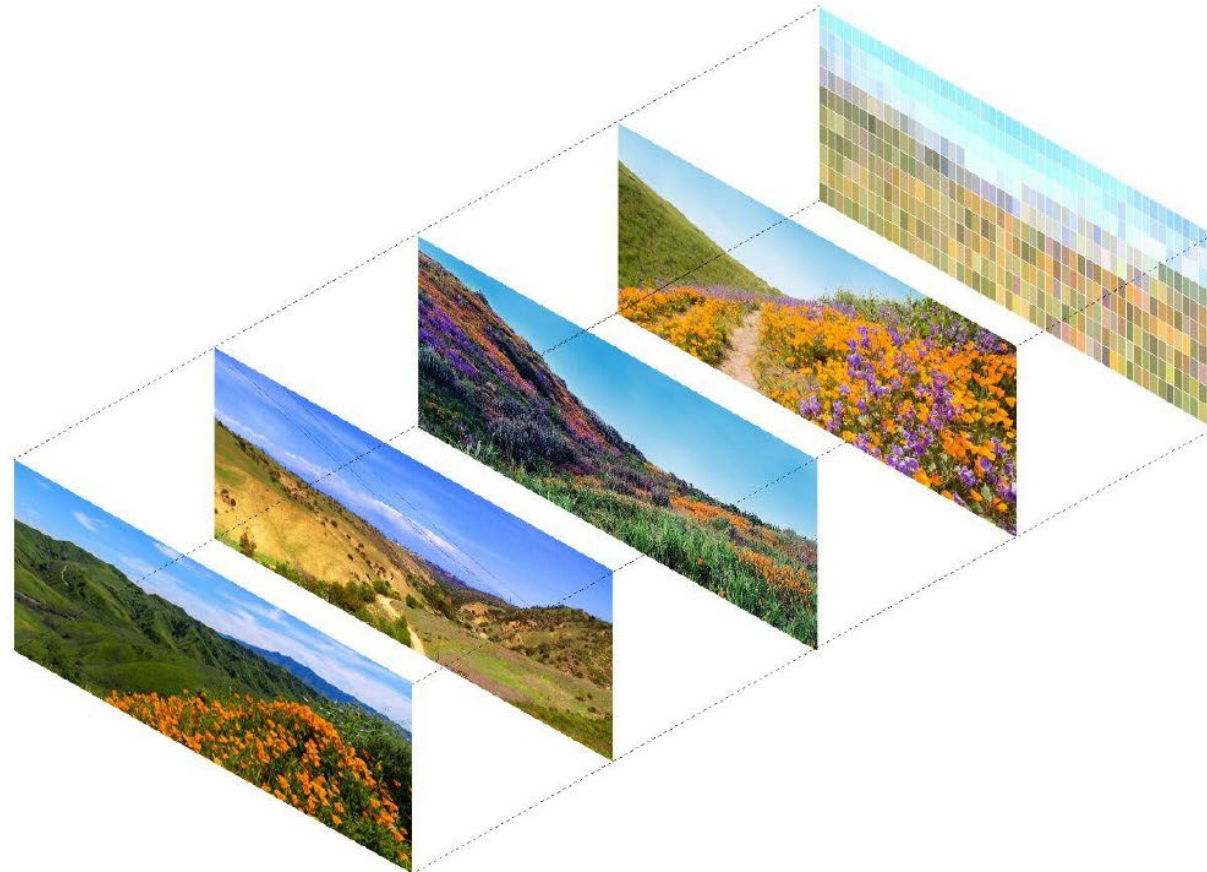
**Overall Elevation** 46 Vertical Elements @ 0'-11.5" O.C.



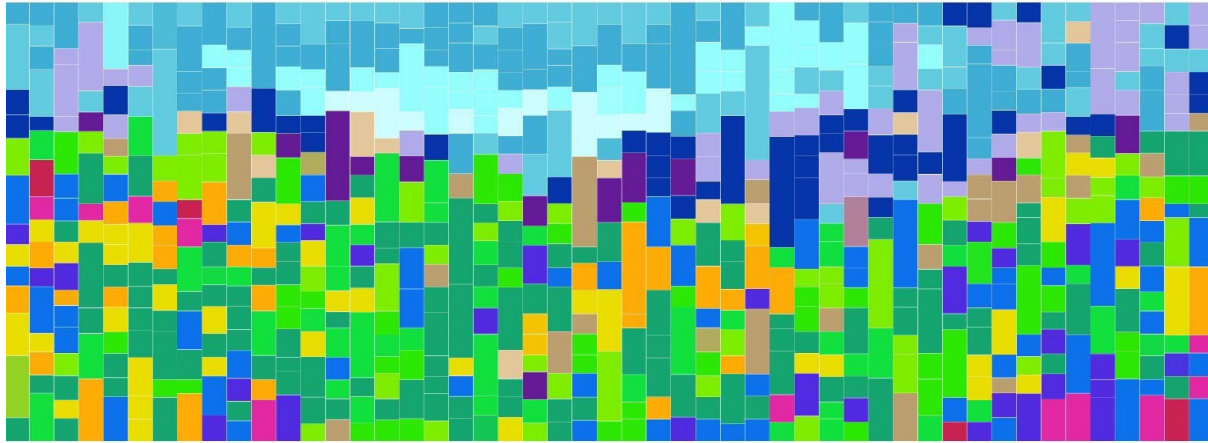


# Sculpture Details: inspiration

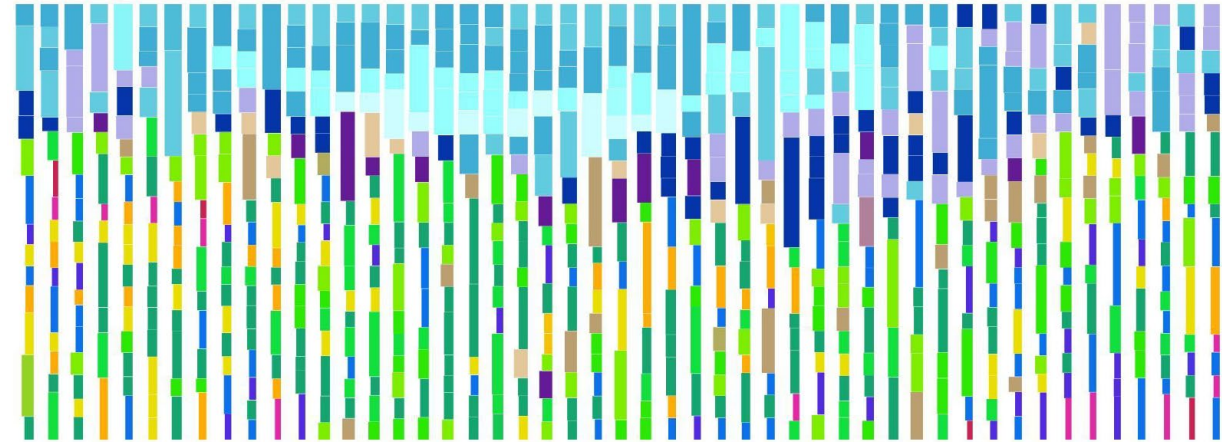
**Color Map** The color samples used to create the final artwork were taken from 4 images of the Brea Hills and composited together to create an abstract color based pattern from the four images.



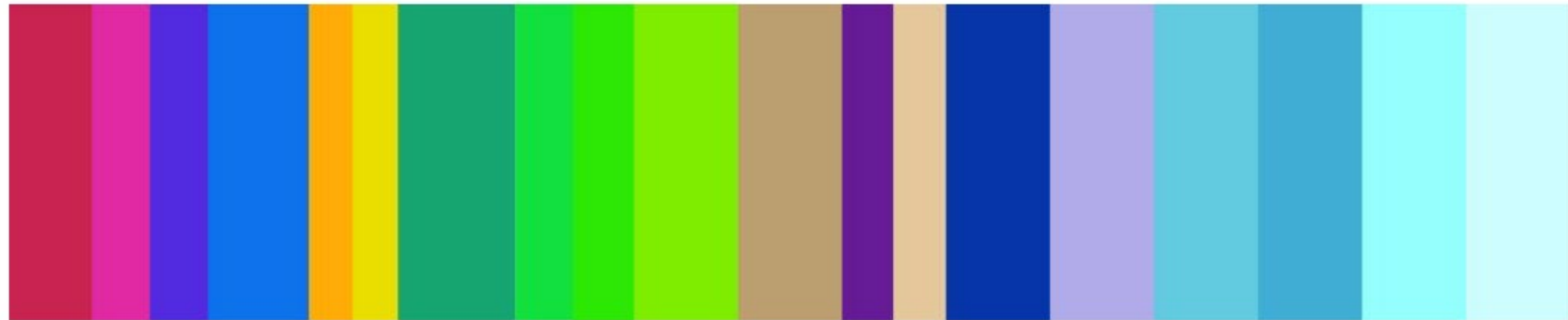
# Sculpture Details: colors



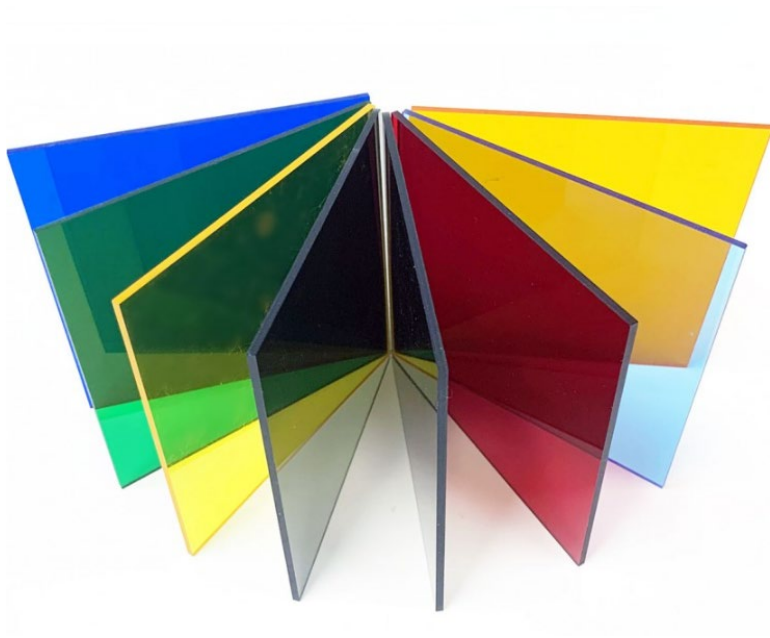
Color Map



Color Map fins



# Sculpture Details: materials



Colored acrylic panels



# Artist Statements

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## Concept

An afterimage is a lingering visual impression of an image that our eyes have been exposed for a length of time. Our concept is an abstract color mapping of a series of vibrant images of the Brea Hills. Will the discrete forms or no longer visible, the subtle view of a horizon and palette of natural colors create an image that resides somewhere between a dream and a memory. During the day this “image” is animated by sunlight as it is cast front the translucent acrylic fins. At night the fins are animated in a subtle way that is evocative of wind and other atmospheric changes.

# Artist Statements

**After Image** is inspired by the atmospheric paintings of J. M. W. Turner who is often described as “painting with light” and pointillism which was a painting technique pioneered by Georges Seurat and Paul Signac in Paris in the mid-1880s. Pointillism involved the application of paint in carefully placed dots of pure, unmixed colour. *After image* explores an extension of both techniques through a three-dimensional color map and literally paints the neutral surface of the wall it is mounted to with light during the day, while at night light behind each colored acrylic panel slowly moves giving the artwork an atmospheric quality.



Norham Castle, Sunrise, J. M. W. Turner 1845



A Sunday Afternoon on the Island of La Grande Jatte, Georges Seurat 1884-1886

# Artist Statements

## How the proposed sculpture fits within the body of the artist's work

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The format of our work varies from large scale outdoor permanent work to suspended interior artwork to wall mounted three-dimensional artwork. We have also created several interactive and light based artworks. Most of our work is inspired by the process found in nature and science and how we use contemporary computational tools to leverage those processes in creative ways. We also utilize optical materials, color, and light in a large body of work. Afterimage is a continuation of our explorations in material, color, and light along with computational ways to break an image down into color blocks.



# Artist Statements

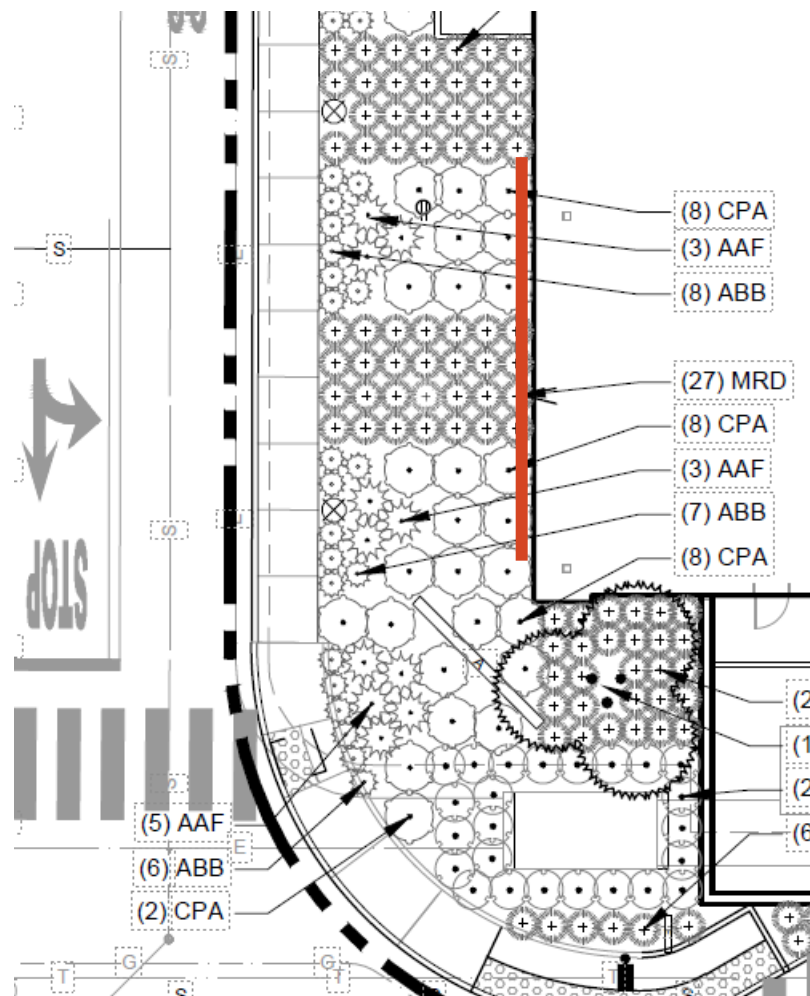
**The context of the proposed sculpture relative to the development project site, including architectural style, future use and users of the development project; the community; and the overall AAP Collection**

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The context of the larger surrounding site is referenced through the production of a color map of various landscape photos of the Brea Hills taken in Chino Hills State Park. Afterimage is both a mural and a three-dimensional artwork that is activated at night by integrated lighting. The vertical aluminum structure will be powder coated to match the neutral color of the brick wall the artwork is mounted to. Overall the artwork is meant to be a vibrant backdrop to visitors entering the retail development on foot or by car. Because it is made of colored translucent panels, the artwork will always be experienced differently depending on the time of day and year as sunlight casts color from the panels onto the surrounding surfaces. At night the integrated lighting will be animated with an atmospheric behavior that is always different. This artwork will help at a sense of vibrancy as well as a material and light based artwork to the AAP Collection.

# Landscape Plan: Planting

Current proposed plan, revisions to be submitted following art approval



## DECIDUOUS SHRUBS



CPA

*Ceanothus x 'pallidus'*

Antonette Wild Lilac

## EVERGREEN SHRUBS



AAZ

*Aeonium arboreum 'Zwartkop'*

Zwartkop Tree Aeonium



AAF

*Agave attenuata*

Foxtail Agave



AVO

*Agave vilmoriniana*

Octopus Agave



ABB

*Aloe barbadensis*

Barbados Aloe

## ORNAMENTAL GRASSES



BBA

*Bouteloua gracilis 'Blonde Ambition'*

Blonde Ambition Blue Grama



CPC

*Carex praegracilis*

California Field Sedge



FOS

*Festuca ovina*

Sheep Fescue



MRD

*Muhlenbergia rigens*

Deer Grass

### Current proposed plan, revisions to be submitted following art approval





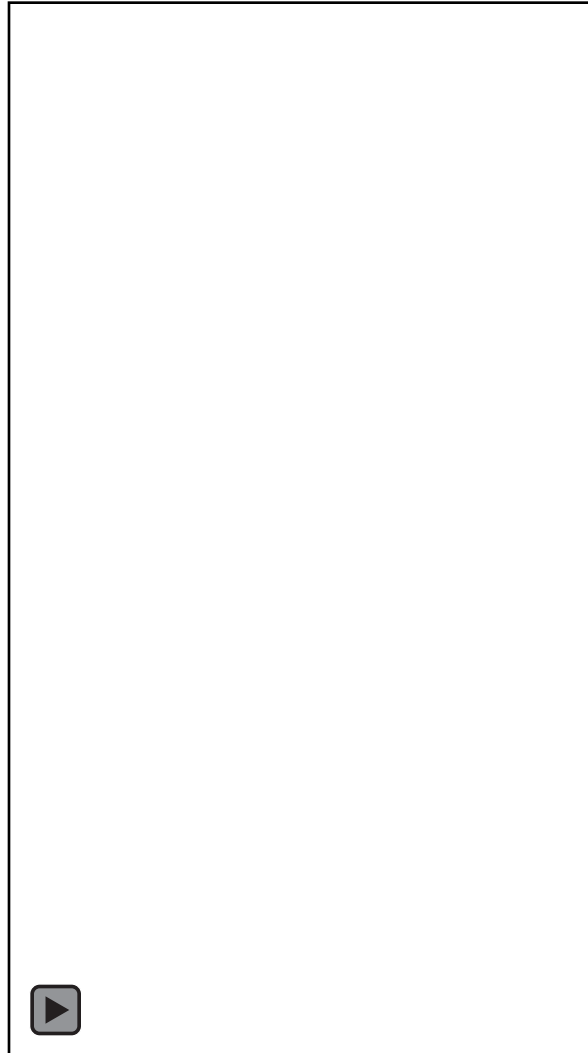
# Integral Lighting Concept

Video clip to be previewed at in person presentation



# Lighting Concept

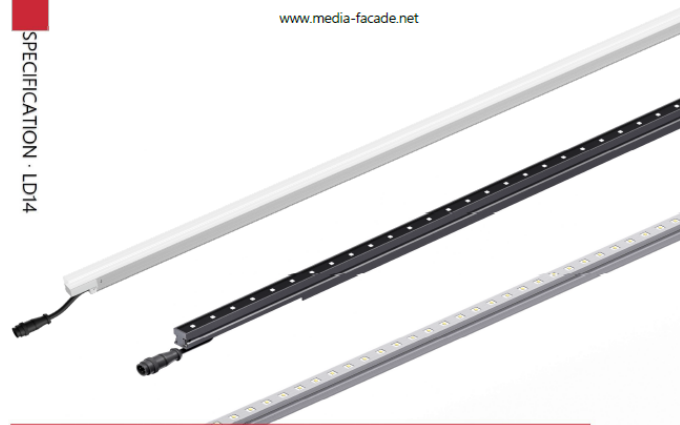
**Video clip to be previewed at in person presentation**



# Lighting Concept Cut Sheet

SPECIFICATION · LD14

www.media-facade.net



We Shape Architecture

**Linear light · LD14**

2022

## Application

Low power consumption, high brightness. Support for a variety of customization including: pixel pitch, LED color (RGB, RGBW or Single Color). An integrated double-colored mold design, P68 protection grade, UL94-V0 flame retardant grade, Class II electrical safety, ensure effectively the stability of the lamp in outdoor environment for all weather conditions. Flexible mounting performance for a variety of irregular structures, easy installation and maintenance. Cost-effective for large scale installation. (Glass curtain walls, large building Display, Decorations, 3D shapes, etc.)

## Lighting Performance

Customizable for different LED options (RGB, RGBW, White, Dynamic White, Single Color). Integral Acrylic Cover, Delicate light effect, High light transmittance, good weather resistance, acid and alkali resistance. Color resolution of 16 bits, effects are more stylish and smooth. Exceeding the DMX protocol with more capacity and flexibility by utilizing our proprietary.

## Lighting Structure

Aviation Aluminum Housing, High hardness, light weight, anti-oxidation and anti-corrosion, good heat conduction, Excellent anti shock ability, Long life and not easy to be aging or yellowing. Flexible and varied mounting options make it easy for installers to make LED structure part of any structure.

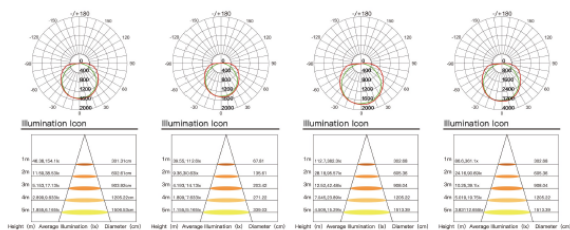
Specification · LD14

## Technical Specification:

Model	LD14 RGB	LD14 RGBW	LD14 W
Chip Brand	CREE/EPSTAR	CREE/EPSTAR	CREE/EPSTAR
LED Source	48 SMD RGB	48 SMD RGBW	48 SMD W
Grey Scale	65536	65536	65536
Beam Angle	120°	120°	120°
Housing	Aviation Aluminum	Aviation Aluminum	Aviation Aluminum
Surface Coating	Aviation/Electrostatic Powder	Aviation/Electrostatic Powder	Aviation/Electrostatic Powder
Housing Color	Silver/Customized	Silver/Customized	Silver/Customized
Bracket	Stainless Steel/Aluminum Alloy	Stainless Steel/Aluminum Alloy	Stainless Steel/Aluminum Alloy
Cover	Aluminum	Aluminum	Aluminum
Weight	500g	500g	500g
Certification	ETL, CE, ROHS	ETL, CE, ROHS	ETL, CE, ROHS
Operating Voltage	DC24V	DC24V	DC24V
Power Consumption	12W	14.4W	12W
Ingress Protection	IP65	IP65	IP65
Fire Protection Rating	UL94-V0	UL94-V0	UL94-V0
Operating Temperature	-35~60℃	-35~60℃	-35~60℃
Storage Temperature	-40~70℃	-40~70℃	-40~70℃
Lifespan	≥80000h	≥80000h	≥80000h
Control	DMX512	DMX512	ON-OFF / DMX512
Regular Size	1m, 0.5m, 0.3 m	1m, 0.5m, 0.3 m	1m, 0.5m, 0.3 m

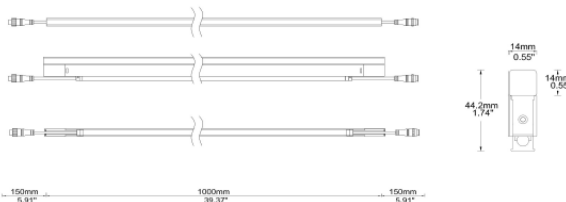
Specification is subject to changes without prior notice for product improvement

## Optical Parameters:

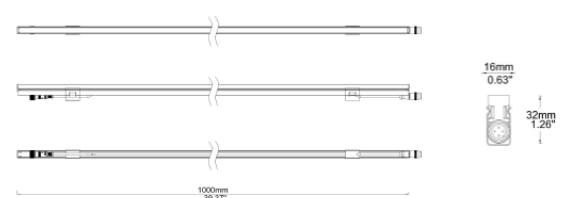


## Product Structure Drawing (mm)

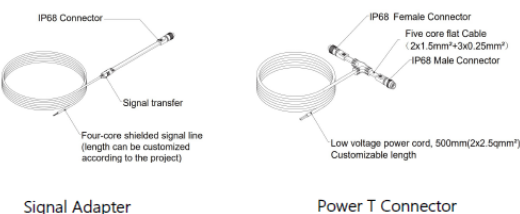
Model: LD14 - A



Model: LD14 - C & LD14 - M



## Installation Accessories



Signal Adapter

Power T Connector

SIMON

Media Facade



Media Facade



NINE dot ARTS

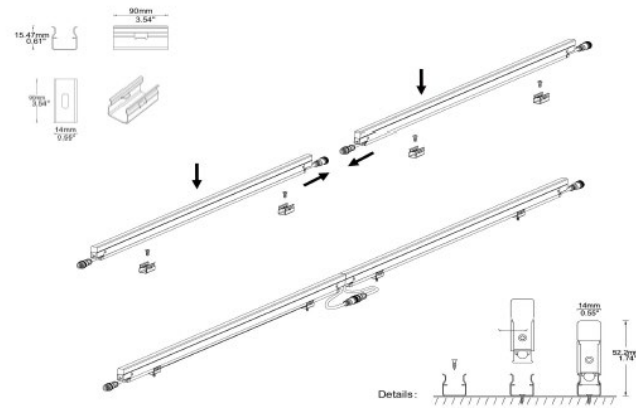


# Lighting Concept Cut Sheet

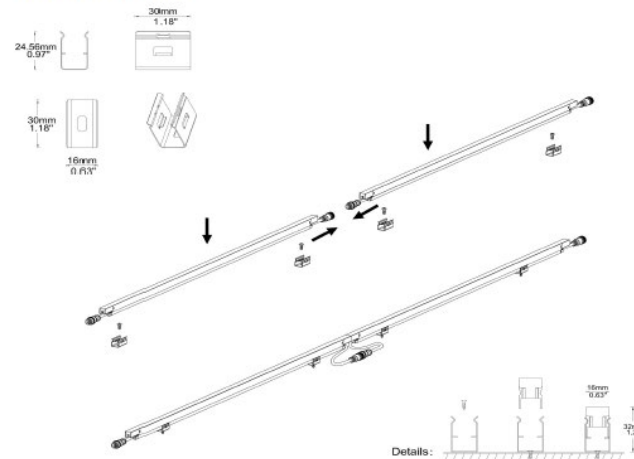
Specification - LD14

## Installation Method

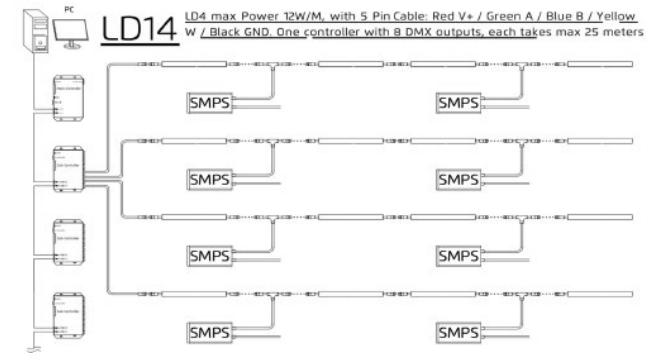
Model: LD14 - A



Model: LD14 - C & LD14 - M



## Control System Diagram



The actual system diagram may subject to change from the above

## Project Cases



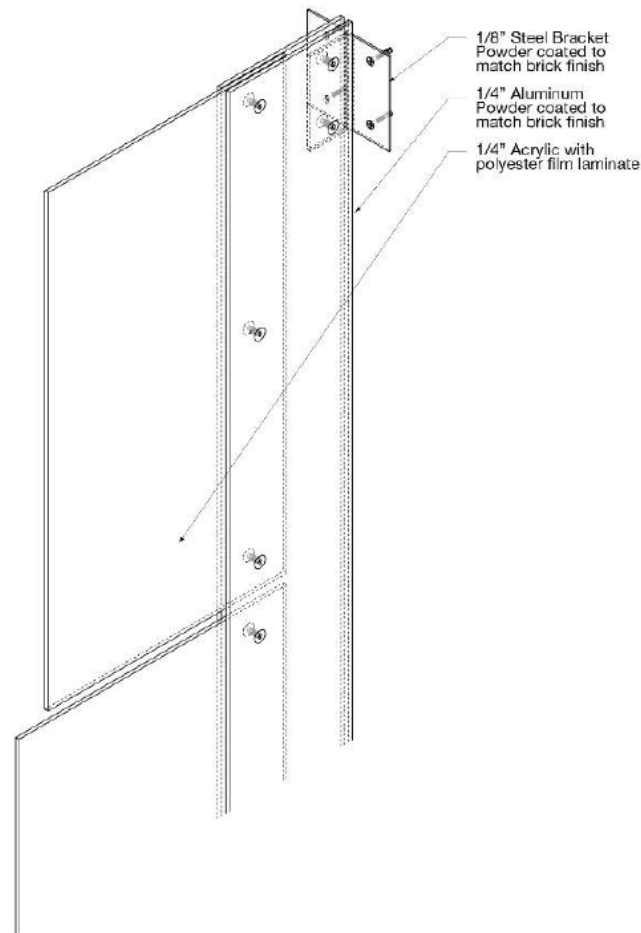
Bamboo Tower, China (2021)

# Installation Plan

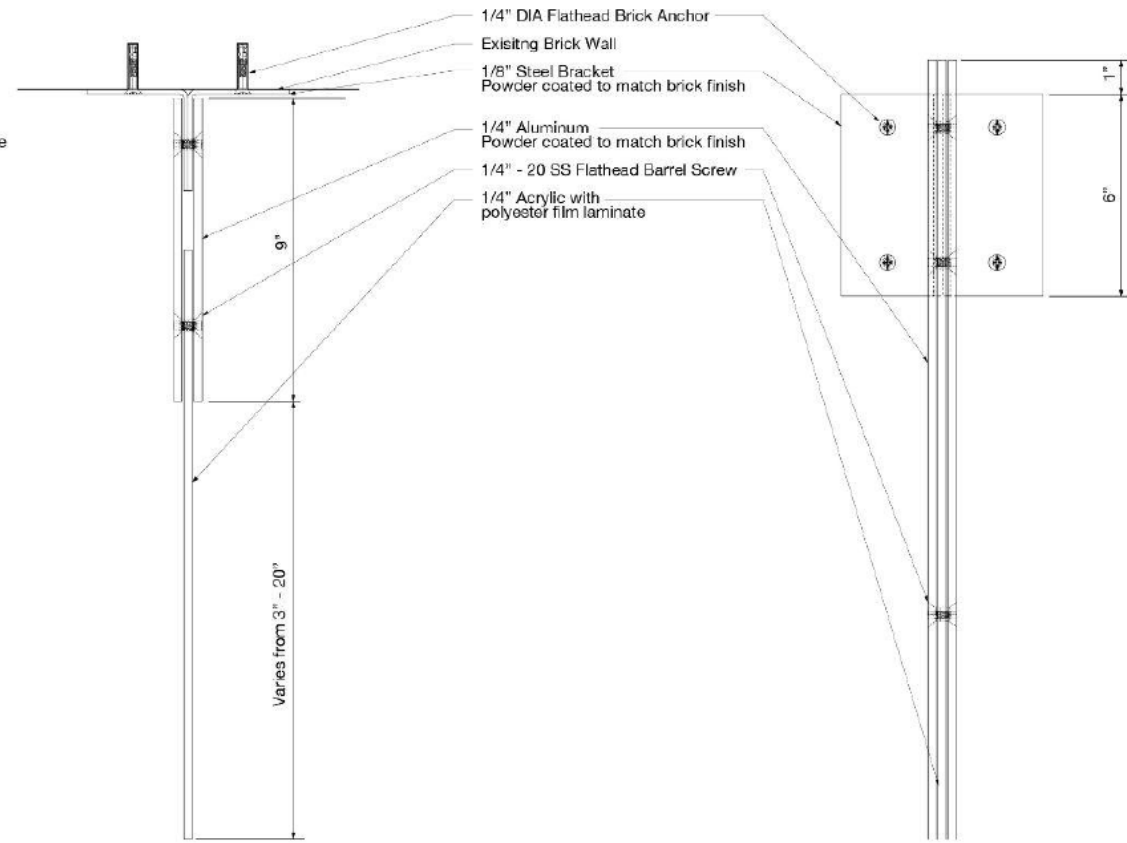
**Current proposed plan, revisions to be submitted following art approval**

## General Details

**Note:** Acrylic extends a maximum of 6" from vertical aluminum elements below 9'-0"



Overall Detail



Plan

Front Elevation

# Maintenance Plan

---

A comprehensive maintenance plan is forthcoming once the piece is fully engineered and specific parts are sourced. In the meantime, a general plan for the materials is below:

The visible structure of Afterimage is composed of powder coated aluminum and acrylic.

Powder Coated Aluminum: wipe off dust with a soft cloth. If more cleaning is necessary, use a highly diluted, mild soap in water and a soft towel or soft sponge to very gently clean. Rinse with a little water, then dry with another soft towel.

Acrylic: Clean using a mild soap/water solution or any glass/acrylic cleaner.

Power washing is not recommended.



# Anticipated Installation Date\*

**\*Subject to project construction schedule**

We anticipate SOFTlab's work to be installed June 2025. The site preparation for electrical will happen earlier.

## 2025 Calendar

January							February							March							April						
Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su
		1	2	3	4	5						1	2						1	2		1	2	3	4	5	6
6	7	8	9	10	11	12	3	4	5	6	7	8	9	3	4	5	6	7	8	9	7	8	9	10	11	12	13
13	14	15	16	17	18	19	10	11	12	13	14	15	16	10	11	12	13	14	15	16	14	15	16	17	18	19	20
20	21	22	23	24	25	26	17	18	19	20	21	22	23	17	18	19	20	21	22	23	21	22	23	24	25	26	27
27	28	29	30	31			24	25	26	27	28			24	25	26	27	28	29	30	28	29	30				
														31													
May							June							July							August						
Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su
			1	2	3	4							1		1	2	3	4	5	6					1	2	3
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19	20	21	22	23	24	25	16	17	18	19	20	21	22	21	22	23	24	25	26	27	18	19	20	21	22	23	24
26	27	28	29	30	31		23	24	25	26	27	28	29	28	29	30	31				25	26	27	28	29	30	31
							30																				
September							October							November							December						
Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su
1	2	3	4	5	6	7			1	2	3	4	5						1	2	1	2	3	4	5	6	7
8	9	10	11	12	13	14	6	7	8	9	10	11	12	3	4	5	6	7	8	9	8	9	10	11	12	13	14
15	16	17	18	19	20	21	13	14	15	16	17	18	19	10	11	12	13	14	15	16	15	16	17	18	19	20	21
22	23	24	25	26	27	28	20	21	22	23	24	25	26	17	18	19	20	21	22	23	22	23	24	25	26	27	28
29	30						27	28	29	30	31			24	25	26	27	28	29	30	29	30	31				



# **Sculpture by Susan Zoccola**

ART LOCATION #1

# Artist Warranties of Title and Originality

## Appendix E

### City of Brea Art in Public Places Program Artist Warranties of Title and Originality

The City of Brea's Art in Public Places (APP) Program provides opportunities for artists to integrate their unique perspectives permanently into the cityscape. Sculpture is to be conceptualized, designed, fabricated, and installed by qualified artists (see Artists Qualifications, pages 14-15 of Brea's APP Policy Manual), their staff, and/or contractors. Sculpture is to be original or an edition of 5 or fewer; similar editions may not be displayed within a 50 mile radius of the project site without prior approval by the City. Sculpture requirements are described in Brea's Art in Public Places Policy Manual, City of Brea Ordinance No. 1050, and City of Brea Zoning Code section 20.408.040 subsection C.4.

#### A. The Artist represents and warrants that:

The Sculpture is solely the result of the artistic effort of the Artist; and

The Artist has full and complete legal authority to create and transfer complete ownership of the Sculpture to the Developer; and

Except as otherwise disclosed in writing to the City and the Developer, the Sculpture is unique and original, or an edition of \_\_ of five or less, and does not infringe upon any copyright or other intellectual property right; and

No similar edition is on display within a 50 mile radius of the project site.

Artist Name: SUSAN ZOCCOLA  
Title of Sculpture: TSD (WORKING TITLE: DAPPLED (KOMOREBI))  
Project Location: BREA MALL  
Developer: 1  
Artist Phone: (206) 856-6644  
Artist Address: 4136 MERIDIAN AVE N., SEATTLE, WA. 98103

I declare under penalty of perjury under the laws of the State of California that all of the above information is true and accurate, and that if found to be other than true and accurate, I may be eliminated from current and future consideration for participation in this program.

[Signature]  
Signature

5/4/2024  
Date



# Rendering in Situ



# Rendering in Situ





# Rendering in Situ





# Rendering in Situ



# Rendering in Situ





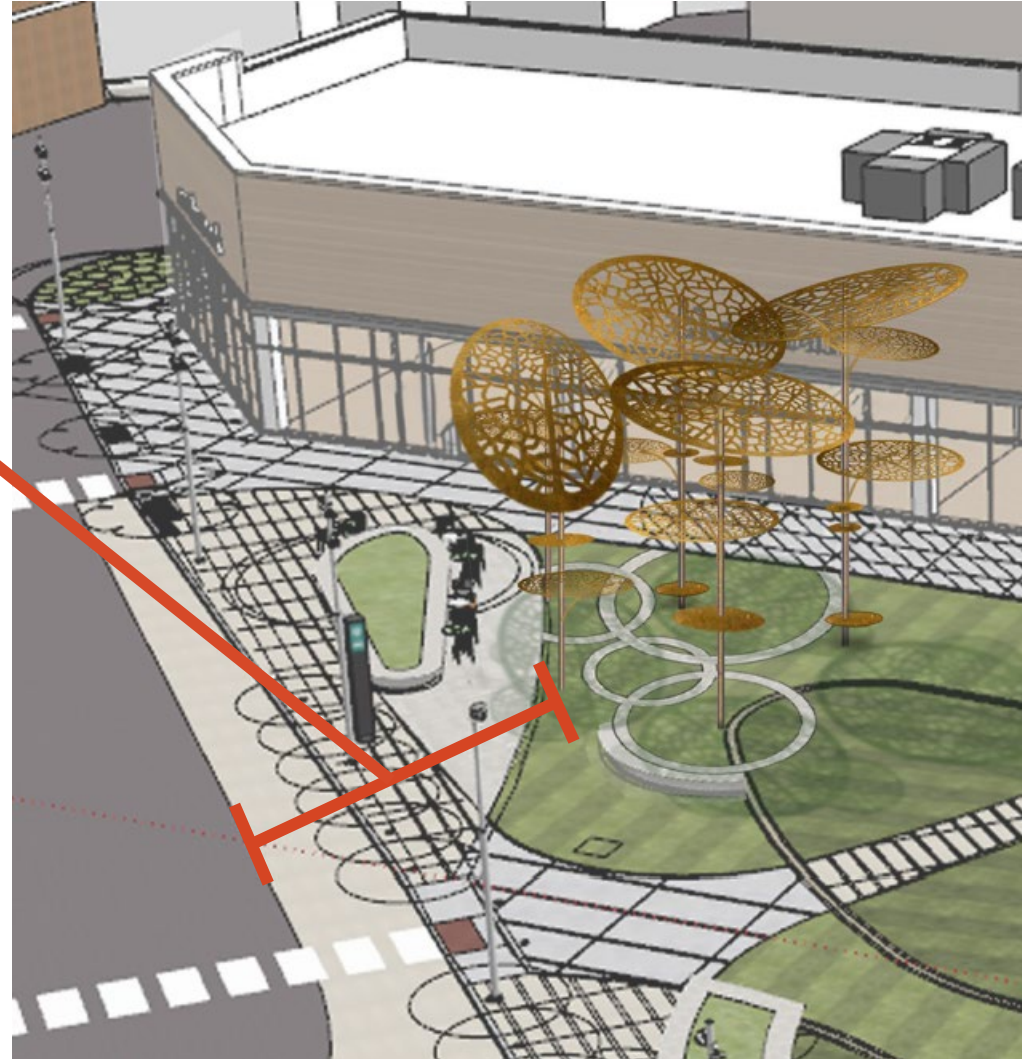
# Rendering in Situ





# Distance Between Sculpture and Street

Approximately 700'



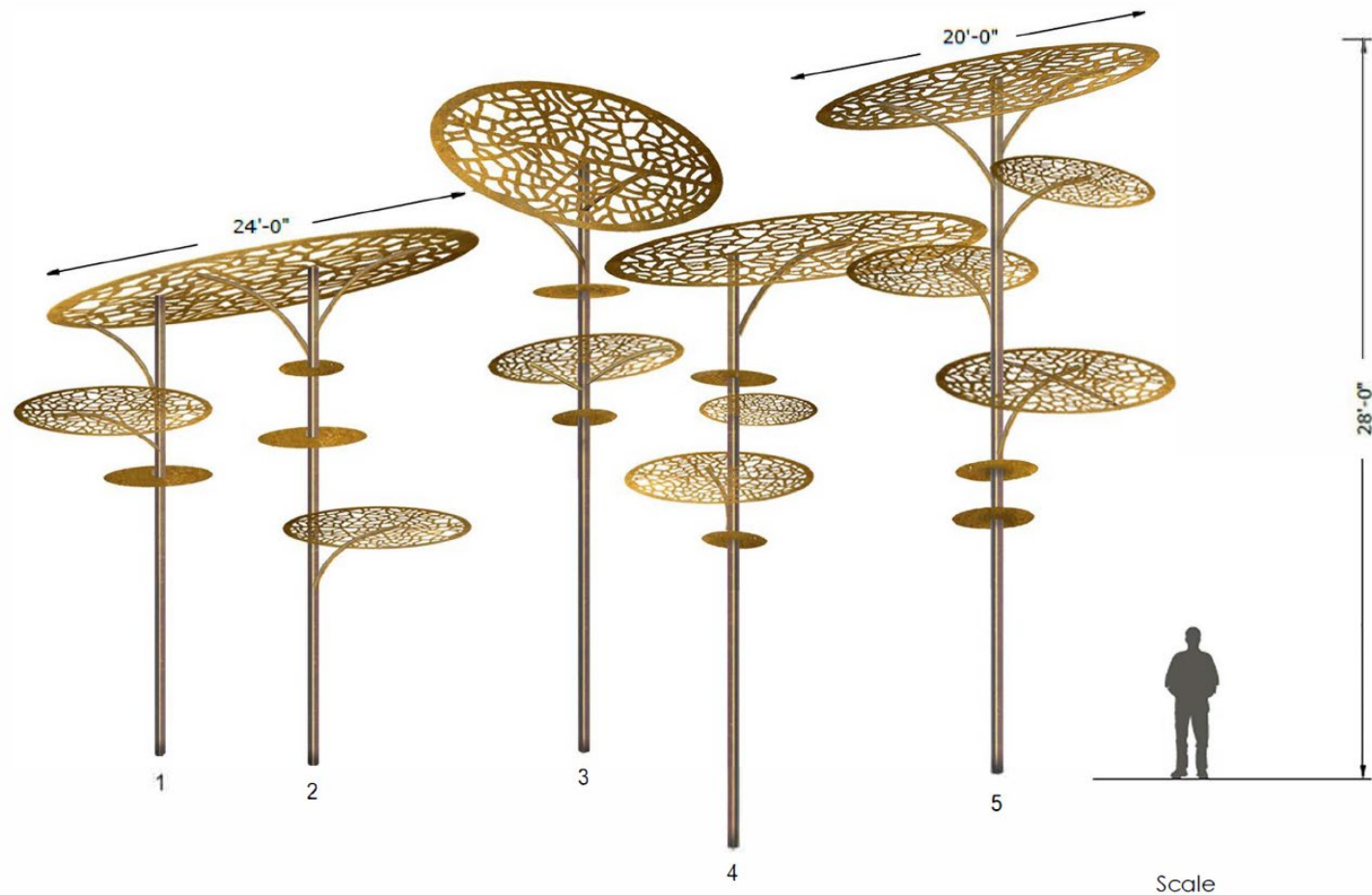
# Sculpture Details



**FORM** This sculpture is designed to be seen totally in the round, so that it will be understood and enjoyed from everywhere along the roads, sidewalks, grass, and multiple vantage points. The cottonwood leaf-inspired round and oval discs would be fabricated from  $\frac{1}{4}$ " thick mild steel coated with an architectural bronze-appearing finish (depending on samples developed during design and approved by client). As illustrated, there would be cascading tiers of multiple sizes of these warm cut metal discs, attaching to 5 main poles with durable epoxy paint coatings (4"-6" in diameter, approx. depending on engineering). This configuration references trees, but abstracts it to create a sculpture that draws the eye, beckons discovery, and appears different from every new vantage point.

My team of fabricators and engineers help me design artwork that is durable and long lasting, prepared for the climate of Orange County. After our meeting in January, I am feeling that a warm bronze-like metallic coating on steel, which would be easy to maintain and would stay the same as the approved sample over time, might be the best finish solution (something similar to "Gathering" in Holladay). I see whatever coating used would be organic in appearance - not a solid color, but rather a range of color values. The highest element of the sculpture would be 28' (shown here near the Mall entrance) and approx. 20' wide, with the 'leaves' starting 10' up the base so as to deter climbing and vandalism, but to be low enough to create shade below for visitors, much like a tree. The pattern on the ground created by the waterjet cuts shadows will be delightful and a fun discovery that would move and change through the day. My team and I would work with the NINE dots team to carefully design the attachments of the sculptures to the site as needed - probably with an embedded bolted footing that would be designed specifically to receive the sculptures. I see tending to the attractiveness as it meets the ground as very important, since it might well become a spot that visitors will want to sit and play beside.

# Sculpture Details: dimensions





# Sculpture Details: materials



Waterjet cut metal.



Bronze color coating



Steel poles

# Sculpture Details: maquette



# Artist Statements

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## CONCEPT

My artwork proposal for the Brea Mall project has been inspired by the Simon's corporate objective to create Live, Work, Play, Shop destinations that are integral to and serve the communities of which they are a part. These monumental scale canopy shade sculptures will help to create a destination shopping mall experience for visitors of all ages. This proposal has also been inspired by the area's native cottonwood trees, with their leaf vein patterns waterjet cut into the horizontal metal shapes, creating a sort of forest canopy overhead in the mixed use public park amenity. These Alice-In-Wonderland scale floating organic patterns create a 'grove' for gathering and connecting, with fun shade and amazing shadows. This artwork would compliment and enhance the visitor experience of the Mall, seamlessly integrate into the environment, and welcome exploration. These majestic and refined sculptures would be grounded in the story of the place, while looking into the future. Referencing a forest grove, they also represent unique interconnections with each other - much like a community. This sculpture would create a welcoming focal point/landmark that would become iconic with its presence and multiple views, becoming a "signature site" that, because of its references to nature, would be modern, flexible and timeless, while celebrating its special place in the Mall.



# Artist Statements

## How the proposed sculpture fits within the body of the artist's work

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Years of experience with public art commissions enables me to work on a large scale and broad context, which I find interesting and inspiring. These projects have all involved collaboration with public entities, community groups, and design professionals. My understanding of materials, scale and site has contributed to the success of these projects and is what continues to excite me about participating in new projects. I thrive in a design team situation and enjoy the challenges of different sites as fuel for creative problem solving and art making. My work is fundamentally inspired by natural forms and systems, is responsive to the environment, helps create a sense of place, reveals dimensions of its history and brings awareness to natural patterns. As a professional public artist, I bring knowledge of durable materials with ease of maintenance in mind, as well as teams of fabricators and engineers with whom I collaborate well. This piece for Brea is a continuation of this body of work, inspired by the natural world and made site-specifically for Brea, responding to the Southern California landscape with native cottonwood leaves and the creation of gathering space with shade and amazing shadows to explore.

# Artist Statements

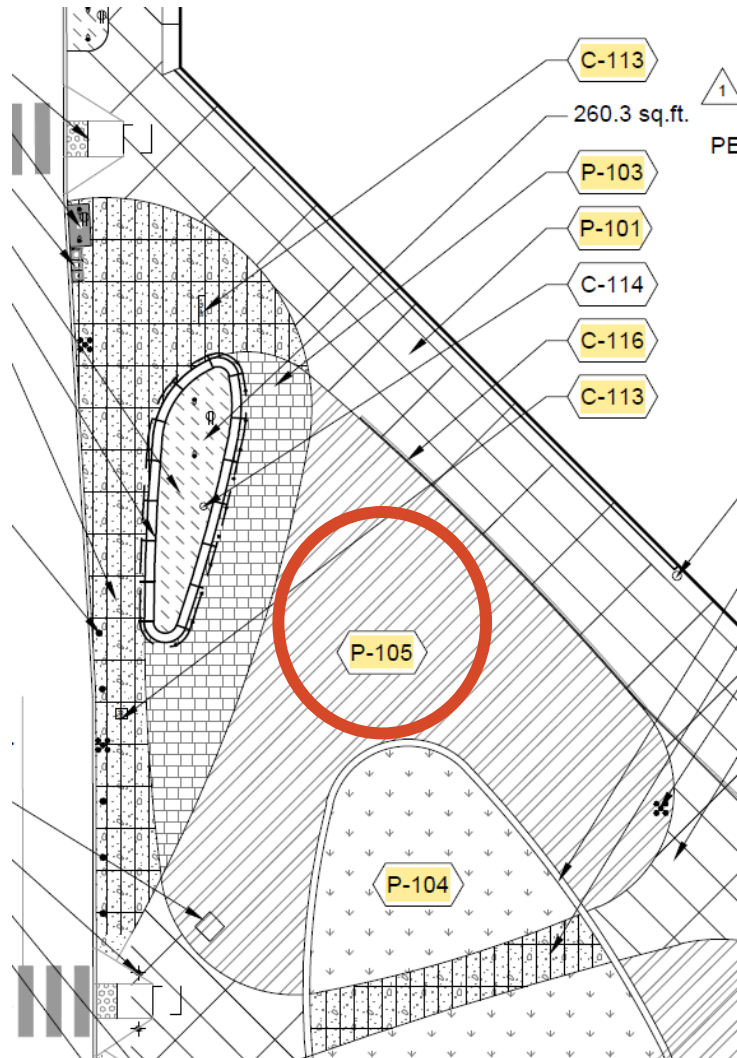
**The context of the proposed sculpture relative to the development project site, including architectural style, future use and users of the development project; the community; and the overall APP Collection**

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My artwork proposal for the Brea Mall project has been inspired by the Simon's corporate objective to create Live, Work, Play, Shop destinations that are integral to and serve the communities of which they are a part. These monumental scale canopy shade sculptures will help to create a destination shopping mall experience for visitors of all ages. This proposal has also been inspired by the area's native cottonwood trees, with their leaf vein patterns waterjet cut into the horizontal metal shapes, creating a sort of forest canopy overhead in the mixed use public park amenity. These Alice-In-Wonderland scale floating organic patterns create a 'grove' for gathering and connecting, with fun shade and amazing shadows. This artwork would compliment and enhance the visitor experience of the Mall, seamlessly integrate into the environment, and welcome exploration. These majestic and refined sculptures would be grounded in the story of the place, while looking into the future. Referencing a forest grove, they also represent unique interconnections with each other – much like a community. This sculpture would create a welcoming focal point/landmark that would become iconic with its presence and multiple views, becoming a "signature site" that, because of its references to nature, would be modern, flexible and timeless, while celebrating its special place in the Mall.

# Landscape Plan: Hardscape

Current proposed plan, revisions to be submitted following art approval



## SYMBOL

C-101	ROAD SURFACE
C-102	CONCRETE CURB AND GUTTER
C-103	ADA CURB RAMP, TYP
C-104	ROAD STRIPING
C-105	CROSS WALK STRIPING
C-106	BUILDING COLUMN
C-108	CONCRETE RETAINING AND SCREEN WALL, SEE PACKAGE 1
C-109	LIGHT FIXTURE, TYP
C-110	UTILITIES
C-111	GFCI OUTLET LOCATION, TYP
C-112	PLANTER AREA GRATE
C-113	SIGNAGE LOCATION
C-114	HOSEBIB LOCATION
C-115	PLANTER DRAIN GRATE
C-116	SLOT DRAIN GRATE

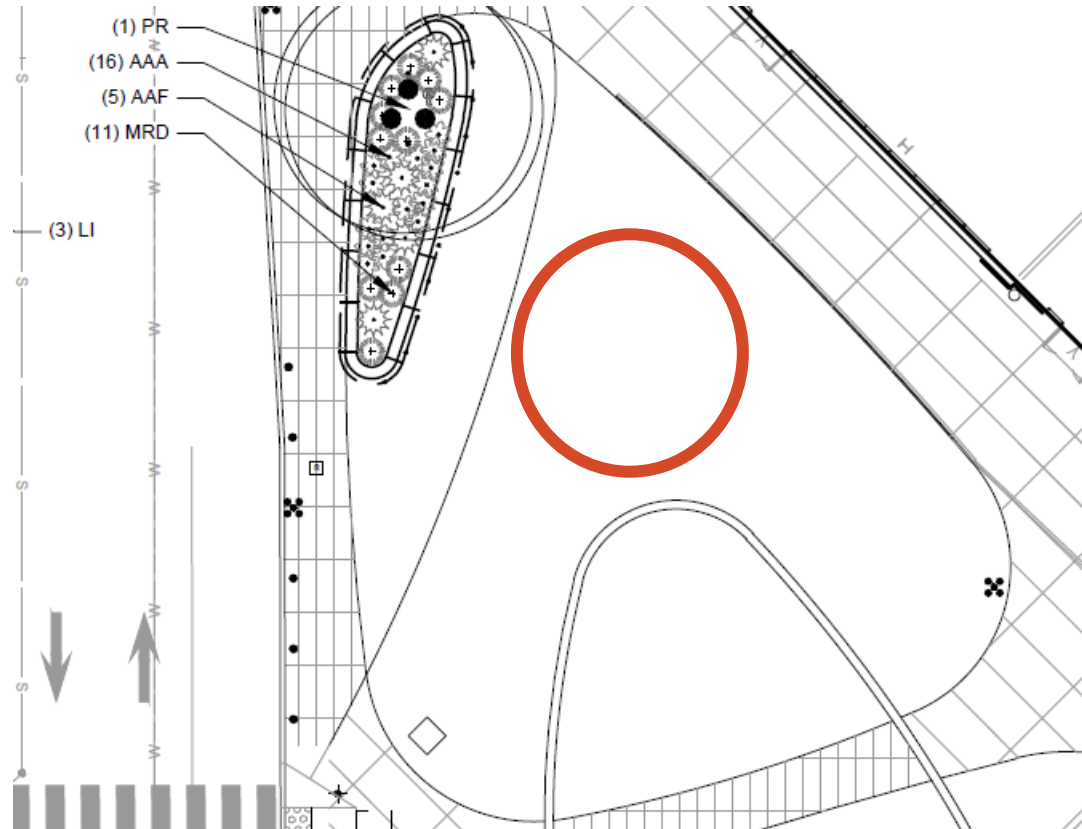
## SYMBOL

P-101	STANDARD GRAY CONCRETE
P-102	INTEGRALLY COLORED CONCRETE
P-103	CONCRETE UNIT PAVERS
P-104	SYNTHETIC TURF - TYPE 1
P-105	SYNTHETIC TURF - TYPE 2
P-106	CONCRETE MOW CURB
P-107	CONCRETE RAMP - WITH HANDRAILS
P-108	NEW CONCRETE TO EXISTING CONCRETE
P-109	UTILITY HATCH IN SYNTHETIC TURF, TYP



# Landscape Plan: Planting

Current proposed plan, revisions to be submitted following art approval



## DECIDUOUS TREES

+	EX	Existing Tree To Remain	
JM2	Jacaranda mimosifolia	Jacaranda	
JM	Jacaranda mimosifolia	Jacaranda	
LI	Lagerstroemia indica x fauriei 'Natchez'	Natchez Crape Myrtle	
PR	Platanus racemosa	California Sycamore Multi-Trunk	
TR	Tabebuia rosea	Rosy Trumpet Tree	
UP	Ulmus parvifolia	Chinese Elm	

## EVERGREEN SHRUBS

AAZ	Aeonium arboreum 'Zwartkop'	Zwartkop Tree Aeonium	
AAF	Agave attenuata	Foxtail Agave	

## ORNAMENTAL GRASSES

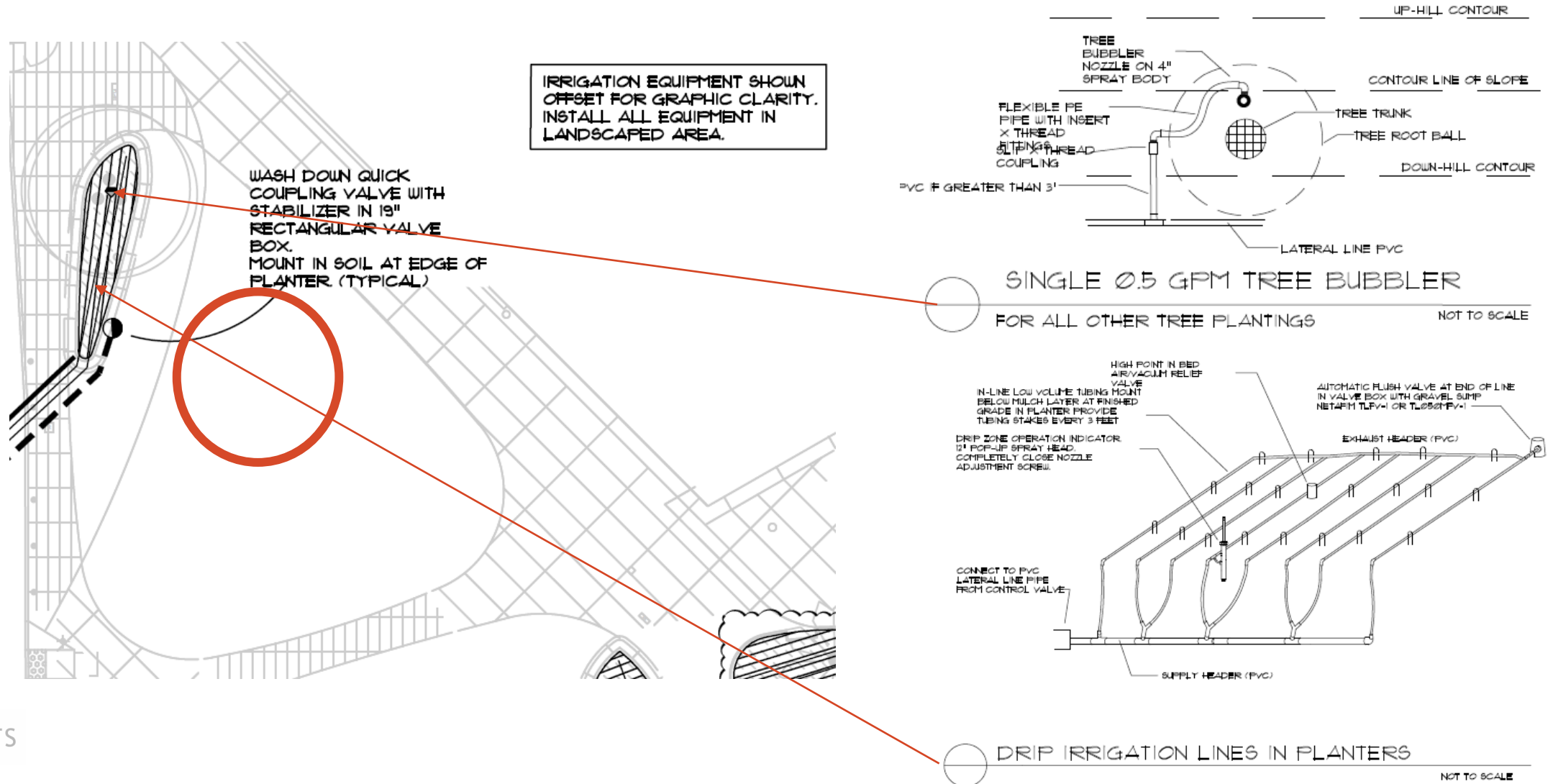
BBA	Bouteloua gracilis 'Blonde Ambition'	Blonde Ambition Blue Grama	
CPC	Carex praegracilis	California Field Sedge	
FOS	Festuca ovina	Sheep Fescue	
MRD	Muhlenbergia rigens	Deer Grass	
PSP	Pennisetum x advena	Purple Fountain Grass	

## PERENNIALS

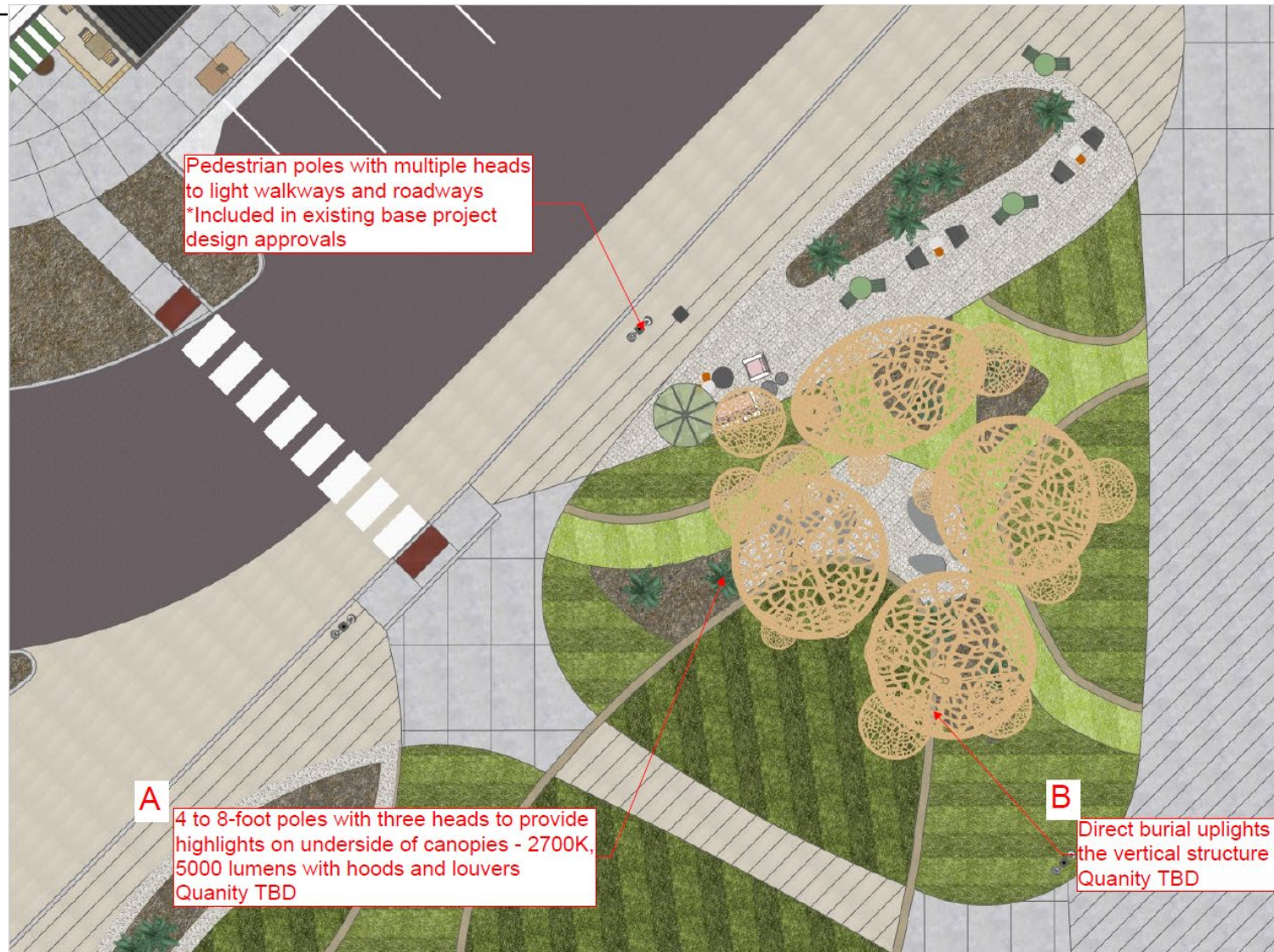
AAA	Agapanthus africanus	African Lily	
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# Landscape Plan: Irrigation

Current proposed plan, revisions to be submitted following art approval



# Lighting Concept



## Brex Redevelopment

**A**

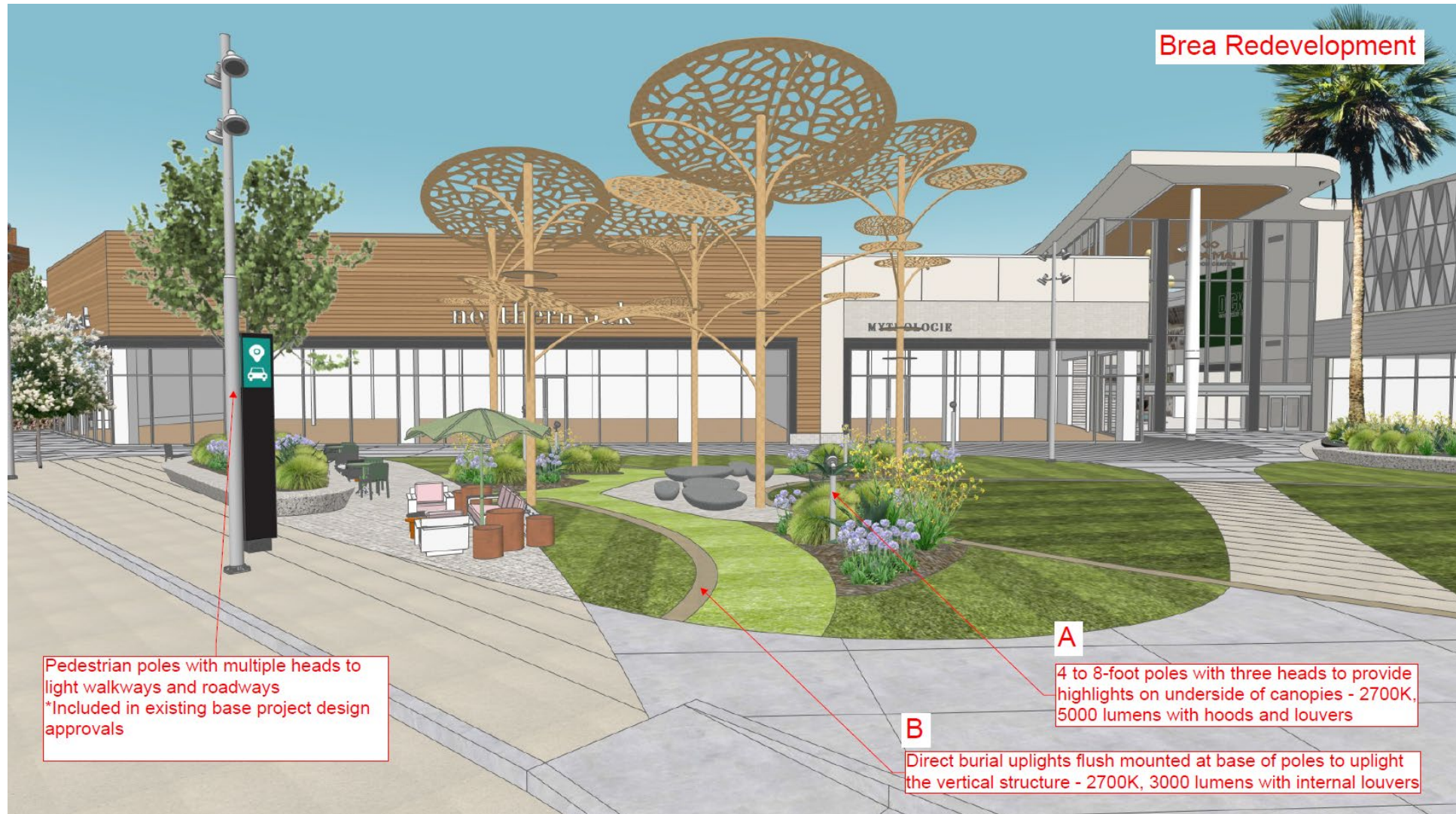


**B**





# Lighting Concept





# Lighting Concept





# Lighting Concept






# Lighting Concept Cut Sheet



- Cast stainless steel body 304 alloy
- Xicato 2000 lm LED module with integral power supply
- LED modules are not adjustable
- Unique "bottle cap" threaded lens frame
- No screws to lose
- Lens frame turned from solid stainless steel.
- 0.40" thick tempered glass lens
- Walkover, driveover rated for 11,000 lbs at 30 mph
- Internal rotatable linear prism lens
- Unit can be through wired for daisy chaining.
- Class I
- Available anti-slip dot pattern glass lens

 listed wet label IP67  
C US

## CUL

In-Ground LED Fixture  
Flat Trim IP67



# Lighting Concept Cut Sheet

## Palco InOut

Solid Thinking

design Artec3 Studio

Palco InOut

Palco InOut extends our collection of Palco floodlights developed for indoor into outdoor applications. Professional floodlights for architectural lighting with five different diameters starting at just 30mm to offer a range of incomparable solutions with luminous flux of up to 3500 lumen. Innovative Opti Beam optical technologies, with lenses and reflectors to combine comfort, clean beam outlines and power. Wide range of selection of optics, from spot cones to flood, wide flood and very wide flood (80°).

It is also possible to choose between four luminous flux levels at different ambient temperatures, with source values from 230 to 3700 lumen. Professional optical and photometric accessories to adapt the luminous flux to specific application requirements. High chromatic quality and three colour temperatures available. Minimal design and optimal performance for applications in architectural and urban environments.

**Palco InOut**  
ground or floor installation  
Micro (ø30mm) / Mini (ø42mm) / Small (ø63mm) /  
Medium (ø119mm) / Large (ø137mm)



**Large**  
Ø137mm  
scale 1:50



**Micro**  
Ø30mm  
scale 1:50



**MultiPalco InOut**  
pole or wall installation  
(coming soon)  
Small (ø63mm) / Medium  
(ø119mm) / Large (ø137mm)

p. 12 possible combinations for pole or wall installation.

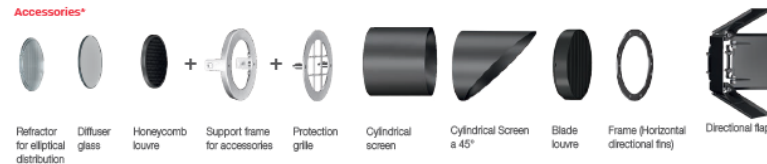
# Lighting Concept Cut Sheet

## Overview



Values refer to 3000K.  
Technical information may change alongside technological progress. Consult [guzzini.com](http://guzzini.com) for ongoing updates.

### Accessories\*



Accessories inside the frame / IP68  
max 2 accessories simultaneously

Accessories outside the frame  
max 1 accessory



Mounting accessories

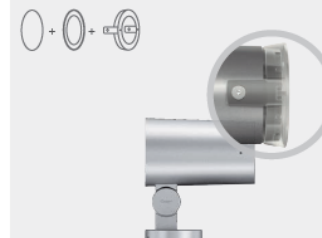
## Solid thinking

Sturdiness, versatility and functionality

Palco InOut is designed to work in any setting. Each internal accessory is housed in a gasket and has protective glass to prevent penetration by dust and therefore the upkeep of the product's IP68 grade. The external accessories, on the other hand, have a hole to drain water and a screen to prevent the emission of stray light.

The different outputs available make it possible to adapt luminous fluxes to outdoor temperatures from -30 °C to +50 °C (see technical specsheet for exact temperatures availability per fixture sizes). Dual rotation to ensure maximum flexibility and versatility.

**IP68**  
Each internal accessory is housed in a gasket to ensure upkeep of the product's IP68 grade.



**Thermal resistance**  
Reliability even at extreme temperatures. See technical specsheet for exact temperature availability per fixture size.



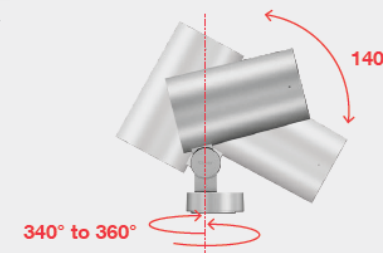
-30°C  
-22°F



+50°C  
+122°F










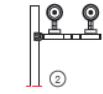


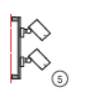


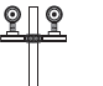




**Dual rotation**  
The product can rotate on vertical and horizontal surfaces alike, thereby ensuring maximum flexibility and versatility.  
Micro / Mini / Small: 360°  
Medium / Large: 340°





# Lighting Concept Cut Sheet

## Palco InOut

						
	Micro (ø30mm)	Mini (ø48mm)	Small (ø63mm)	Small* (ø63mm)	Medium (ø119mm)	Large (ø137mm)
<b>Dimensions</b>						
AvxØ (Inches)	2 x 2-7/8	3 1/4 x 3-5/8	5 1/4 x 6-1/2	5 1/4 x 7-5/8	8 1/4 x 10	9-5/8 x 11-1/8
<b>Optics / Technology</b>						
Opti Beam Lens	14°/25°	16°/23°		15°/25°	14°/25°	9°/19°/28°
Opti Beam Reflector		42°	15°/25°/41°/78°	41°	47°/80°	41°/73°
<b>Accessories</b>						
Refractor for elliptical distribution	*	*	*	*	*	*
Diffuser glass	*	*	*	*	*	*
Honeycomb louvre	*	*	*	*	*	*
Blade louvre			*	*	*	*
Cylindrical screen	*	*	*	*	*	*
Cylindrical Screen at 45°	*	*	*	*	*	*
Directional flap					*	*
Frame (directional flaps)					*	*
Protection grille					*	*
<b>Mounting accessories</b>						
Spike	*	*	*	*		
Junction box kit	*	*	*	*		
On pole with arms single (1) / double (2) (coming soon)				*	*	*
On pole with flange single (3) / double (4) (coming soon)				*	*	*
Wall-mounted with double (5) / triple (6) support (coming soon)				*	*	*
<b>Insulation Class</b>						
Class III	*	*	*			
Class II (complete with power supply)				*	*	*
<p>MultPalco InOut possible installations on poles 16"-4 7/8" / 19"-8 1/4" / 22"-11 5/8" / 26"-3" / 29"-6 3/8" / 39"-4 1/2" (dimensions refer to the height of the pole above ground)</p>	 1	 2	 3	 4	 5	 6
<p>Installation alternatives with single / double arm</p>	 1	 2	 3	 4		
<p>Installation alternatives with single / double flange</p>			 3	 4		

\*Coming soon



iGuzzini

# Installation Plan

## Current proposed plan, revisions to be submitted following art approval

FABRICATOR: Artwork will be fabricated by Metal Arts Foundry, 790 W. State St., Lehi, UT 84043, 801-768-4442  
www.mtlarts.com

MATERIALS: (preliminary, as engineering has not been completed)

Steel size and type: Curved shapes: 2" and 3" Sch. 80 pipe; Support poles: 6-8" sch 40 pipe; Waterjet cut "leaf" canopies: ¼" steel plate. All materials sandblasted and primed prior to final coat. Coating will probably be a combination of Sherwin Williams Pro Industrial Water based Epoxy base color (same on poles and "leaves") with an additional exterior grade metallic gold hand-applied variegated coating on the "leaves". Finish at this writing to be similar to "Gathering" for the City of Holladay, Utah (photos on website).

### INSTALLATION:

Preliminary installation plan is to have the 5 footings for the vertical posts be installed sub-grade during Mall construction.

These will be specified by the Engineer. The sub-grade footings will have 4-6 stainless steel bolts embedded in concrete, which will be designed to receive the base plates for the artwork support posts. These footings will be installed by the contractor to Engineers specifications, and allowed to cure for at least 30 days. This design enables the landscaping materials (turf) to be installed right up to the poles, so that they appear to be "growing" out of the ground.

Installation of the artwork will occur at a date agreed upon by the Contractor, Artist and City. The artwork will probably arrive on site at the time of installation (on a flatbed or box truck) and lifted onto the footings with a crane and/or forklift. It may also be arranged that the art will be delivered on a separate date, then stored on site at the Contractors convenience. A complete plan will be made after engineering, based on how the sculptures will be fabricated. At this writing, we suspect the 5 large poles will have the support "arms" for the waterjet cut "leaves" will be welded directly to the poles and transported as such. Then, the "leaves" will be installed via mechanical fasteners to the "arms" on site. This will be true of both the primary (largest) and secondary "leaves". The transportation and fabrication of the largest canopy/top leaves is still TBD, as they are approx.. 20' in diameter, which is too large for a truck to ship. Therefore, there has been discussion with the artists team about an option of mechanically joining 2 halves of the circles, that is attractive and works with the lightness of the design. Another option is to do some on-site welding. There are advantages and disadvantages to either. This will all get worked out in design development and engineering, and will be communicated clearly to the City and Nine Dots.

# Maintenance Plan

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A comprehensive maintenance plan is forthcoming once the piece is fully engineered and specific parts are sourced. In the meantime, a general plan for the materials is below:

The fabricator recommends that nothing need to be done to “maintain” the artwork per se, as the protective epoxy coatings, will seal it from weather. In the event of an accident to the poles, the City/Client will be provided with extra Sherwin Williams paint for them to be touched-up. Also, the epoxy paint on the poles is tough enough to withstand a water-based graffiti removal product.



# Anticipated Installation Date\*

**\*Subject to project construction schedule**

## 2025 Calendar

We anticipate Susan's work to be installed March/April 2025. The site preparation will happen earlier.

January							February							March							April						
Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su
		1	2	3	4	5						1	2						1	2		1	2	3	4	5	6
6	7	8	9	10	11	12	3	4	5	6	7	8	9	3	4	5	6	7	8	9	7	8	9	10	11	12	13
13	14	15	16	17	18	19	10	11	12	13	14	15	16	10	11	12	13	14	15	16	14	15	16	17	18	19	20
20	21	22	23	24	25	26	17	18	19	20	21	22	23	17	18	19	20	21	22	23	21	22	23	24	25	26	27
27	28	29	30	31			24	25	26	27	28			24	25	26	27	28	29	30	28	29	30				
														31													
May							June							July							August						
Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su
			1	2	3	4							1		1	2	3	4	5	6					1	2	3
5	6	7	8	9	10	11	2	3	4	5	6	7	8	7	8	9	10	11	12	13	4	5	6	7	8	9	10
12	13	14	15	16	17	18	9	10	11	12	13	14	15	14	15	16	17	18	19	20	11	12	13	14	15	16	17
19	20	21	22	23	24	25	16	17	18	19	20	21	22	21	22	23	24	25	26	27	18	19	20	21	22	23	24
26	27	28	29	30	31		23	24	25	26	27	28	29	28	29	30	31				25	26	27	28	29	30	31
							30																				
September							October							November							December						
Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su
1	2	3	4	5	6	7			1	2	3	4	5						1	2	1	2	3	4	5	6	7
8	9	10	11	12	13	14	6	7	8	9	10	11	12	3	4	5	6	7	8	9	8	9	10	11	12	13	14
15	16	17	18	19	20	21	13	14	15	16	17	18	19	10	11	12	13	14	15	16	15	16	17	18	19	20	21
22	23	24	25	26	27	28	20	21	22	23	24	25	26	17	18	19	20	21	22	23	22	23	24	25	26	27	28
29	30						27	28	29	30	31			24	25	26	27	28	29	30	29	30	31				

# Documents

# Design Contract

**Final contract to be issued after approval of application**

DocuSign Envelope ID: 5F90E27F-0EE6-4AA6-A434-60632DAD38CE



## ADDITIONAL SERVICES AGREEMENT #1

DATE OF ORIGINAL AGREEMENT: October 10, 2022

DESIGN PROFESSIONAL:

NINEdotARTS Corp  
3734 Osage St.  
Denver, CO 80211  
(telephone): 303-335-0262

PROJECT: Brea Mall – Sears  
Redevelopment

Corp. #: 4821

AGREEMENT DATE: 1/3/2023

COMPLETION DATE: 12/31/2023

Based upon the OWNER's criteria, budget and schedule identified in the Original Agreement or in a new Schedule I, if attached, and made a part of this Additional Services Agreement, and in conformity therewith, the Design Professional shall provide the additional architectural, engineering and/or professional services described in Schedule II to this Additional Services Agreement (the "Additional Services"). This agreement modifies the original Agreement entered into between the parties. All terms and conditions of the original Agreement shall remain in effect, except to the extent modified by this Additional Services Agreements.


**Compensation:** The OWNER shall compensate the Design Professional for the Additional Services as set forth in Schedule II to this Additional Services Agreement, not to exceed Forty-Seven Thousand Dollars (\$47,000.00). The OWNER shall also reimburse the Design Professional for the actual amount expended by the Design Professional (without a multiplier or mark-up) not to exceed the aggregate amount of \$0.00

**Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. Signatures of this Agreement may be transmitted via electronic means (including facsimile or e-mailed PDF scan) and shall be considered an original and binding against the party that executed and delivered such signature via electronic means.

"OWNER"  
The Retail Property Trust  
A Massachusetts business trust

"PROFESSIONAL"  
NINEdotARTS Corp

Signed:   
Printed: Jeff Jones  
Title: SVP Construction

Signed:   
Printed: Adele Grundies  
Title: COO

DocuSign Envelope ID: 72841C7B-3AFA-433F-6D33-C3D851CCF52B



## ADDITIONAL SERVICES AGREEMENT #2

DATE OF ORIGINAL AGREEMENT: October 10, 2022

DESIGN PROFESSIONAL:

NINEdotARTS Corp  
3734 Osage St.  
Denver, CO 80211  
(telephone): 303-335-0262

PROJECT: Brea Mall – Sears  
Redevelopment

Corp. #: 4821

AGREEMENT DATE: December 8, 2023

COMPLETION DATE: December 1, 2025


Based upon the OWNER's criteria, budget and schedule identified in the Original Agreement or in a new Schedule I, if attached, and made a part of this Additional Services Agreement, and in conformity therewith, the Design Professional shall provide the additional architectural, engineering and/or professional services described in Schedule II to this Additional Services Agreement (the "Additional Services"). This agreement modifies the original Agreement entered into between the parties. All terms and conditions of the original Agreement shall remain in effect, except to the extent modified by this Additional Services Agreements.


**Compensation:** The OWNER shall compensate the Design Professional for the Additional Services as set forth in Schedule II to this Additional Services Agreement, not to exceed Eighty-Eight Thousand Eight Hundred Dollars (\$88,800.00). The OWNER shall also reimburse the Design Professional for the actual amount expended by the Design Professional (without a multiplier or mark-up) not to exceed the aggregate amount of \$0.00

**Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. Signatures of this Agreement may be transmitted via electronic means (including facsimile or e-mailed PDF scan) and shall be considered an original and binding against the party that executed and delivered such signature via electronic means.

"OWNER"  
The Retail Property Trust  
A Massachusetts business trust

"PROFESSIONAL"  
NINEdotARTS Corp

Signed:   
Printed: Michael Rodriguez  
Title: SVP Construction

Signed:   
Printed: Adele Grundies  
Title: COO



# Susan Zoccola Contract

To be signed after engineered drawings complete and design approved



## COMMISSIONED ARTWORK PURCHASE AGREEMENT

This COMMISSIONED ARTWORK PURCHASE AGREEMENT (this "**Agreement**"), dated June 6, 2024, is between NINE dot ARTS Corp., a Colorado corporation ("**NDA**"), and Susan Zoccola (the "**Artist**"). NDA and the Artist are sometimes referred to herein, individually, as a "**Party**" and, collectively, as the "**Parties**."

### BACKGROUND

A. NDA is providing consulting service to THE RETAIL PROPERTY TRUST, a Massachusetts Business Trust (the "**Owner**") with respect to artist selection, final design, schedule, and coordination for the commission, creation, construction, and installation of certain artwork to be installed at Owner's retail shopping center commonly known as Brea Mall, which is located at 1065 Brea Mall, Brea, CA 92821 (the "**Site**").

B. Prior to the date hereof, the Artist submitted to NDA a design concept (the "**Design Concept**") for the artwork described therein (the "**Artwork**"), which Design Concept and Artwork were selected and approved by NDA for installation at the Site.

C. The Parties have entered into this Agreement to set forth the terms and conditions on which they will work together to install the Artwork at the Site.

Accordingly, the Parties agree as follows:

1. **The Services.** The services to be performed by the Artist (collectively, the "**Services**") and the rights and obligations of the Artist and NDA with respect thereto are set forth below and in the Exhibits to this Agreement, which Exhibits are hereby incorporated in and made a part of this Agreement. The Artist shall perform all Services and furnish all supplies, materials, labor, and equipment necessary for the performance of the Services unless otherwise expressly set forth herein. The Services shall be performed and delivered in a good, diligent, skilled and workmanlike manner consistent with the highest standards of care and quality in the industry, in accordance with all applicable laws, rules, regulations, ordinances, and other directives (collectively, "**Applicable Law**") of all applicable governmental or regulatory authorities (each, a "**Governmental Authority**"), and in strict compliance with the Specifications and all terms and conditions set forth in this Agreement.

(a) Prefabrication.

(1) The Design Concept is preliminary, and modifications to the Design Concept may be required prior to final approval by NDA. NDA may provide guidance to the Artist and request revisions to the Design Concept in order to comply with Applicable Laws or for other reasons, including, but not limited to, ensuring the physical integrity of the Artwork or the installation of the Artwork at the Site. The Artist and NDA shall cooperate to modify and finalize the Design Concept as mutually agreed. Upon finalization of the Design Concept, the same shall be signed by the Parties attached hereto as Exhibit A (the "**Design**").

(2) In connection with or promptly following finalization of the Design, the Artist shall prepare and deliver to NDA presentation quality materials depicting the Artwork (the "**Final Design Materials**"), which Final Design Materials shall include: colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork and how it will be installed at the Site, mock-ups, final color and materials samples, proposed fabrication methods, feasibility studies, and final cost estimates for completion of the Services. The Final Design Materials shall fix and describe

the size and character of the Artwork with respect to its relationship to the Site, including architectural, structural, mechanical, and electrical systems, materials and other elements as may be appropriate.

(3) The Artist shall determine the artistic expression, design, dimensions, and materials of the Artwork, subject to review and acceptance by NDA and any Governmental Authority with project oversight. The Artist shall ensure that the materials to be used for fabrication of the Artwork are not currently known to be harmful to public health and safety. The Artist shall be responsible for ensuring that the Artwork, as installed, will not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, safety devices and procedures, and other needs and functions of the Site as defined by NDA, Applicable Law, or Governmental Authority prior to fabrication of the Artwork.

(4) The Artist shall submit documents for construction and/or installation of the proposed Design (such documents, the "**Construction Documents**") to NDA, which Construction Documents must be signed and stamped by requisite design professionals licensed in the State in which the Site is located, as required by Applicable Law, including all applicable building code(s).

(5) The Artist shall review all Construction Documents, including any architect's or engineer's design development materials related to the Artwork, for accuracy of the integration of the Design or the Artwork within the Site and provide NDA with written comments and/or corrections, as requested by NDA.

(6) If necessary for proper installation of the Artwork, the Artist shall inspect the Site prior to fabrication of the Artwork and shall notify NDA of any adverse Site conditions that may impact the installation of the Artwork and are in need of correction. The Artist's failure to notify NDA of any such adverse Site conditions shall be deemed acceptance by the Artist of the Site conditions as they exist. If the Artist notifies NDA of any adverse Site conditions, NDA shall work with the Artist and the Owner to determine whether such adverse Site conditions may be sufficiently remedied so as to proceed with the Services.

(7) The Artist shall secure any and all required licenses, permits and similar legal authorizations, at the Artist's expense, as may be necessary for the installation of the Artwork at the Site.

(8) As soon as possible following finalization of the Design, the Artist shall deliver a proposed budget for completion of the Services (the "**Proposed Budget**"), identifying all fees and costs for completion of all work under this Agreement, including, without limitation, design, determination of preliminary and final engineering requirements, materials and labor for fabrication (including Artist and subcontractors' costs), consultants (including engineers and specifications writers), transportation of Artwork, installation of Artwork, any necessary permits and licenses, potential modifications, and required insurance, for approval by NDA. Calculation of the Budget will take into consideration the possible increase in costs (e.g., inflation) of services and materials between the date of execution of this Agreement and the anticipated completion date. The Artist and NDA shall cooperate to modify and finalize the Proposed Budget as mutually agreed. Upon finalization of the Proposed Budget, the same shall be signed by the Parties attached hereto as Exhibit B (the "**Budget**"). Unless otherwise expressly agreed in writing, the Budget shall be treated as the fixed price for the Services subject to adjustment only by Change Order.

(9) The Artist shall deliver to NDA an anticipated schedule for the fabrication, transportation, and installation of the Artwork (the "**Proposed Completion Schedule**"), which must identify a specific date or timeframe for the completion of all deliverables, including a schedule for the submission of progress reports and inspections, if any, required by NDA or any Governmental Authority, including any permitting agency, related to the fabrication and installation of the Artwork at the Site, and a corresponding milestone-based payment schedule, for review and approval by NDA. The Artist and NDA shall cooperate to modify and finalize the Proposed Completion Schedule as mutually agreed. Upon finalization of the Proposed

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Completion Schedule, the same shall be signed by the Parties and attached hereto as Exhibit C (the "**Completion Schedule**").

(10) The Artist shall deliver to NDA:

- (A) A maintenance manual, including a description of all materials, processes, and products to be utilized in fabrication the Artwork, detailed instructions for the future maintenance and preservation of the Artwork, and recommended procedures for the conservation and preservation of the Artwork, for review and approval by NDA. Such maintenance manual shall indicate anticipated costs associated with future maintenance and conservation work required or recommended to conserve or preserve the Artwork; and shall reflect issues such as the longevity of the materials used and the life span of the Artwork. The Artist and NDA shall cooperate to modify and finalize the maintenance manual as mutually agreed. Upon finalization of the maintenance manual, the same shall be signed by the Parties and attached hereto as Exhibit D (the "**Maintenance Manual**").
- (B) A list of all subcontractors to be engaged in connection with providing the Services, a description of the work to be performed by such subcontractors, and a copy of each agreement between the Artist and each such subcontractor.
- (C) Proof of required insurance in amounts and with the limits specified in Exhibit E (the "**Insurance Requirements**").

(11) NDA shall provide the Artist, at no expense to the Artist, with a list of any permits required with respect to the Services of which NDA is aware, and copies of all existing designs, drawings, reports, and other data, relevant to the Services and in NDA's possession.

(12) The Design, the Budget, the Construction Documents, and the Completion Schedule are, collectively, referred to herein, as the "**Specifications**." The Artist shall not begin fabrication of the Artwork until the Specifications have been agreed to by the Parties in accordance with this Section 1(a) and the Artist has completed the other tasks required by this Section 1(a) unless otherwise agreed in writing by NDA.

(b) Fabrication.

(1) The Artist shall fabricate the Artwork in accordance with the Specifications in all material respects and in accordance with Applicable Law. The Artist may not deviate from the Specifications unless approved in writing by NDA prior to any such deviation, which approval may be withheld in NDA's sole and absolute discretion. If any such deviation from the Specifications is approved by NDA, the Artist shall provide a set of "as built" drawings if requested by NDA.

(2) The Artist shall ensure that no defective or inferior materials (including materials containing any inherent vices or qualities that cause or accelerate deterioration of the Artwork) are used in fabrication of the Artwork.

(3) If the Artwork is being constructed on the Site, the Artist shall ensure that the fabrication is being conducted in a manner that limits the impacts and burdens of such fabrication on the Owner, the Site, and its neighbors and visitors, and without creating a nuisance.

(4) NDA shall have the right to review the Artwork at reasonable times and upon reasonable notice to the Artist during the fabrication thereof. If upon review of the Artwork NDA determines that the Artwork does

not conform to the Specifications, NDA shall notify the Artist in writing of the nonconformance specifying in reasonable detail the reasons for such nonconformance. If the Artist disputes NDA's determination that the Artwork does not conform to the Specifications, the Artist shall promptly notify NDA in writing of the Artist's determination that the Artwork does conform to the Specifications addressing in reasonable detail each item of nonconformance identified by NDA. The Artist and NDA shall cooperate to resolve any such dispute in good faith as promptly as possible, but final determination of whether the Artwork conforms to the Specifications shall be made by NDA. The Artist and NDA shall cooperate to determine the process for remedying any such nonconformance. Absent an agreement otherwise, the Artist shall cure any such nonconformance within 30 days after its receipt of written notice of such nonconformance.

(5) The Artist shall take all reasonable measures to protect and preserve the integrity of the Artwork, including applying a protective sealant, patina, or anti-graffiti coating to the Artwork, if applicable, unless NDA specifically instructs the Artist otherwise.

(6) Upon request, the Artist shall provide photographic documentation of the completed Artwork in a format mutually acceptable to the Artist and NDA.

(c) Acceptance and Installation of the Artwork.

(1) The Artist shall notify NDA in writing when fabrication of the Artwork has been completed and, if the Artwork was fabricated off-Site, when the Artwork is ready for delivery and installation at the Site.

(2) If the Artwork was fabricated off-Site, then as soon as reasonably possible after its receipt of such notice, and prior to the transportation and installation of the Artwork at the Site, NDA shall inspect the Artwork, either in-person or via electronic video or photographs, to determine whether the Artwork conforms to the Specifications. If NDA determines that the Artwork conforms with the Specifications, it shall give final approval of the fabricated Artwork, and authorize the installation of the Artwork at the Site. NDA shall notify the Artist when the Site is prepared to receive the Artwork. The Parties shall cooperate to remediate any such conditions. If there are no such conditions or following the remediation thereof, the Artist shall arrange for the transportation and installation of the Artwork in coordination with NDA. If the Artist does not install the Artwork itself, the Artist shall be present at the Site to supervise and approve the installation of the Artwork. All installation services shall be performed by qualified professionals and by licensed contractors as required by Applicable Law. The Artist is responsible for timely and proper installation of the Artwork. The Artist shall notify NDA when installation of the Artwork is complete.

(3) Within 30 days after its receipt of such completion notice, or, if the Artwork was fabricated on-Site, after its receipt of notice from the Artist of the completion of the Artwork, NDA shall inspect the Artwork and the installation thereof at the Site to determine whether it conforms to the Specifications in all material respects and all Applicable Laws and whether the Artwork has been safely and securely installed. If NDA determines that the Artwork does not so conform or has not been so installed, it shall provide the Artist with written notice of such nonconformance or deficient installation specifying in reasonable detail the basis for such nonconformance or deficient installation (a "**Non-Acceptance Notice**").

(4) After receipt of a Non-Acceptance Notice, if the Artist disputes NDA's determination that the Artwork does not conform to the Specifications or was not safely and securely installed, the Artist shall promptly notify NDA in writing of the Artist's determination that the Artwork does conform to the Specifications and was safely and securely installed addressing in reasonable detail each item of nonconformance or safety issue identified by NDA. The Artist and NDA shall cooperate to resolve any such dispute in good faith as promptly as possible, but final determination of whether the Artwork conforms to the Specifications and was safely and securely installed shall be made by NDA. The Artist and NDA shall cooperate to determine

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the process for remedying any such nonconformance or deficient installation. Absent an agreement otherwise, the Artist shall cure any such nonconformance or deficient installation within 30 days after its receipt of the Non-Acceptance Notice. The Artist shall notify NDA in writing when it has so cured such nonconformance or deficient installation and the acceptance process described herein shall be repeated until Final Acceptance of the Artwork and its installation. "Final Acceptance" means that NDA has either provided written notice of acceptance the Artwork or has not delivered a Non-Acceptance Notice within 30 days after its receipt of the last notice of completion or correction of non-conformance or deficient work, as applicable.

(d) General Provisions Governing the Services.

(1) NDA shall be responsible for coordination and communication between the Artist and other interested parties (e.g., the Owner, architects, landscape architects, general contractor, and other decision-makers) other than the Artist's subcontractors, including a reasonable number of meetings required to coordinate the Artwork design and installation at the Site with the overall project at the Site.

(2) The Artist shall be available with reasonable advance notice for a reasonable number of meetings as may be required to coordinate design, lighting, landscaping, and overall project implementation, as well as ceremonies and the like.

(3) Each Party shall promptly notify the other Party in writing if it becomes aware of any fact, circumstance or condition that is likely to impede or delay the fabrication or installation of the Artwork in accordance with the Specifications.

(4) The Specifications may be modified only in a writing signed by both Parties (a "Change Order").

(5) Either Party may request a Change Order. Prior to the execution of any Change Order, the Artist shall provide NDA with a written description of any significant or material impact such Change Order will have, including with respect to the Artwork, the Services, the Construction Documents, the Budget, or the Completion Schedule, which notice must include a detailed description of any such impact, including any such impact to the artistic expression, design, dimensions, or materials of the Artwork, the costs to complete the Services, or the dates of completion of any milestones or the installation of the Artwork. If a proposed Change Order is not executed by both parties, the Artist shall continue to fabricate the Artwork in accordance with the Specifications without giving effect to the proposed Changes Order. If the Change Order is signed by both Parties, it shall become part of the Specifications and modify the existing Agreement. If the Artist incurs costs in excess of the amounts listed in the Budget (as modified by any Change Order), the Artist shall pay such excess costs from the Artist's own funds unless the Artist obtains approval in writing for such additional costs from NDA.

2. **Payment.** Subject to the Artist's performance of the Services in compliance with this Agreement, NDA shall make payments to the Artist at such times and in such amounts as are specified in the Completion Schedule. NDA may withhold any payment that may otherwise be due hereunder if the Artist is in breach or violation of this Agreement or has failed to deliver any deliverable or meet any milestone or condition that was to be satisfied prior to the date of such payment. NDA shall deliver any such withheld payment when such breach, violation, or failure has been cured to NDA's reasonable satisfaction.

3. **Term and Termination.** This Agreement shall be effective on the date that this Agreement has been signed by both Parties, and, unless terminated earlier in accordance with the terms hereof, shall extend until Final Acceptance or the Artist has been paid in full for the Services, whichever is later. NDA may terminate this Agreement for any reason or no reason upon 24 hours' written notice to the Artist. Such termination shall not

extinguish or diminish the rights and obligations of the Parties incurred prior to such termination. If NDA terminates this Agreement prior to completion of the Services other than due to the Artist's breach of this Agreement, NDA shall pay the Artist for all Services performed up to the effective date of the termination, including any expenses incurred by the Artist in connection therewith. If NDA terminates this Agreement for breach or violation of this Agreement, including but not limited to the Artist missing progress report dates, non-responsiveness, inability to complete the Artwork within the agreed upon Completion Schedule, refusal to make requested revisions to the Artwork, or failure to comply with the Specifications, NDA will have no obligation to pay the Artist any remaining balance owed under this Agreement and the Artist shall return or refund to NDA any prepaid amounts or other amounts deposited with the Artist, including any amounts paid in advance of the Artist achieving the milestone or satisfying any other condition to the Artist earning such amounts. Such obligations shall be in addition to, and not in lieu of, any other remedies that NDA may have for breach. Sections 4 through 13 of this Agreement shall survive any termination of this Agreement.

4. **Risk of Loss.** The Artist shall bear the risk of loss or damage to the Artwork until Final Acceptance. During such period, the Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. Until Final Acceptance, any injury to property or persons caused by the Artwork or any damage to, theft of, vandalism to, or other actions affecting the Artwork, are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the fabrication, storage, transportation, installation, or delivery of the Artwork, regardless of where such loss occurs.

5. **Maintenance.** If, within one year after Final Acceptance, the Artwork requires maintenance or preservation substantially in excess of that described in Maintenance Manual, NDA shall notify the Artist of such need with reasonable promptness. Upon receipt of such notice, the Artist shall provide such required maintenance and/or preservation services promptly, satisfactorily, and consistent with professional conservation standards, at no expense to NDA or Owner. If the Artist is unable to provide such maintenance and/or preservation services, the Artist shall be responsible for reimbursing NDA or Owner for any costs, expenses, damages, or losses incurred by NDA in order to otherwise procure such maintenance and/or preservation services. The foregoing is in addition to any other rights NDA or the Owner may have.

6. **Artist as an Independent Artist.** The Artist is an independent contractor, and is not an agent or employee of, and has no authority to bind, NDA. The Artist is not an employee of NDA for federal tax purposes, it being the intent of the parties to rely upon §3508 of the Internal Revenue Code of 1986, as amended. In his or her capacity as an independent contractor, the Artist represents, warrants, and agrees that, subject to NDA's reasonable requirements with respect to the Artist's work: (a) the Artist will not be required to devote his or her full-time to the performance of the Services and has the right to perform services for others during the term of this Agreement so long as the Artist does not otherwise violate the terms of this Agreement or any other agreement between the Artist and NDA; (b) the Artist has the sole right to control and direct the means, manner and method by which the Services will be performed; (c) the Artist has the right to perform the Services at any place or location and at such times as the Artist may determine; (d) the Artist will furnish all equipment and materials used to provide the Services; (e) the Services will be performed by the Artist and NDA shall not be required to hire, supervise or pay any assistants or other persons to help the Artist; (f) the Artist will not receive any training from NDA in the professional skills necessary to perform the Services; (g) the Artist shall ensure that he or she is adequately insured, including with respect to the performance of the Services and, unless otherwise agreed in writing, NDA will not provide insurance coverage of any kind for the Artist; (h) NDA will not withhold any payroll, FICA, FUTA, or other taxes or any kind from compensation payable to the Artist hereunder; (i) the Artist will be solely responsible for reporting and paying all income and employment taxes on all compensation received by the Artist pursuant to this Agreement; and (j) the Artist will not be entitled to any fringe benefits, to receive any vacation or illness payments, or to participate in any plans, arrangements, or distributions by NDA, including any health or welfare plans, 401(k) plans, or any plans pertaining to any bonus, stock option, profit sharing, insurance, or similar benefits for employees of NDA.



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## 7. Representations and Warranties.

(a) Artist Representations and Warranties. The Artist represents and warrants to NDA and the Owner as follows:

- (1) It has the full power and authority to enter into and perform this Agreement and to grant the rights contemplated by this Agreement, and this Agreement is a legal, valid, and binding obligation of the Artist.
- (2) The Services shall be performed and delivered in a good, diligent, and skilled and workmanlike manner consistent with the highest standards in the industry, and in accordance with Applicable Law and the terms and conditions set forth in this Agreement.
- (3) The Artist has and at all times during the term of this Agreement for the duration specified in the Insurance Requirements shall maintain insurance that complies with the Insurance Requirements.
- (4) The Artwork shall conform in all material respects to the Specifications, shall be free from material defects in materials and workmanship, and shall not require material maintenance or preservation efforts in excess of those described in the Maintenance Manual.
- (5) The Artwork is unique and original and, except as otherwise disclosed in writing by the Artist to NDA, is solely the result of the artistic efforts of the Artist.
- (6) Neither the Artwork nor any duplicate or derivative thereof has been or will be made available for sale other than pursuant to this Agreement.
- (7) The Artist has not sold, assigned, transferred, licensed, granted, utilized, or otherwise encumbered the Artwork or any element thereof or any copyright or other intellectual property right therein or related thereto, in any way that may affect or impair the rights granted or purported to be granted pursuant to this Agreement.
- (8) The Artwork does not infringe upon any copyright, trademark, or any other intellectual property rights of any party.
- (9) The Artwork is free and clear of any liens from any source whatsoever.

(b) NDA Representations and Warranties. NDA represents and warrants to the Artist as follows:

- (1) It has the full power and authority to enter into and perform this Agreement, and this Agreement is a legal, valid, and binding obligation of NDA.
- (2) NDA has authority to act on behalf of the Owner with respect to this Agreement and the Services.

## 8. Intellectual Property Rights.

(a) Title: Waiver of Certain Rights. Title to the Artwork and any other deliverables resulting from the Services (collectively, the "**Work**") shall pass to the Owner upon Final Acceptance. At such time, the Owner shall be deemed to be the possessor of the Artwork. The Artist agrees to waive and does hereby voluntarily waive all rights to attribution and integrity with respect to the Work and any and all claims as may arise under the Visual Artists Rights Act of 1990, 17 U.S.C. §§106A and 113(d) ("**VARA**"), the California Art Preservation Act (Cal. Civ.

Code §§987 and 989 )("**CAPA**"), or any other local, state, foreign, or international law, whether now existing or hereafter enacted, as the same may be amended, that conveys any moral or similar rights ("**Moral Rights Laws**"), with respect to the Work, its display, removal from display, exhibition, installation, conservation, storage, study, alteration, and any other activities conducted by the Owner, its officers, employees, agents, contractors, licensees, successors or assigns. If the Work is incorporated into a building such that the Work cannot be removed from the building without physical defacement, mutilation, alternation, distortion, destruction, or other modification (collectively, "**Modification**") of the Work, the Artist waives any and all claims it may have under any Moral Rights Laws arising out of or against the Owner and any current or future owners of the site, and its agents, officers, and employees, for Modification of the Work. The Owner has the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the Work, in whole or in part, in the Owner's sole discretion. The Artist understands the effect of this waiver and hereby acknowledges that the Artist is surrendering the rights described herein with respect to the Work. If the Owner modifies the Work without the Artist's consent in a manner that is prejudicial to the Artist's reputation, the Artist retains the right to disclaim authorship of the Artwork in accordance with 17 U.S.C. § 106A (a)(2). This waiver does not extend to the rights of attribution conferred by 17.U.S.C. §106A(a)(1) or §106A(a)(2).

(b) Retention of Documents. One set of Final Design Materials prepared by the Artist and submitted to NDA under this Agreement shall be retained by NDA for no less than two years following Final Acceptance.

(c) Copyright Ownership. The Artist shall retain all rights under the Copyright Act of 1976, 17 U.S.C. §101 et seq., as the sole author of the Artwork for the duration of the copyright of the Artwork.

(d) Reproduction Rights.

- (1) In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate two- or three-dimensional or digital reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the Owner. Provided, however, nothing in this Agreement shall prevent the Artist from creating additional works in the Artist's manner and style of artistic expression.
- (2) The Artist grants to the Owner and Owner's affiliates and respective assignees a royalty-free, worldwide, perpetual, and irrevocable license to make two-dimensional reproductions of the Artwork (including all print and digital media including, without limitation, video) for promotion of the Site, including, but not limited to, reproductions used in brochures, media publicity, social media posts, advertisements, exhibition catalogues or other similar publications, as long as any such reproductions are not offered for sale.
- (3) In the event that Owner's use of the Artwork creates trademark, service mark or trade dress rights in connection with the Artwork, Owner shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.
- (4) In the event that Owner or Artist desires to make reproductions of the Artwork for resale, such party shall notify the other party of such desire and the Owner and Artist shall negotiate in good faith to reach a license agreement for such use and distribution including a reasonable royalty or revenue sharing agreement between such parties.

9. Indemnification. The Artist shall defend, protect, indemnify, and hold harmless NDA, the Owner, and their respective affiliates, directors, officers, agents, employees, equity holders, contractors and subcontractors

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(collectively, the "Indemnified Parties") from and against any and all claims, costs, damages, expenses, losses, demands, causes of action, judgments, and proceedings, including court costs, reasonable attorneys' and other professional fees, brought or made against, or suffered or incurred by, and Indemnified Party relating to, arising out of, incident to, or resulting, directly or indirectly, from, (i) the Artist's negligence, willful misconduct, or breach of its representations, warranties, or covenants made in this Agreement, (ii) the Artist's or its subcontractors' and the respective agents', employees' or contractors performance of the Services, (iii) any claims and mechanic's liens asserted by the Artist's contractors, subcontractors, suppliers, vendors, or service providers, and (iv) any claims that the Works infringe an intellectual property, proprietary, or other rights of any third party.

**10. Alteration of Site; Relocation or Removal of Artwork.** The Owner may alter the Site or relocate or deaccession the Artwork in its sole and absolute discretion at any time following Final Acceptance.

**11. Non-disparagement.** Each Party agrees that it (a) will not do or say anything false that a reasonable person would expect to diminish or constrain the good will and good reputation of the other Party or any of its subsidiaries or affiliates, or their products or services, and (b) will not seek to injure the reputation of the other Party or any of its subsidiaries or affiliates, which includes, without limitation, refraining from making disparaging statements about any of their methods of doing business, the effectiveness of any of their business policies and practices, and the quality of any of their products or services.

**12. Worker's Compensation.** THE ARTIST UNDERSTANDS AND AGREES THAT (1) THE ARTIST IS NOT ENTITLED TO WORKERS' COMPENSATION OR UNEMPLOYMENT INSURANCE BENEFITS UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY THE ARTIST OR AN ENTITY OTHER THAN NDA, AND (2) THE ARTIST (NOT NDA) IS OBLIGATED TO PAY FEDERAL AND STATE INCOME AND EMPLOYMENT TAX ON ANY AMOUNT EARNED BY THE ARTIST PURSUANT TO THIS AGREEMENT.

## **13. General Provisions.**

(a) **Entire Agreement.** This Agreement constitutes the entire agreement between NDA and the Artist and supersedes any previous agreements or representations, either oral or written with respect to the subject matter of this Agreement. Amendments may only be made in writing signed by both Parties. In the event of any conflict between the terms and conditions of this Agreement and any other agreement or document, the terms and conditions of this Agreement shall control.

(b) **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A facsimile or other digital transmission of this signed Agreement bearing a signature on behalf of a Party shall be legal and binding on such Party. Each Party agrees that electronic signatures may be used in lieu of hand signatures in the execution of this Agreement.

(c) **Governing Law; Dispute Resolution.** This Agreement will be governed by and construed in accordance with the laws of the state of Colorado, without regard to or application of conflict of law rules or principles. Any controversy or claim arising out of this Agreement, shall be decided by binding arbitration to be conducted in accordance with the rules of the American Arbitration Association ("AAA") by a single arbitrator selected by the Parties, and not by court action, except as provided by Colorado law for judicial review of arbitration proceedings. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator selected by the Parties shall have the power to determine the scope and time constraints of reasonable discovery and the admissibility, relevance, materiality, and weight of any evidence offered by any Party. The arbitrator selected by the Parties to conduct the arbitration shall have the power and authority to grant any and all relief requested by the Parties to the dispute, except those proceedings for any

order of attachment, receivership, injunction, or any other provisional remedy. Commencement of court action in pursuance of these excluded matters shall not constitute a waiver of the right to arbitrate under this provision. In the event the Parties to the dispute cannot agree to an arbitrator, the AAA shall select and appoint an arbitrator. Any mediation or arbitration shall be conducted in Denver, Colorado unless otherwise agreed by the Parties. Any costs and fees of arbitration, other than attorney fees associated with the arbitration, shall be shared equally between the Parties. If arbitration or any other legal action is necessary to enforce this Agreement, the prevailing Party shall be entitled to reasonable attorney fees, costs, and expenses.

(d) **Notice.** All notices and other communications given in connection with this Agreement shall be in writing and shall be hand delivered or mailed return receipt requested or sent by reputable overnight courier to the other Party at such Party's address set forth on the signature page hereto or at such other address as may be provided in accordance herewith, or sent by e-mail to the e-mail address set forth on the signature page hereto or otherwise provided by such Party for purposes of receiving such notices. A copy of any notice under this Agreement sent by any Party shall be sent also by one of the methods mentioned above in this Section 13(d) to:

THE RETAIL PROPERTY TRUST  
225 West Washington Street  
Indianapolis, IN 46204  
Attention: General Counsel  
E-mail at: [sfivel@simon.com](mailto:sfivel@simon.com)

With a copy to:  
BREA MALL  
Attention: General Manager  
1065 Brea Mall  
Brea, CA 92821

(e) **No Agency.** Nothing contained herein will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise between the Parties.

(f) **Assignment.** The rights and obligations under this Agreement may not be assigned or transferred by the Artist. NDA may assign the rights and obligations under this Agreement; however, NDA shall retain the obligation to pay the Artist if the assignee fails to pay as required under this Agreement.

(g) **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto, their successors and assigns.

(h) **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and each provision of this Agreement shall be severable and enforceable to the extent permitted by law.

(i) **Waiver.** No provision of this Agreement shall be deemed waived, nor shall there be an estoppel against the enforcement of any such provision, except by a writing signed by the Party charged with the waiver or estoppel. No waiver shall be deemed continuing unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any provision other than that specifically waived.

# Susan Zoccola Contract

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(j) Interpretation. Headings in this Agreement are for convenience only and shall not control the meaning of this Agreement. Whenever applicable, masculine and neutral pronouns shall equally apply to the feminine genders; the singular shall include the plural and the plural shall include the singular. The Parties have reviewed and understand this Agreement, and each has had a full opportunity to negotiate the Agreement's terms and to consult with counsel of their own choosing. Therefore, the Parties expressly waive all applicable common law and statutory rules of construction that any provision of this Agreement should be construed against the Agreement's drafter, and agree that this Agreement and all amendments hereto shall be construed as a whole, according to the fair meaning of the language used.

(k) Third-Party Beneficiary. The Artist and NDA agree that the Owner shall be an express third-party beneficiary of this Agreement.

*[Signature Page Follows]*

Each of the undersigned, intending to be legally bound, has executed this Agreement as of the date set forth below such Party's signature below.

## ARTIST:

By: \_\_\_\_\_  
Name: Susan Zoccola  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## NDA:

**NINE dot ARTS Corp.**

By: \_\_\_\_\_  
Name: Molly Casey  
Title: Vice President  
Date: \_\_\_\_\_  
E-mail: molly@ninedotarts.com  
Address: 3734 Osage Street  
Denver, CO 80211



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## COMMISSIONED ARTWORK PURCHASE AGREEMENT

This COMMISSIONED ARTWORK PURCHASE AGREEMENT (this "**Agreement**"), dated June 6, 2024 \_\_\_\_\_, is between NINE dot ARTS Corp., a Colorado corporation ("**NDA**"), and \_\_\_\_\_ (the "**Artist**"). NDA and the Artist are sometimes referred to herein, individually, as a "**Party**" and, collectively, as the "**Parties**."

### BACKGROUND

A. NDA is providing consulting service to THE RETAIL PROPERTY TRUST, a Massachusetts Business Trust (the "**Owner**") with respect to artist selection, final design, schedule, and coordination for the commission, creation, construction, and installation of certain artwork to be installed at Owner's retail shopping center commonly known as Brea Mall, which is located at 1065 Brea Mall, Brea, CA 92821 (the "**Site**").

B. Prior to the date hereof, the Artist submitted to NDA a design concept (the "**Design Concept**") for the artwork described therein (the "**Artwork**"), which Design Concept and Artwork were selected and approved by NDA for installation at the Site.

C. The Parties have entered into this Agreement to set forth the terms and conditions on which they will work together to install the Artwork at the Site.

Accordingly, the Parties agree as follows:

1. **The Services.** The services to be performed by the Artist (collectively, the "**Services**") and the rights and obligations of the Artist and NDA with respect thereto are set forth below and in the Exhibits to this Agreement, which Exhibits are hereby incorporated in and made a part of this Agreement. The Artist shall perform all Services and furnish all supplies, materials, labor, and equipment necessary for the performance of the Services unless otherwise expressly set forth herein. The Services shall be performed and delivered in a good, diligent, skilled and workmanlike manner consistent with the highest standards of care and quality in the industry, in accordance with all applicable laws, rules, regulations, ordinances, and other directives (collectively, "**Applicable Law**") of all applicable governmental or regulatory authorities (each, a "**Governmental Authority**"), and in strict compliance with the Specifications and all terms and conditions set forth in this Agreement.

#### (a) Prefabrication

(1) The Design Concept is preliminary, and modifications to the Design Concept may be required prior to final approval by NDA. NDA may provide guidance to the Artist and request revisions to the Design Concept in order to comply with Applicable Laws or for other reasons, including, but not limited to, ensuring the physical integrity of the Artwork or the installation of the Artwork at the Site. The Artist and NDA shall cooperate to modify and finalize the Design Concept as mutually agreed. Upon finalization of the Design Concept, the same shall be signed by the Parties attached hereto as Exhibit A (the "**Design**").

(2) In connection with or promptly following finalization of the Design, the Artist shall prepare and deliver to NDA presentation quality materials depicting the Artwork (the "**Final Design Materials**"), which Final Design Materials shall include: colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork and how it will be installed at the Site, mock-ups, final color and materials samples, proposed fabrication methods, feasibility studies, and final cost estimates for completion of the Services. The Final Design Materials shall fix and describe

the size and character of the Artwork with respect to its relationship to the Site, including architectural, structural, mechanical, and electrical systems, materials and other elements as may be appropriate.

(3) The Artist shall determine the artistic expression, design, dimensions, and materials of the Artwork, subject to review and acceptance by NDA and any Governmental Authority with project oversight. The Artist shall ensure that the materials to be used for fabrication of the Artwork are not currently known to be harmful to public health and safety. The Artist shall be responsible for ensuring that the Artwork, as installed, will not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, safety devices and procedures, and other needs and functions of the Site as defined by NDA, Applicable Law, or Governmental Authority prior to fabrication of the Artwork.

(4) The Artist shall submit documents for construction and/or installation of the proposed Design (such documents, the "**Construction Documents**") to NDA, which Construction Documents must be signed and stamped by requisite design professionals licensed in the State in which the Site is located, as required by Applicable Law, including all applicable building code(s).

(5) The Artist shall review all Construction Documents, including any architect's or engineer's design development materials related to the Artwork, for accuracy of the integration of the Design or the Artwork within the Site and provide NDA with written comments and/or corrections, as requested by NDA.

(6) If necessary for proper installation of the Artwork, the Artist shall inspect the Site prior to fabrication of the Artwork and shall notify NDA of any adverse Site conditions that may impact the installation of the Artwork and are in need of correction. The Artist's failure to notify NDA of any such adverse Site conditions shall be deemed acceptance by the Artist of the Site conditions as they exist. If the Artist notifies NDA of any adverse Site conditions, NDA shall work with the Artist and the Owner to determine whether such adverse Site conditions may be sufficiently remedied so as to proceed with the Services.

(7) The Artist shall secure any and all required licenses, permits and similar legal authorizations, at the Artist's expense, as may be necessary for the installation of the Artwork at the Site.

(8) As soon as possible following finalization of the Design, the Artist shall deliver a proposed budget for completion of the Services (the "**Proposed Budget**"), identifying all fees and costs for completion of all work under this Agreement, including, without limitation, design, determination of preliminary and final engineering requirements, materials and labor for fabrication (including Artist and subcontractors' costs), consultants (including engineers and specifications writers), transportation of Artwork, installation of Artwork, any necessary permits and licenses, potential modifications, and required insurance, for approval by NDA. Calculation of the Budget will take into consideration the possible increase in costs (e.g., inflation) of services and materials between the date of execution of this Agreement and the anticipated completion date. The Artist and NDA shall cooperate to modify and finalize the Proposed Budget as mutually agreed. Upon finalization of the Proposed Budget, the same shall be signed by the Parties attached hereto as Exhibit B (the "**Budget**"). Unless otherwise expressly agreed in writing, the Budget shall be treated as the fixed price for the Services subject to adjustment only by Change Order.

(9) The Artist shall deliver to NDA an anticipated schedule for the fabrication, transportation, and installation of the Artwork (the "**Proposed Completion Schedule**"), which must identify a specific date or timeframe for the completion of all deliverables, including a schedule for the submission of progress reports and inspections, if any, required by NDA or any Governmental Authority, including any permitting agency, related to the fabrication and installation of the Artwork at the Site, and a corresponding milestone-based payment schedule, for review and approval by NDA. The Artist and NDA shall cooperate to modify and finalize the Proposed Completion Schedule as mutually agreed. Upon finalization of the Proposed

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Completion Schedule, the same shall be signed by the Parties and attached hereto as Exhibit C (the "**Completion Schedule**").

(10) The Artist shall deliver to NDA:

- (A) A maintenance manual, including a description of all materials, processes, and products to be utilized in fabrication the Artwork, detailed instructions for the future maintenance and preservation of the Artwork, and recommended procedures for the conservation and preservation of the Artwork, for review and approval by NDA. Such maintenance manual shall indicate anticipated costs associated with future maintenance and conservation work required or recommended to conserve or preserve the Artwork; and shall reflect issues such as the longevity of the materials used and the life span of the Artwork. The Artist and NDA shall cooperate to modify and finalize the maintenance manual as mutually agreed. Upon finalization of the maintenance manual, the same shall be signed by the Parties and attached hereto as Exhibit D (the "**Maintenance Manual**").
- (B) A list of all subcontractors to be engaged in connection with providing the Services, a description of the work to be performed by such subcontractors, and a copy of each agreement between the Artist and each such subcontractor.
- (C) Proof of required insurance in amounts and with the limits specified in Exhibit E (the "**Insurance Requirements**").

(11) NDA shall provide the Artist, at no expense to the Artist, with a list of any permits required with respect to the Services of which NDA is aware, and copies of all existing designs, drawings, reports, and other data, relevant to the Services and in NDA's possession.

(12) The Design, the Budget, the Construction Documents, and the Completion Schedule are, collectively, referred to herein, as the "**Specifications**." The Artist shall not begin fabrication of the Artwork until the Specifications have been agreed to by the Parties in accordance with this Section 1(a) and the Artist has completed the other tasks required by this Section 1(a) unless otherwise agreed in writing by NDA.

(b) Fabrication.

(1) The Artist shall fabricate the Artwork in accordance with the Specifications in all material respects and in accordance with Applicable Law. The Artist may not deviate from the Specifications unless approved in writing by NDA prior to any such deviation, which approval may be withheld in NDA's sole and absolute discretion. If any such deviation from the Specifications is approved by NDA, the Artist shall provide a set of "as built" drawings if requested by NDA.

(2) The Artist shall ensure that no defective or inferior materials (including materials containing any inherent vices or qualities that cause or accelerate deterioration of the Artwork) are used in fabrication of the Artwork.

(3) If the Artwork is being constructed on the Site, the Artist shall ensure that the fabrication is being conducted in a manner that limits the impacts and burdens of such fabrication on the Owner, the Site, and its neighbors and visitors, and without creating a nuisance.

(4) NDA shall have the right to review the Artwork at reasonable times and upon reasonable notice to the Artist during the fabrication thereof. If upon review of the Artwork NDA determines that the Artwork does

not conform to the Specifications, NDA shall notify the Artist in writing of the nonconformance specifying in reasonable detail the reasons for such nonconformance. If the Artist disputes NDA's determination that the Artwork does not conform to the Specifications, the Artist shall promptly notify NDA in writing of the Artist's determination that the Artwork does conform to the Specifications addressing in reasonable detail each item of nonconformance identified by NDA. The Artist and NDA shall cooperate to resolve any such dispute in good faith as promptly as possible, but final determination of whether the Artwork conforms to the Specifications shall be made by NDA. The Artist and NDA shall cooperate to determine the process for remedying any such nonconformance. Absent an agreement otherwise, the Artist shall cure any such nonconformance within 30 days after its receipt of written notice of such nonconformance.

(5) The Artist shall take all reasonable measures to protect and preserve the integrity of the Artwork, including applying a protective sealant, patina, or anti-graffiti coating to the Artwork, if applicable, unless NDA specifically instructs the Artist otherwise.

(6) Upon request, the Artist shall provide photographic documentation of the completed Artwork in a format mutually acceptable to the Artist and NDA.

(c) Acceptance and Installation of the Artwork.

(1) The Artist shall notify NDA in writing when fabrication of the Artwork has been completed and, if the Artwork was fabricated off-Site, when the Artwork is ready for delivery and installation at the Site.

(2) If the Artwork was fabricated off-Site, then as soon as reasonably possible after its receipt of such notice, and prior to the transportation and installation of the Artwork at the Site, NDA shall inspect the Artwork, either in-person or via electronic video or photographs, to determine whether the Artwork conforms to the Specifications. If NDA determines that the Artwork conforms with the Specifications, it shall give final approval of the fabricated Artwork, and authorize the installation of the Artwork at the Site. NDA shall notify the Artist when the Site is prepared to receive the Artwork. The Parties shall cooperate to remediate any such conditions. If there are no such conditions or following the remediation thereof, the Artist shall arrange for the transportation and installation of the Artwork in coordination with NDA. If the Artist does not install the Artwork itself, the Artist shall be present at the Site to supervise and approve the installation of the Artwork. All installation services shall be performed by qualified professionals and by licensed contractors as required by Applicable Law. The Artist is responsible for timely and proper installation of the Artwork. The Artist shall notify NDA when installation of the Artwork is complete.

(3) Within 30 days after its receipt of such completion notice, or, if the Artwork was fabricated on-Site, after its receipt of notice from the Artist of the completion of the Artwork, NDA shall inspect the Artwork and the installation thereof at the Site to determine whether it conforms to the Specifications in all material respects and all Applicable Laws and whether the Artwork has been safely and securely installed. If NDA determines that the Artwork does not so conform or has not been so installed, it shall provide the Artist with written notice of such nonconformance or deficient installation specifying in reasonable detail the basis for such nonconformance or deficient installation (a "**Non-Acceptance Notice**").

(4) After receipt of a Non-Acceptance Notice, if the Artist disputes NDA's determination that the Artwork does not conform to the Specifications or was not safely and securely installed, the Artist shall promptly notify NDA in writing of the Artist's determination that the Artwork does conform to the Specifications and was safely and securely installed addressing in reasonable detail each item of nonconformance or safety issue identified by NDA. The Artist and NDA shall cooperate to resolve any such dispute in good faith as promptly as possible, but final determination of whether the Artwork conforms to the Specifications and was safely and securely installed shall be made by NDA. The Artist and NDA shall cooperate to determine

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the process for remedying any such nonconformance or deficient installation. Absent an agreement otherwise, the Artist shall cure any such nonconformance or deficient installation within 30 days after its receipt of the Non-Acceptance Notice. The Artist shall notify NDA in writing when it has so cured such nonconformance or deficient installation and the acceptance process described herein shall be repeated until Final Acceptance of the Artwork and its installation. "Final Acceptance" means that NDA has either provided written notice of acceptance the Artwork or has not delivered a Non-Acceptance Notice within 30 days after its receipt of the last notice of completion or correction of non-conformance or deficient work, as applicable.

(d) General Provisions Governing the Services.

(1) NDA shall be responsible for coordination and communication between the Artist and other interested parties (e.g., the Owner, architects, landscape architects, general contractor, and other decision-makers) other than the Artist's subcontractors, including a reasonable number of meetings required to coordinate the Artwork design and installation at the Site with the overall project at the Site.

(2) The Artist shall be available with reasonable advance notice for a reasonable number of meetings as may be required to coordinate design, lighting, landscaping, and overall project implementation, as well as ceremonies and the like.

(3) Each Party shall promptly notify the other Party in writing if it becomes aware of any fact, circumstance or condition that is likely to impede or delay the fabrication or installation of the Artwork in accordance with the Specifications.

(4) The Specifications may be modified only in a writing signed by both Parties (a "Change Order").

(5) Either Party may request a Change Order. Prior to the execution of any Change Order, the Artist shall provide NDA with a written description of any significant or material impact such Change Order will have, including with respect to the Artwork, the Services, the Construction Documents, the Budget, or the Completion Schedule, which notice must include a detailed description of any such impact, including any such impact to the artistic expression, design, dimensions, or materials of the Artwork, the costs to complete the Services, or the dates of completion of any milestones or the installation of the Artwork. If a proposed Change Order is not executed by both parties, the Artist shall continue to fabricate the Artwork in accordance with the Specifications without giving effect to the proposed Changes Order. If the Change Order is signed by both Parties, it shall become part of the Specifications and modify the existing Agreement. If the Artist incurs costs in excess of the amounts listed in the Budget (as modified by any Change Order), the Artist shall pay such excess costs from the Artist's own funds unless the Artist obtains approval in writing for such additional costs from NDA.

2. **Payment.** Subject to the Artist's performance of the Services in compliance with this Agreement, NDA shall make payments to the Artist at such times and in such amounts as are specified in the Completion Schedule. NDA may withhold any payment that may otherwise be due hereunder if the Artist is in breach or violation of this Agreement or has failed to deliver any deliverable or meet any milestone or condition that was to be satisfied prior to the date of such payment. NDA shall deliver any such withheld payment when such breach, violation, or failure has been cured to NDA's reasonable satisfaction.

3. **Term and Termination.** This Agreement shall be effective on the date that this Agreement has been signed by both Parties, and, unless terminated earlier in accordance with the terms hereof, shall extend until Final Acceptance or the Artist has been paid in full for the Services, whichever is later. NDA may terminate this Agreement for any reason or no reason upon 24 hours' written notice to the Artist. Such termination shall not

extinguish or diminish the rights and obligations of the Parties incurred prior to such termination. If NDA terminates this Agreement prior to completion of the Services other than due to the Artist's breach of this Agreement, NDA shall pay the Artist for all Services performed up to the effective date of the termination, including any expenses incurred by the Artist in connection therewith. If NDA terminates this Agreement for breach or violation of this Agreement, including but not limited to the Artist missing progress report dates, non-responsiveness, inability to complete the Artwork within the agreed upon Completion Schedule, refusal to make requested revisions to the Artwork, or failure to comply with the Specifications, NDA will have no obligation to pay the Artist any remaining balance owed under this Agreement and the Artist shall return or refund to NDA any prepaid amounts or other amounts deposited with the Artist, including any amounts paid in advance of the Artist achieving the milestone or satisfying any other condition to the Artist earning such amounts. Such obligations shall be in addition to, and not in lieu of, any other remedies that NDA may have for breach. Sections 4 through 13 of this Agreement shall survive any termination of this Agreement.

4. **Risk of Loss.** The Artist shall bear the risk of loss or damage to the Artwork until Final Acceptance. During such period, the Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. Until Final Acceptance, any injury to property or persons caused by the Artwork or any damage to, theft of, vandalism to, or other actions affecting the Artwork, are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the fabrication, storage, transportation, installation, or delivery of the Artwork, regardless of where such loss occurs.

5. **Maintenance.** If, within one year after Final Acceptance, the Artwork requires maintenance or preservation substantially in excess of that described in Maintenance Manual, NDA shall notify the Artist of such need with reasonable promptness. Upon receipt of such notice, the Artist shall provide such required maintenance and/or preservation services promptly, satisfactorily, and consistent with professional conservation standards, at no expense to NDA or Owner. If the Artist is unable to provide such maintenance and/or preservation services, the Artist shall be responsible for reimbursing NDA or Owner for any costs, expenses, damages, or losses incurred by NDA in order to otherwise procure such maintenance and/or preservation services. The foregoing is in addition to any other rights NDA or the Owner may have.

6. **Artist as an Independent Artist.** The Artist is an independent contractor, and is not an agent or employee of, and has no authority to bind, NDA. The Artist is not an employee of NDA for federal tax purposes, it being the intent of the parties to rely upon §3508 of the Internal Revenue Code of 1986, as amended. In his or her capacity as an independent contractor, the Artist represents, warrants, and agrees that, subject to NDA's reasonable requirements with respect to the Artist's work: (a) the Artist will not be required to devote his or her full-time to the performance of the Services and has the right to perform services for others during the term of this Agreement so long as the Artist does not otherwise violate the terms of this Agreement or any other agreement between the Artist and NDA; (b) the Artist has the sole right to control and direct the means, manner and method by which the Services will be performed; (c) the Artist has the right to perform the Services at any place or location and at such times as the Artist may determine; (d) the Artist will furnish all equipment and materials used to provide the Services; (e) the Services will be performed by the Artist and NDA shall not be required to hire, supervise or pay any assistants or other persons to help the Artist; (f) the Artist will not receive any training from NDA in the professional skills necessary to perform the Services; (g) the Artist shall ensure that he or she is adequately insured, including with respect to the performance of the Services and, unless otherwise agreed in writing, NDA will not provide insurance coverage of any kind for the Artist; (h) NDA will not withhold any payroll, FICA, FUTA, or other taxes or any kind from compensation payable to the Artist hereunder; (i) the Artist will be solely responsible for reporting and paying all income and employment taxes on all compensation received by the Artist pursuant to this Agreement; and (j) the Artist will not be entitled to any fringe benefits, to receive any vacation or illness payments, or to participate in any plans, arrangements, or distributions by NDA, including any health or welfare plans, 401(k) plans, or any plans pertaining to any bonus, stock option, profit sharing, insurance, or similar benefits for employees of NDA.



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## 7. Representations and Warranties.

(a) Artist Representations and Warranties. The Artist represents and warrants to NDA and the Owner as follows:

- (1) It has the full power and authority to enter into and perform this Agreement and to grant the rights contemplated by this Agreement, and this Agreement is a legal, valid, and binding obligation of the Artist.
- (2) The Services shall be performed and delivered in a good, diligent, and skilled and workmanlike manner consistent with the highest standards in the industry, and in accordance with Applicable Law and the terms and conditions set forth in this Agreement.
- (3) The Artist has and at all times during the term of this Agreement for the duration specified in the Insurance Requirements shall maintain insurance that complies with the Insurance Requirements.
- (4) The Artwork shall conform in all material respects to the Specifications, shall be free from material defects in materials and workmanship, and shall not require material maintenance or preservation efforts in excess of those described in the Maintenance Manual.
- (5) The Artwork is unique and original and, except as otherwise disclosed in writing by the Artist to NDA, is solely the result of the artistic efforts of the Artist.
- (6) Neither the Artwork nor any duplicate or derivative thereof has been or will be made available for sale other than pursuant to this Agreement.
- (7) The Artist has not sold, assigned, transferred, licensed, granted, utilized, or otherwise encumbered the Artwork or any element thereof or any copyright or other intellectual property right therein or related thereto, in any way that may affect or impair the rights granted or purported to be granted pursuant to this Agreement.
- (8) The Artwork does not infringe upon any copyright, trademark, or any other intellectual property rights of any party.
- (9) The Artwork is free and clear of any liens from any source whatsoever.

(b) NDA Representations and Warranties. NDA represents and warrants to the Artist as follows:

- (1) It has the full power and authority to enter into and perform this Agreement, and this Agreement is a legal, valid, and binding obligation of NDA.
- (2) NDA has authority to act on behalf of the Owner with respect to this Agreement and the Services.

## 8. Intellectual Property Rights.

(a) Title: Waiver of Certain Rights. Title to the Artwork and any other deliverables resulting from the Services (collectively, the "**Work**") shall pass to the Owner upon Final Acceptance. At such time, the Owner shall be deemed to be the possessor of the Artwork. The Artist agrees to waive and does hereby voluntarily waive all rights to attribution and integrity with respect to the Work and any and all claims as may arise under the Visual Artists Rights Act of 1990, 17 U.S.C. §§106A and 113(d) ("**VARA**"), the California Art Preservation Act (Cal. Civ.

Code §§987 and 989 )("**CAPA**"), or any other local, state, foreign, or international law, whether now existing or hereafter enacted, as the same may be amended, that conveys any moral or similar rights ("**Moral Rights Laws**"), with respect to the Work, its display, removal from display, exhibition, installation, conservation, storage, study, alteration, and any other activities conducted by the Owner, its officers, employees, agents, contractors, licensees, successors or assigns. If the Work is incorporated into a building such that the Work cannot be removed from the building without physical defacement, mutilation, alternation, distortion, destruction, or other modification (collectively, "**Modification**") of the Work, the Artist waives any and all claims it may have under any Moral Rights Laws arising out of or against the Owner and any current or future owners of the site, and its agents, officers, and employees, for Modification of the Work. The Owner has the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the Work, in whole or in part, in the Owner's sole discretion. The Artist understands the effect of this waiver and hereby acknowledges that the Artist is surrendering the rights described herein with respect to the Work. If the Owner modifies the Work without the Artist's consent in a manner that is prejudicial to the Artist's reputation, the Artist retains the right to disclaim authorship of the Artwork in accordance with 17 U.S.C. § 106A (a)(2). This waiver does not extend to the rights of attribution conferred by 17.U.S.C. §106A(a)(1) or §106A(a)(2).

(b) Retention of Documents. One set of Final Design Materials prepared by the Artist and submitted to NDA under this Agreement shall be retained by NDA for no less than two years following Final Acceptance.

(c) Copyright Ownership. The Artist shall retain all rights under the Copyright Act of 1976, 17 U.S.C. §101 et seq., as the sole author of the Artwork for the duration of the copyright of the Artwork.

(d) Reproduction Rights.

- (1) In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate two- or three-dimensional or digital reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the Owner. Provided, however, nothing in this Agreement shall prevent the Artist from creating additional works in the Artist's manner and style of artistic expression.
- (2) The Artist grants to the Owner and Owner's affiliates and respective assignees a royalty-free, worldwide, perpetual, and irrevocable license to make two-dimensional reproductions of the Artwork (including all print and digital media including, without limitation, video) for promotion of the Site, including, but not limited to, reproductions used in brochures, media publicity, social media posts, advertisements, exhibition catalogues or other similar publications, as long as any such reproductions are not offered for sale.
- (3) In the event that Owner's use of the Artwork creates trademark, service mark or trade dress rights in connection with the Artwork, Owner shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.
- (4) In the event that Owner or Artist desires to make reproductions of the Artwork for resale, such party shall notify the other party of such desire and the Owner and Artist shall negotiate in good faith to reach a license agreement for such use and distribution including a reasonable royalty or revenue sharing agreement between such parties.

9. **Indemnification**. The Artist shall defend, protect, indemnify, and hold harmless NDA, the Owner, and their respective affiliates, directors, officers, agents, employees, equity holders, contractors and subcontractors

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(collectively, the "Indemnified Parties") from and against any and all claims, costs, damages, expenses, losses, demands, causes of action, judgments, and proceedings, including court costs, reasonable attorneys' and other professional fees, brought or made against, or suffered or incurred by, and Indemnified Party relating to, arising out of, incident to, or resulting, directly or indirectly, from, (i) the Artist's negligence, willful misconduct, or breach of its representations, warranties, or covenants made in this Agreement, (ii) the Artist's or its subcontractors' and the respective agents', employees' or contractors performance of the Services, (iii) any claims and mechanic's liens asserted by the Artist's contractors, subcontractors, suppliers, vendors, or service providers, and (iv) any claims that the Works infringe an intellectual property, proprietary, or other rights of any third party.

**10. Alteration of Site; Relocation or Removal of Artwork.** The Owner may alter the Site or relocate or deaccession the Artwork in its sole and absolute discretion at any time following Final Acceptance.

**11. Non-disparagement.** Each Party agrees that it (a) will not do or say anything false that a reasonable person would expect to diminish or constrain the good will and good reputation of the other Party or any of its subsidiaries or affiliates, or their products or services, and (b) will not seek to injure the reputation of the other Party or any of its subsidiaries or affiliates, which includes, without limitation, refraining from making disparaging statements about any of their methods of doing business, the effectiveness of any of their business policies and practices, and the quality of any of their products or services.

**12. Worker's Compensation.** THE ARTIST UNDERSTANDS AND AGREES THAT (1) THE ARTIST IS NOT ENTITLED TO WORKERS' COMPENSATION OR UNEMPLOYMENT INSURANCE BENEFITS UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY THE ARTIST OR AN ENTITY OTHER THAN NDA, AND (2) THE ARTIST (NOT NDA) IS OBLIGATED TO PAY FEDERAL AND STATE INCOME AND EMPLOYMENT TAX ON ANY AMOUNT EARNED BY THE ARTIST PURSUANT TO THIS AGREEMENT.

## **13. General Provisions.**

(a) **Entire Agreement.** This Agreement constitutes the entire agreement between NDA and the Artist and supersedes any previous agreements or representations, either oral or written with respect to the subject matter of this Agreement. Amendments may only be made in writing signed by both Parties. In the event of any conflict between the terms and conditions of this Agreement and any other agreement or document, the terms and conditions of this Agreement shall control.

(b) **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A facsimile or other digital transmission of this signed Agreement bearing a signature on behalf of a Party shall be legal and binding on such Party. Each Party agrees that electronic signatures may be used in lieu of hand signatures in the execution of this Agreement.

(c) **Governing Law; Dispute Resolution.** This Agreement will be governed by and construed in accordance with the laws of the state of Colorado, without regard to or application of conflict of law rules or principles. Any controversy or claim arising out of this Agreement, shall be decided by binding arbitration to be conducted in accordance with the rules of the American Arbitration Association ("AAA") by a single arbitrator selected by the Parties, and not by court action, except as provided by Colorado law for judicial review of arbitration proceedings. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator selected by the Parties shall have the power to determine the scope and time constraints of reasonable discovery and the admissibility, relevance, materiality, and weight of any evidence offered by any Party. The arbitrator selected by the Parties to conduct the arbitration shall have the power and authority to grant any and all relief requested by the Parties to the dispute, except those proceedings for any

order of attachment, receivership, injunction, or any other provisional remedy. Commencement of court action in pursuance of these excluded matters shall not constitute a waiver of the right to arbitrate under this provision. In the event the Parties to the dispute cannot agree to an arbitrator, the AAA shall select and appoint an arbitrator. Any mediation or arbitration shall be conducted in Denver, Colorado unless otherwise agreed by the Parties. Any costs and fees of arbitration, other than attorney fees associated with the arbitration, shall be shared equally between the Parties. If arbitration or any other legal action is necessary to enforce this Agreement, the prevailing Party shall be entitled to reasonable attorney fees, costs, and expenses.

(d) **Notice.** All notices and other communications given in connection with this Agreement shall be in writing and shall be hand delivered or mailed return receipt requested or sent by reputable overnight courier to the other Party at such Party's address set forth on the signature page hereto or at such other address as may be provided in accordance herewith, or sent by e-mail to the e-mail address set forth on the signature page hereto or otherwise provided by such Party for purposes of receiving such notices. A copy of any notice under this Agreement sent by any Party shall be sent also by one of the methods mentioned above in this Section 13(d) to:

THE RETAIL PROPERTY TRUST  
225 West Washington Street  
Indianapolis, IN 46204  
Attention: General Counsel  
E-mail at: [sfivel@simon.com](mailto:sfivel@simon.com)

With a copy to:  
BREA MALL  
Attention: General Manager  
1065 Brea Mall  
Brea, CA 92821

(e) **No Agency.** Nothing contained herein will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise between the Parties.

(f) **Assignment.** The rights and obligations under this Agreement may not be assigned or transferred by the Artist. NDA may assign the rights and obligations under this Agreement; however, NDA shall retain the obligation to pay the Artist if the assignee fails to pay as required under this Agreement.

(g) **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto, their successors and assigns.

(h) **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and each provision of this Agreement shall be severable and enforceable to the extent permitted by law.

(i) **Waiver.** No provision of this Agreement shall be deemed waived, nor shall there be an estoppel against the enforcement of any such provision, except by a writing signed by the Party charged with the waiver or estoppel. No waiver shall be deemed continuing unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any provision other than that specifically waived.

# SOFTlab Contract

**To be signed after engineered drawings complete and design approved**

(j) Interpretation. Headings in this Agreement are for convenience only and shall not control the meaning of this Agreement. Whenever applicable, masculine and neutral pronouns shall equally apply to the feminine genders; the singular shall include the plural and the plural shall include the singular. The Parties have reviewed and understand this Agreement, and each has had a full opportunity to negotiate the Agreement's terms and to consult with counsel of their own choosing. Therefore, the Parties expressly waive all applicable common law and statutory rules of construction that any provision of this Agreement should be construed against the Agreement's drafter, and agree that this Agreement and all amendments hereto shall be construed as a whole, according to the fair meaning of the language used.

(k) Third-Party Beneficiary. The Artist and NDA agree that the Owner shall be an express third-party beneficiary of this Agreement.

*[Signature Page Follows]*

Each of the undersigned, intending to be legally bound, has executed this Agreement as of the date set forth below such Party's signature below.

## ARTIST:

By: \_\_\_\_\_  
Name: Michael Szivos  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## NDA:

**NINE dot ARTS Corp.**

By: \_\_\_\_\_  
Name: Molly Casey  
Title: Vice President  
Date: \_\_\_\_\_  
E-mail: molly@ninedotarts.com  
Address: 3734 Osage Street  
Denver, CO 80211



# Budget

Brea Redevelopment  
City of Brea Art in Public Places  
Preliminary Sculpture Allocation Breakdown - PART II

6/5/2024

	Art Location #1	Art Location #2	Total
Artist Design	\$ 58,000	\$ 28,000	\$ 86,000
Sculpture Fabrication/Materials	\$ 348,000	\$ 101,800	\$ 449,800
Shipping	\$ 6,000	\$ 18,000	\$ 24,000
Foundation/Base	\$ 60,000	\$ 10,000	\$ 70,000
Structural Engineering	\$ 10,000	\$ 5,000	\$ 15,000
Lighting/ Electrical	\$ 75,000	\$ 75,000	\$ 150,000
Electrical Engineering/ Lighting	\$ 10,000	\$ 10,000	\$ 20,000
Plaque(s)	\$ 5,000	\$ 1,500	\$ 6,500
Permits	\$ 35,000	\$ 25,000	\$ 60,000
Art Consultant (Max 20%)	\$ 121,400	\$ 54,860	\$ 176,260
Contingency (5%)	\$ 30,350	\$ 13,715	\$ 44,065
Total	\$ 728,400	\$ 329,160	\$ 1,101,625

\* Some figures are estimates and pending final design and bidding

# THANK YOU





## **Art in Public Places Advisory Committee Communication**

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### **Cultural Arts Master Plan - Art in Public Places Policy Recommendations Follow-Up**

Meeting	Agenda Group
Monday, June 24, 2024, 5:00 PM	Discussion Items Item: 4A
FROM	
Carrie Hernandez, Deputy Director of Community Services	

### **BACKGROUND/DISCUSSION**

Staff will provide a summary of the Committee's discussion at the May 20, 2024, meeting, and will share a presentation and timeline focused on the upcoming action steps planned to address the Committee's priorities.

### **RESPECTFULLY SUBMITTED**

Carrie Hernandez, Deputy Director of Community Services

Prepared by: Jenn Colacion, Senior Management Analyst