

## AGREEMENT FOR COMMISSION OF PUBLIC ART WORK

THIS AGREEMENT, is entered into this 20th day of August, 2019, by and between District House LLC, an Illinois Limited Liability Company, (hereinafter the “Owner”) with offices at 3151 N. Halsted Chicago, IL 60657 and Zach Balousek (hereinafter, “Artist”) with offices at 5339 W Lake St. Chicago, IL.

WHEREAS, the Owner requires the services of an artist to create a work of art (hereinafter the “Artwork”) in a public space located at District House on the West side of Euclid North of Lake Street. in Oak Park, IL 60302 (hereinafter the “Site”); and

WHEREAS, the Artist is a professional artist whose work and qualifications make the Artist uniquely qualified to create the Artwork;

WHEREAS, the Owner has selected the Artist based upon the Artist’s work and qualifications; and

WHEREAS, the Artist and the Owner wish to perform under the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions hereinafter set forth, the parties agree as follows:

- a. “Agency” shall mean: Village of Oak Park
- b. “Artist” shall mean: ZACH BALOUSEK
- c. “Artwork” shall mean the work of art designed by Artist for the Site under the terms of this Agreement, as described and defined in Artist Proposal, to be attached as Appendix A upon completion of Phase I, Conceptual Design, of the Services to be Provided by Artist.

### Article 1      **Scope of Services**

#### 1.1      **Artist’s Obligations**

- a. The Artist shall perform all services and furnish [all supplies, material and/or work equipment (specify if not all)] as necessary for the design, fabrication, transportation and installation of the Artwork. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- b. The Artist shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the Owner and any regulatory agencies with project oversight, as set forth in this Agreement. The Artist will do so in a manner that ensures that the Artwork as installed shall 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 Owner and/or ordinance prior to the development of a design by the Artist

- c. The Artist shall prepare the design concept described in Section 1.3 of this Agreement.
- d. The Artist shall complete the fabrication, transportation and installation of the Artwork by the scheduled dates as provided in Section 1.4(b)(i) of this Agreement.
- e. 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
- f. The Artist shall arrange for the transportation and installation of the Artwork in coordination with Owner. If the Artist does not install the Artwork himself, Artist shall supervise and approve the installation. Artist shall notify Owner of any perceived conflict, defect or non-compliance with specifications. All work shall be performed by qualified professionals and by licensed contractors as required by law.
- g. Artist shall provide required insurance to satisfy the Agency in amounts and limits specified in Article 5 and Exhibit C.
- h. Artist shall provide a maintenance manual with a description of all materials, processes and products utilized in the Artwork and the required care and upkeep involved, as well as recommended procedures in the event of necessary conservation.
- i. Artist shall provide a set of "as built" drawings if there is significant deviation from approved and permitted construction documents.
- j. Artist shall provide photographic documentation of the Artwork in a format acceptable to Artist and Owner.
- k. Artist shall be available with reasonable advance notice for a reasonable number of meetings required to coordinate design and project implementation, ceremonies and the like, as necessary.

## **1.2 Owner's Obligations**

- a. The Owner shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- b. The Owner shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is needed by Artist in order to perform.
- c. The Owner shall be responsible for compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations, and prior to Artist's development of design, shall provide to the artist in writing an explanation of any specific limitations imposed by such laws and/or regulations that may impact the Artwork including the policies, guidelines and approvals required by regulatory or oversight agencies such as a cultural affairs office.
- d. The Owner shall prepare the Site in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement. The Owner shall be responsible for [all expenses, labor and equipment (specify if not all)] to prepare the Site for the timely transportation and installation of the Artwork. The

Owner shall complete the Site preparations by the scheduled installation date as provided in Section 1.4(b)(i) of this Agreement or shall contact the Artist in writing informing him or her of any delays. Artist acknowledges that the Site is ready as of the date of this Agreement.

- e. The Artist shall provide and install a plaque on or near the Artwork containing a credit to the Artist in the following form: [Artist's name, date]. If the plaque is to be placed on the Artwork or Artwork pedestal, it should be done in consultation with the Owner and Agency.
- f. The Owner shall not permit any use of the Artist's name or misuse of the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within the Owner's control.

### **1.3 Design**

- a. Concept/Schematic
  - i. The Artist submitted a design concept/schematic (the "Design") which was selected and approved by the Owner. The Design shall be attached to this Agreement as Exhibit A.
- b. Approval
  - i. Within [30] days after the execution of this agreement, the Owner shall notify the Artist if Owner requires any revisions to the Design in order to comply with any applicable laws, ordinances and/or regulations or for other reasons including, but not limited to, ensuring the physical integrity of the Artwork or its installation at the Site. If agreed upon by both parties, such revisions will become a part of the Design.
- c. Final Design
  - i. Upon approval of the schematic design by Owner, Artist is authorized to proceed with Final Design which shall include the following: presentation quality materials, which 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 at design completion. When used in reference to the proposed Artwork, Final Design Documents 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.
- d. Final/Construction Documents
  - i. Artist shall submit Construction Documents for construction and/or installation of the proposed Artwork as approved, which must be signed and stamped by design professionals licensed in the State of Illinois, as required by the Illinois Uniform Building Code and any local government amendments to the Building Code.
  - ii. Artist shall deliver Marquette (computer model or otherwise as agreed to by both parties) and color and material samples.

- iii. Artist shall review installation plan for accuracy of the integration of Artist's Proposal within the Site and provide the Owner with written comments and/or corrections.
- iv. Artist shall provide a detailed description of future maintenance requirements for the Artwork. The Artist shall present the Design to a qualified conservator, who will make recommendations on the maintenance of the Artwork, and the Artist shall provide a written copy of the conservator's recommendations to the Owner. The conservator's report will indicate future maintenance and conservation needs and anticipated costs and may reflect issues such as the longevity of the materials used and the life span of the project. (see below)
- v. Artist shall deliver a schedule describing Artist's specific timelines for completing the Artwork.

#### **1.4 Payment and Deliverables Schedule**

- a. Budget
  - i. The Artist shall prepare an invoice, which shall include all goods, services and materials with such costs itemized. The invoice shall be attached to this Agreement as Exhibit B.
  - ii. Invoice shall mean a specific and detailed document identifying the cost of completion of all work under this Agreement, including all modifications. The invoice shall include the costs for all design fees and costs; 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, including any necessary permits; permits and licenses; required insurance; any sales tax;
  - iii. If the Artist incurs costs in excess of the amount listed in the invoice, the Artist shall pay such excess from the Artist's own funds unless the Artist obtains approval in writing for such additional costs from the Owner (or such costs were the result of actions or inaction of the Owner).
  - iv. Payment Schedule
  - v. Artist's completion milestones and payment schedule is as set forth in Exhibit B, Payment Schedule, which is incorporated herein by reference
  - vi. Artist shall deliver to Owner a bill of sale concurrent with the final payment schedule as set forth in Exhibit B

#### **1.5 Schedule and Progress Reports**

- a. The Artist shall notify the Owner of the anticipated schedule for the fabrication, transportation and installation of the Artwork, including a schedule for the submission of progress reports and inspections if any required by Owner or permitting agency. The Schedule may be amended by written agreement. The Schedule of Deliverables must identify a specific date or timeframe for the completion of the Artwork. This Schedule of Deliverables is included as Appendix C.
- b. The Artist shall inform the client of the progress of each phase of work completed under the Agreement.

## **1.6 Fabrication Stage**

- a. The Artist shall fabricate [and install] the Artwork in substantial conformity with the Design. The Artist may not deviate from the approved design without written approval of the Owner.
- b. If the Artwork is being constructed on Site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations. Artist shall adhere to all ordinances, rules and regulations of Agency.
- c. The Owner shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice.
- d. If the Owner, upon review of the Artwork, determines that the Artwork does not conform to the approved Final Design, the Owner reserves the right to notify the Artist in writing of the deficiencies and that the Owner intends to withhold the next budget installment within [30] days of the determination as in paragraph (g) below.
- e. The Artist will have thirty days to cure the Owner's objections and will notify the Owner in writing of completion of the cure. The Owner shall promptly review the Artwork, and upon approval shall release the next budget installment. If the Artist disputes the Owner's determination that the Artwork does not conform, the Artist shall promptly submit reasons in writing to the Owner within [5] days of the Owner's prior notification to the contrary. The Owner shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether the Artist has complied with the terms of this Agreement shall remain with the Owner.
- f. The Artist shall notify the Owner in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for delivery and installation at the Site if the Artwork was fabricated off-site.
- g. Prior to the transportation and installation of the Artwork, the Owner shall inspect the Artwork within [14] days after receiving notification pursuant to paragraph (f) to determine that the Artwork conforms with the Final Design: give final approval of the fabricated Artwork and; authorize the installation of the Artwork at the site. The Owner shall not unreasonably withhold final approval of the fabricated Artwork. In the event that the Owner does withhold final approval, the Owner shall submit the reasons for such disapproval in writing within [5] days of examining the fabricated Artwork. The Artist shall then have [30] days from the date of the Owner's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. The Artist shall not be penalized for any delay in the delivery and installation of the Artwork to the Site unless the Artist has willfully and substantially deviated from the Design without the prior approval of the Owner. The Artist shall then be held responsible for any expenses incurred in correcting such deviation.
- h. The Owner shall promptly notify the Artist of any delays impacting installation of the Artwork. Any additional storage and insurance costs incurred by the Artist shall be borne by the Owner in the event that the delay is the caused by the Owner.

- i. The Artist shall be required to inspect the Site prior to the transportation and installation of the Artwork and shall notify the Owner of any adverse Site conditions that will impact the installation of the Artwork and which are in need of correction. Failure to do so by the Artist shall be deemed as an acceptance of the Site conditions.
- j. The Artist shall take reasonable measures to protect or preserve the integrity of the Artwork with the application of a protective sealant, patina or anti-graffiti coating, if applicable, unless the Owner specifically disapproves of such.

## **1.7 Installation**

- a. Upon the Owner's final approval of the fabricated Artwork as being in conformity with the Design, the Artist shall deliver [and install] the completed Artwork to the Site in accordance with the schedule provided for in Section 1.4(b).
- b. The Artist will coordinate closely with the Owner to ascertain that the Site is prepared to receive the Artwork. Artist must notify Owner of any adverse conditions at the Site that would affect or impede the installation of the Artwork.
- c. The Artist is responsible for timely installation of the Artwork. Artist may not install the Artwork until authorized to do so by the Owner.
- d. The Artist shall be present to supervise the installation of the Artwork.
- e. Upon installation, the Artwork shall be deemed to be in the custody of the Owner for purposes of Article 3 and Article 5 of this Agreement; the Owner assumes liability for any damage to the Artwork or injury to persons or property caused by the Artwork or any activity related to the Artwork after acceptance by the Owner.
- f. Upon completion of the installation of the Artwork, the Artist shall provide the Owner with written instructions for the future maintenance and preservation of the Artwork. The Owner is responsible for the proper care and maintenance of the Artwork.

## **1.8 Approval and Acceptance**

- a. The Artist shall notify the Owner in writing when all services as required of both Parties by this Agreement prior to this paragraph have been completed in substantial conformity with the Design and contract documents.
- b. The Owner shall promptly notify the Artist in writing of its final acceptance of the Artwork within [5] days after the Artist submitted written notice pursuant to paragraph (a) above. The effective date of final acceptance shall be the date the Owner submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that the Owner acknowledges completion of the Artwork in substantial conformity with the Design, and that the Owner confirms that all services as required of both Parties by this Agreement prior to paragraph (c) of this section have been completed. Title to the Artwork to the Owner passes upon final acceptance of the Artwork and final payment by Owner to Artist. If a regulatory agency must approve the completed artwork, the Owner should move promptly to gain such approval as it will be a precondition to the Owner's ability to accept and approve the finished artwork from the Artist.
- c. If the Owner disputes that all the services have been performed, the Owner shall notify the Artist in writing of those services the Artist has failed to perform within

- [5] days after the Artist submitted written notice pursuant to paragraph (a) above. The Artist shall promptly perform those services indicated by the Owner.
- d. If the Artist disputes the Owner's determination that not all services have been performed, the Artist shall submit reasons in writing to the Owner within [5]days of the Owner's prior notification to the contrary. The Owner shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether all services have been performed shall remain with the Owner.
  - e. Upon the resolution of any disputes that arise under paragraphs (c) and (d) of this Section, the Owner shall notify the Artist of its final acceptance of the Artwork pursuant to paragraph (b).

## **Article 2. Terms of Agreement**

- a. Duration
  - i. This Agreement shall be effective on the date that this contract has been signed by both parties, and, unless terminated earlier pursuant to such provisions in the Agreement, shall extend until final acceptance by the Owner under Section 1.8(b), or submission of final payment to the Artist by the Owner under Exhibit B, whichever is later. Extension of time of performance hereunder may be granted upon the request of one party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both parties, and attached to the schedule described in Section 1.4(b)(i).
- b. Force Majeure
  - i. The Owner shall grant to the Artist a reasonable extension of time in the event that conditions beyond the Artist's control render timely performance of the Artist's services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

## **Article 3. Risk of Loss**

The Artist shall bear the risk of loss or damage to the Artwork until the installation of the Artwork. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The Owner shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork is in the custody, control or supervision of the Owner or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

## **Article 4      Artist's Representations and Warranties**

### **4.1      Warranties of Title**

The Artist represents and warrants that:

- a. the Artwork is solely the result of the artistic effort of the Artist;
- b. except as otherwise disclosed in writing to the Owner, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- c. the Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- d. the Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
- e. the Artwork is free and clear of any liens from any source whatsoever;
- f. all Artwork created by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party;
- g. the Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;
- h. all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence;
- i. these representations and warranties shall survive the termination or other extinction of this Agreement.

### **4.1      Warranties of Quality and Condition**

- a. The Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for one (1) year after the date of final acceptance by the Owner under Section 1.8(b).
- b. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.
- c. The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Section 1.7(f).
- d. If within [one] year the Owner observes any breach of warranty described in this Section 4.2, the Artist shall cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the Owner. The Owner shall give notice to the Artist of such breach with reasonable promptness. However, if Artist did not disclose this risk of breach in the Proposal and Maintenance and Conservation manual, and if breach is not curable by Artist, the Artist is responsible for reimbursing the Owner for damages, expense and loss incurred by the Owner as a result of the breach of warranty. However, if the Artist disclosed the risk of this breach in the Proposal and maintenance and conservation manual and the Owner accepted that it may occur, as indicated by the written final

acceptance of the artwork, it shall not be deemed a breach for purposes of this Section 4.2 of this Agreement.

- e. If after [one] year the Owner observes any breach of warranty described in this Section 4.2 that is curable by the Artist, the Owner shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations as long as the Artwork is owned by the Owner. Should the Artist be unavailable or unwilling to accept reasonable compensation under the industry standard, the Owner may seek the services of a qualified restorative conservator and maintenance expert.
- f. The foregoing warranties are conditional and shall be voided by the failure of the Owner to maintain the Artwork in accordance with the Artist's specifications and the applicable conservation standards. If the Owner fails to maintain the Artwork in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

## **Article 5 Insurance**

### **5.1 General**

- a. The Artist acknowledges that until installation of the Artwork under Section 1.7(e), any injury to property or persons caused by the Artist's Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artist's Artwork are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist's Artwork, regardless of where such loss occurs.
- b. Terms for the procurement and duration of insurance are provided in Exhibit C.
- c. Required insurance policies are described in Exhibit C.

### **5.2 Indemnity**

- a. The Artist shall indemnify the Owner, its respective officers, managers, members, agents, and employees, from any claims brought arising out of the breach of this Agreement or any negligent occurrence which occurs pursuant to the performance of this Agreement by the Artist, its subcontractors, agents or employees, including the installation of the Artwork.
- b. The Owner shall indemnify the Artist, Artist's subcontractors, agents or employees from any claims brought arising out of the breach of this Agreement or any negligent occurrence which occurs pursuant to the performance of this Agreement by the Owner, its respective officers, managers, members, agents, and employees.
- c. Each Party shall immediately notify the other of any written claim regarding any matter resulting from or relating to the Party's obligations under this Agreement. Each Party shall cooperate, assist, and consult with the other in the defense or investigation of any such claim arising out of or relating to the performance of this Agreement.

- d. The indemnification shall include reasonable attorneys' fees and costs.
- e. This indemnification shall survive the termination or expiration of this Agreement.
- f. Notwithstanding any provision of this Agreement to the contrary, no Party shall recover from a Party to this Agreement in an action, of whatever nature, in contract or tort, any consequential or incidental damages, lost profits, or any type of expectancy damages.

## **Article 6      Ownership and Intellectual Property Rights**

### **6.1      Title**

Title to the Artwork shall pass to the Owner upon the Owner's written final acceptance and payment for the Artwork pursuant to Section 1.8(b) and Exhibit Band Owner's receipt of a bill of sale. Artist acknowledges the Owner intends to donate the Artwork to the Agency to comply with the terms of Owner's Planned Development and will have no care, custody or control of the Artwork after the date of such donation and such ownership will transfer to Agency.

### **6.2      Ownership of Documents**

One set of presentation materials prepared by Artist and submitted to Owner under this Agreement shall be retained by Owner or Agency.

### **6.3      Copyright Ownership**

The Artist retains 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.

### **6.4      Reproduction Rights**

- a. The Artist grants to the Owner and its assignees an irrevocable license to make two-dimensional reproduction 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 these rights are exercised in a tasteful and professional manner.
- b. All reproductions by the Owner shall contain a credit to the Artist and a copyright notice in substantially the following form: © [Artist's name, date].
- c. The Artist shall use his best efforts in any public showing or resume use of reproductions to give acknowledgment to the Owner in substantially the following form: "An original artwork owned and commissioned by the Owner."
- d. The Artist shall, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Artwork in the Artist's name.
- e. If the Owner wished to make reproductions of the Artwork for commercial purposes the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.

## **Article 7      Artist's Rights**

### **7.1      General**

- a. The Artist retains all rights under state and federal laws including §106A of the Copyright Act of 1976.
- b. The Owner agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first obtaining permission from the Artist. The Owner further agrees to take reasonable measures to avoid these from occurring from the gross negligence of the Owner, its representatives, or employees pursuant to the federal Visual Artists' Rights Act
- c. If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies he/she may have in law or equity under this contract. Upon written request, the Owner shall use reasonable efforts to cause the Agency to remove the identification plaque and all attributive references to the Artist at its own expense within one hundred and eighty [180] days of receipt of the notice. No provision of this Agreement shall obligate the Owner to alter or remove any such attributive reference printed or published prior to the Owner's receipt of such notice. The Artist may take such other action as the Artist may choose in order to disavow the Artwork

## **Article 8      Artist as an Independent Contractor**

The Artist agrees to perform all work under this Agreement as an independent contractor and not as an employee of the Owner. The Artist acknowledges and agrees that the Artist shall not hold himself out as an authorized agent of the Owner with the power to bind in any manner.

The Artist shall provide the Owner with the Artist's Tax Identification number and any proof of such number as requested by the Owner.

## **Article 9      Assignment of Artwork**

The work and services required of the Artist are personal and shall not be assigned, sublet or transferred. Any attempt by the Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the Owner. The Owner shall have the right to assign or transfer any and all of the Owner's rights and obligations under this Agreement, subject to the Artist's consent, if ownership of the Site is transferred; if the Artist refuses to give consent, this Agreement shall terminate.

## **Article 10      Termination**

- a. Either Party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as, but not limited to, acts of nature; war or warlike operation; superior governmental regulation or control; public emergence; or strike or other labor disturbances. Notice of termination of this Agreement shall

be given to the non-terminating party in writing not less than thirty (30) days prior to the effective date of termination.

- b. The Owner may terminate this Agreement without cause upon [30] days written notice to the Artist. The Owner shall pay the Artist for services performed and commitments made prior to the date of the termination, consistent with the schedule of payments set forth in Exhibit B of this Agreement. The Artist shall have the right to an equitable adjustment in the fee for services performed and expenses incurred beyond those for which the Artist has been compensated to date under Exhibit B with allowance for documented lost opportunities, unless the parties come to a settlement otherwise. The Artist shall retain possession and title to the [studies, drawing, designs, maquettes, and models] already prepared and submitted or prepared for submission to the Owner by the Artist under this Agreement prior to the date of termination.
- c. If either party to this agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have [30] days after the effective date of the notice to cure the default. If it is not cured by that time, this Agreement shall terminate.
- d. If the Artist defaults [for cause other than death or incapacitation], the Artist shall return to the Owner all funds provided by the Owner in excess of the expenses already incurred. The Artist shall provide an accounting of these expenses. All finished and unfinished drawings, sketches, photographs and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall be retained by the Artist. [The Owner [shall] retain the right to have the Artwork fabricated or executed.] However, the Artist shall retain the copyright in the Artwork and all rights under Article 7 and Article 8.
- e. Upon notice of termination, the Artist and his subcontractors shall cease all services affected.

#### **Article 11     Waiver**

The Parties agree that a waiver of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

#### **Article 12     Arbitration**

- a. If, during the creation of the Artwork, its installation and subsequent existence, either Party breaches this Agreement, each Party agrees to submit to arbitration upon the request of the other Party provided that the breach is not cured within a reasonable time.
- b. If an ambiguity arises regarding this Agreement upon which the Parties cannot agree or a dispute arises as to the completion of a provision, the Parties shall submit to arbitration.
- c. [Notwithstanding any provision of this Agreement to the contrary, any damage award to a party on account of a Party's breach of this Agreement, with the

exception of the Artist's duty under Article 6 to procure and maintain insurance, shall not exceed an amount equal to the sum of the payment in Exhibit B.]

- d. Each party agrees to be responsible for its own attorney's fees except as otherwise provided by statute.

**Article 13 Amendments**

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto.

**Article 14 Choice of Law**

This contract shall be governed by the laws of the State of Illinois both as to interpretation and performance.

**Article 15 Entire Agreement**

This Agreement, including the exhibits, comprises all of the covenants, promises, agreements and conditions between the Parties. No verbal agreements or conversation between the Parties prior to the execution of this Agreement shall affect or modify any of the terms or obligation.

For Owner: District House LLC

By: Ranquist Partners II LLC, its manager

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

For Artist:

Name: Zach Balousek

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



## **Exhibit A**

### **Description of Project**

I will create a larger than life, kinetic singing sculpture. This piece will borrow some elements from “Monolith,” a 7-foot-tall whistling musical sculpture I previously designed, built, and installed in various outdoor and indoor spaces in Oak Park and Chicago. Playing off design elements of District house and blending other architectural elements from the city, the sculpture will be roughly 10ft tall and feature a tapered round base growing to 30” in diameter at its hip and slimming back down to two pointed spires on top. The sculpture will also incorporate a round bottom, allowing the entire piece to be rocked within a foundation. Within its sleek, minimal exterior it will house a dozen musical pipes and several chambers. The sculpture will contain a liquid that will flow through these chambers as the piece is rocked that will activate the various musical pipes.

### **MATERIALS**

The sculpture will be made from a non-toxic exterior grade epoxy resin, often used in outdoor zoo habitats. It will be durable and well suited to the elements and harsh Chicago weather. The material is also very lightweight, making it ideal for the functionality of the sculpture. For the sculpture to produce sound it will need to be filled with liquid. For the longevity of the sculpture and to keep maintenance to a minimum the piece will be filled with a non-toxic fluid that will neither freeze nor evaporate and will not harbor bacteria or insects. The sculpture will be filled during installation and liquid may be removed at any time through a small hidden port if needed.

### **FOUNDATION**

The foundation for the sculpture will be a concrete pad roughly 5’x5’ square and 14” deep. It will also include a circular pit 29” in diameter by 8” deep to house the base of the sculpture. Holes will be included for drainage. Two half-inch-thick steel plates will be cut to fit to anchor the sculpture to the foundation.

### **SAFETY**

For safety measures, the bottom of the sculpture will balloon out into a 28” disc that will drop into a foundation below ground level. As the sculpture is installed into its base two heavy gauge plates of steel will enclose the bottom portion of the sculpture and bolt into a concrete foundation. This will ensure that the sculpture will not tip, pull out, or fall out of its foundation. A gasket will fit around the base of the sculpture to negate any hazards of pinching or loose debris from entering the foundation of the sculpture.

## **Exhibit B**

### **Payment Schedule**

The Owner shall pay the Artist a fixed fee of \$45,000, which shall constitute full and complete compensation for all the services performed and material furnished by the Artist under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and material provided prior to payment thereof:

- a. 50% upon the Owner's notification to the Artist of its approval of the Design as set forth under Section 1.3]; alternately, upon permitting of construction documentation since there's not a required owner approval of final drawings in 1.3
- b. 50% upon final acceptance of the Artwork by the Owner as set forth under Section 1.8(b) and approval by the regulatory agency.

**Exhibit C**

**Insurance**