**TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2322**

**BY-LAW NO. 6**

**BE IT ENACTED** as a By-law of Toronto Standard Condominium Corporation No. **2322** hereinafter referred to as the **"Corporation"**) as follows:

The directors of the Corporation shall cause the Corporation to enter into an assignment and assumption agreement with **KING WEST CENTRE (II) CORP.** (the "Declarant") in the form attached hereto as Schedule A (the "Assignment and Assumption Agreement") that shall provide that, effective as of the date that the Artwork has been installed at the Property:

(a) the Corporation shall accept an assignment from the Declarant of all right, title, benefit and interest in and to an agreement dated June, 27, 2012 (the " Agreement") with Olaf Breuning (the "Artist") which provides that the Artist shall create, manufacture, produce and install certain artwork (the "Artwork") at 65-75-85 East Liberty Street, City of Toronto (the "Property") on terms and conditions as more particularly described in the Public Art Agreement;

(b) the Corporation shall:

(i) assume and agree to be bound by all rights, covenants, obligations and liabilities of the Declarant under the Public Art Agreement as and from the effective date of the Assignment and Assumption Agreement and for so long as the Public Art Agreement remains in force and effect;

(ii) covenant and agree to pay any amounts payable by the Declarant under the Public Art Agreement, at the times and in the manner set forth in the Public Art Agreement for so long as the Public Art Agreement remains in force and effect; and

(iii) covenant and agree to do, observe, perform, keep and be bound by every term, covenant, proviso, condition and agreement contained in the Public Art Agreement to be done, observed, performed and kept by the Declarant as if the Corporation was the original party to the Public Art Agreement with the Artist and as such had executed the Public Art Agreement;

(c) the Corporation shall indemnify and save the Declarant harmless from all actions, causes of actions, claims and demands for damages or loss which are brought by the Corporation in contravention of the Assignment and Assumption Agreement or by the Artist in respect of any term, covenant, proviso, condition and agreement contained in the Public Art Agreement;

(d) the parties shall agree that they will from time to time duly execute and deliver such instruments and take such further action as shall be necessary or reasonable to accomplish or give full effect to the intent, spirit and purposes of the Assignment and Assumption Agreement; and

(e) the Assignment and Assumption Agreement shall not be terminated or terminable by the Corporation following the Turnover Meeting, and it shall enure to the benefit of and be binding upon the parties hereto and their respective successors.

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The foregoing By-law No. 6 is hereby enacted and passed by the directors of the Corporation, who have duly approved and confirmed without variation the provisions herein, as evidenced by all of the respective signatures hereto of all the directors.

**DATED** at Toronto, this 23rd day of July, 2013.

Director – Anthony Heller

Director – David Brothman

Director – Howard M. Hacker

Director – Mark Tutton

Director – Scott McLellan

Director – Sam Galet

Director – Jeffrey King

The foregoing By-law No. 6 is hereby approved and confirmed by the sole Owner of the Units as evidenced by the signature of its duly authorized officer in that behalf.

**DATED** at Toronto, this 23rd day of July, 2013.

**KING WEST CENTRE (II) CORP.**

Per:_____
Name: Anthony Heller
Title: President

I have authority to bind the Corporation.

**SCHEDULE A TO BY-LAW NO. 6**

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** made effective on the 23rd day of July, 2013.

**BETWEEN:**

**TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2322**

(the "Corporation")

**OF THE FIRST PART**

AND

**KING WEST CENTRE (II) CORP.**

(the "Declarant")

**OF THE SECOND PART**

**WHEREAS** the Declarant has created a condominium (the "Corporation") pursuant to the Condominium Act, R.S.O. 1990 (the "Condominium Act") by the registration of a Declaration and a Description in the Land Registry Office for the Land Titles Division of Metropolitan Toronto, relating to the land and any interest appurtenant to the land described in the Description located at 65-75-85 East Liberty Street, City of Toronto (the "Property");

**AND WHEREAS** prior to the creation of the Corporation, the Declarant entered into an agreement dated June 27, 2012 (the "Public Art Agreement") with Olaf Breuning (the "Artist") which provides that the Artist shall create, manufacture, produce and install certain artwork at the Property (the "Artwork"), on terms and conditions as more particularly described in the Public Art Agreement attached hereto as Schedule "A";

**AND WHEREAS** once the Artwork has been so created, manufactured, produced and installed at the Property and has been fully paid for by the Declarant, there shall remain certain covenants on the part of the Declarant to be performed in respect of the Artwork including, without limitation, those referred to in 12.02 of Article XII and in Article XIII of the Public Art Agreement;

**AND WHEREAS** the Declarant wishes to assign its right, title benefit and interest in and to the Public Art Agreement to the Corporation, provided that the Corporation shall assume the obligations of the Declarant thereunder;

**AND WHEREAS** the Corporation has agreed to enter into an assignment and assumption agreement with the Declarant to obtain the right, title, benefit and interest in and to, and to assume the obligations of the Declarant under, the Public Art Agreement in accordance with the terms and conditions of the assignment and assumption agreement;

**NOW THEREFORE THIS ASSIGNMENT AND ASSUMPTION AGREEMENT WITNESSETH** that, in consideration of the premises and the mutual covenants and agreement herein contained and other valuable consideration, the Corporation and Declarant hereby agree that upon the installation of the Artwork at the Property, and the Declarant's fully payment for the same:

1. The Declarant hereby assigns, transfers and sets over to the Corporation all of its right, title, benefit and interest in and to the Public Art Agreement including all rights and obligations thereunder;

2. The Corporation hereby:

   (a) accepts the assignment of the Public Art Agreement and assumes and agrees to be bound by all rights, covenants, obligations and liabilities of the Declarant under the Public Art Agreement as and from the effective date of this Assignment and Assumption Agreement and for so long as the Public Art Agreement remains in force and effect; and

   (b) covenants and agrees to do, observe, perform, keep and be bound by every term, covenant, proviso, condition and agreement contained in the Public Art Agreement to be done, observed, performed and kept by the Declarant as if the Corporation was the original party to the Public Art Agreement and as such had executed the Public Art Agreement;

3. The Corporation hereby indemnifies and saves the Declarant harmless from all actions, causes of actions, claims and demands for damages or loss which are brought by the Corporation arising from the Public Art Agreement or in contravention of this Assignment and Assumption

Agreement or are brought by the Artist in respect of any term, covenant, proviso, condition and agreement contained in the Public Art Agreement;

4. The parties hereto agree that they will from time to time duly execute and deliver such instruments and take such further action as shall be necessary or reasonable to accomplish or give full effect to the intent, spirit and purposes of this Assignment and Assumption Agreement; and

5. This Assignment and Assumption Agreement shall not be terminated or terminable by the Corporation following the Turnover Meeting, and it shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**IN WITNESS WHEREOF** the parties hereto have duly executed this Agreement made on the 23rd day of July, 2013.

**TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2322**

Per:_____
Name: Anthony Heller
Title: President, Director

Per:_____
Name: David Brothman
Title: Vice President, Director

Per:_____
Name: Howard M. Hacker
Title: Secretary

We have authority to bind the Corporation

**KING WEST CENTRE (II) CORP.**

Per:_____
Name: Anthony Heller
Title: President

I have authority to bind the Corporation.

SCHEDULE "A"

**THIS AGREEMENT** made the 27 day of June, 2012.

BETWEEN:

**KING WEST CENTRE (II) CORP.**

(hereinafter referred to as the "Developer")

- and -

**OLAF BREUNING**

(hereinafter referred to as the "Artist")

**WHEREAS** the Artist has been selected by a jury to create, manufacture and install the Artwork for the Developer on the proposed building to be constructed at 65 to 85 East Liberty Street, Toronto;

**AND WHEREAS** the Developer and the Artist wish to set out the terms and conditions relating to the production, installation and purchase of the Artwork for the said development project;

**AND WHEREAS** the Artist has familiarized himself with the local conditions under which the Artwork will be located and will produce the Artwork in a professional manner, and in the sole discretion of the Artist as to artistic matters, including the production of prototypes and/or maquettes and/or samples as required.

**NOW THEREFORE**, the Developer and Artist in consideration of the mutual promises, conditions and covenants contained herein, agree with each other as follows:

## ARTICLE I

## DEFINITIONS

1.01 **"Artwork"** means the artwork based on the proposal, titled *"Guardians"* created by the Artist for fabrication and installation at the Installation Site as depicted in the concept drawings and descriptive narrative attached hereto as Schedule "A" to this agreement.

1.02 **"Consultant"** means Catherine Williams of Catherine Williams Fine Art Consultants Inc. and Rina Greer both of the City of Toronto.

1.03 **"Installation Site"** The art site is the large plaza at the northwest corner of the site which dips northward, more or less at the junction of East Liberty Street and Western Battery Road. As the terminus of the view corridor of Western Battery Road, it offers excellent sightlines to travelers going east and west over the hill on East Liberty Street and going north and south on Western Battery Road.

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The site is an irregularly shaped open plaza measuring 303 m2 (3,259 sq. ft.), with the 27.3 m length along East Liberty Street, 16.9m length at the west side and 4.068m at the east side.

1.04 **"Project"** means the condominium building to be built at 65 to 86 East Liberty Street, Toronto.

This Agreement is to be read with all changes in sender or number as required.

## ARTICLE II

## GENERAL COVENANTS

2.01 The Artist hereby covenants and agrees with the Developer, for the consideration hereinafter expressed, to create the Artwork according to the terms and conditions of this Agreement or as it may be from time to time revised or amended by mutual written agreement.

2.02 The Artist covenants and agrees with and represents and warrants to the Developer that upon final completion, the Artwork shall be free and clear of all of all liens, mortgages, pledges, charges, claims and encumbrances whatsoever.

2.03 The Developer agrees in consideration of the full and faithful performance of all covenants and conditions herein contained, to pay the Artist's corporation, Implosion Post Media Ltd. in a due and punctual manner in lawful money of Canada, and in the manner and subject to the terms and conditions hereinafter specified in Schedule "B" the total and complete sum. The Artist covenants and agrees to be registered for HST purposes prior to accepting payments from the Developer, and provide his HST number to the Developer.

## ARTICLE III
## GENERAL CONDITIONS OF CONTRACT

**Basic Responsibilities of the Artist**

3.01 The Artist agrees to the following terms and shall perform in a careful and professional manner and in accordance with this agreement the following services to the satisfaction of the Developer acting reasonably:

a. evaluate the material and data relevant to the Artwork which shall be provided by the Developer and Consultant to further clarify understanding of the technical aspects of the Artwork and to facilitate the production of the final design;

b. use best efforts to advise the Developer and Consultant of all factors relating to the Artwork's location, size, materials, theme, and character, structural or mechanical needs, installation method, milestones, and future maintenance;

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c. cooperate with the Developer's project manager, the project architects and the structural engineers in resolving the details mutually agreed upon for the appropriate final sitting of the Artwork, the details of the appropriate footing requirements of the Artwork and any related substructure issues associated with the Artwork;

d. The Artist will provide the foundation for the Artwork within twelve weeks of receiving approval for the same from the Developer, subject to force majeure, delay caused by the Developer or its agents, or any other matter beyond the control of the Artist.

e. supply the Artwork at the Artist's sole cost and expense and supply all equipment required to install the Artwork on the Installation Site at the Artist's sole cost and expense;

f. ensure comprehensive insurance shall be in place to the satisfaction of the Developer on or before installation of the Artwork and kept in full force and effect until completion of this contract (as certified by the Consultant acting reasonably), including the following types of insurance coverage;

   i. general liability insurance, including but not limited to preparation, installation and subsequent site visits;

   ii. "All Risk" property damage insurance, including but not limited to transit coverage and hook-up liability coverage;

   iii. an Installation Floater during the period; and

   iv. insurance on any portion of the Artwork stored off site, showing the Developer as a named insured.

   Such insurance shall be in the amount of a minimum of one million ($1,000,000.00) dollars, with the Developer, and all other related parties to the development project (as specified by the Developer in writing) added as additional named insured. Such insurance shall include a cross liability clause and Waiver of Subrogation clause. The Artist shall provide to the Developer an appropriate certificate of insurance as soon as available for approval by the Developer showing the nature and extent of the coverage;

g. in the event of physical loss or damage to the Artwork caused by the Artist or his agents prior to completion of installation,rectify the loss or damage by repair, restoration, replacement or other appropriate means as determined by consultant, as soon as is reasonably possible at no additional expense to the Developer;

h. assume responsibility for a limited period of two (2) years from the date of the final completion of the installation for any substantial deterioration of the Artwork due to the workmanship or materials, which deterioration is not caused by normal wear and tear or any other matter beyond control of the Artist including weather, vandalism or a failure to follow the maintenance criteria provided by the Artist. Any such deterioration discovered within the said time shall be repaired by or at the election of the Artist, by another party on behalf of the Artist, and in any event at the sole cost

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and expense of the Artist provided that the Developer or his agent or assignee, following discovery of such deterioration, has given prompt written notice of the substantial deterioration to the Artist;

i. promptly upon completion of the installation of the Artwork, provide to the Developer a comprehensive written maintenance manual containing a detailed description of the materials used in the Artwork as well as a detailed description of the installation methods together with complete and adequate instructions of the procedure required to properly maintain the Artwork. In addition, such comprehensive maintenance manual shall contain all relevant information, including contacts, addresses and phone numbers, warranties and manuals of various parties whose products were used to complete the Artwork. The Artist shall provide colour photography of the installed work. A further set of the photographs will be provided to the Consultant and the City of Toronto;

j. obtain at the sole cost and expense of the Artist any permits necessary for delivery to and installation at the Installation Site;

k. during installation, provide appropriate and adequate measures to ensure the safety of the public and the Developer's, contractors, employees, etc.;

l. cooperate with duly authorized contractor(s) and Developer's workers on site. The Artist shall use best efforts to coordinate installation of the Artwork through the Developer's supervisory staff at the Installation Site in accordance with the construction schedule of the Developer. If any actual out-or-pocket costs result directly and manifestly from the Artist failing to coordinate the installation with that of the Developer's supervisory staff, these costs shall be borne by the Artists upon provision of proof of such costs being incurred. The Developer will ensure that the Artist has access to its supervisory staff on a timely basis to facilitate timely installation of the Artwork;

m. covenants to comply with all applicable outstanding codes, by-laws, municipal regulations and ordinances up to the point the installation of the Artwork is complete and all applicable requirements of all governmental authorities having jurisdiction over the Project have been satisfied;

n. except for components of the Artwork which are subcontracted to third parties, the Artist shall provide the work personally. The Artist shall provide the Developer details of work not to be carried out by the Artist personally. For greater certainty those items not done customarily by an artist which in this case includes the actual fabrication of the Artwork shall be the responsibility of and be carried out at the sole cost and expense of the Artist;

o. until installation at the Project, the Artist shall store the Artwork at his sole cost and expense, and shall provide the Developer with a Bill of Sale in the form attached hereto as Schedule "C", and evidence of insurance; and

3.02 In the event of the death or the incapacity of the Artist before completion of the Artwork which death or incapacity would affect the completion of the Artwork, the Developer shall have the right of ownership of the unfinished Artwork upon paying the Artist or his

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personal representative, in addition to the amount received pursuant to Schedule "B" hereof, any further amount necessary so that the total payment to the Artist be expressed as a percentage of the Artwork completed, such percentage to be determined by the Consultant in conjunction with the Developer. The Developer and the Artist or his personal representative agree to accept the Consultant's decision as final except in the case of manifest error. The Developer, through the Consultant, shall be then entitled to have a third party Artist complete the Artwork in accordance with this contract.

3.03 Neither this contract nor any rights or obligations shall be assignable by the Artist, except as provided herein.

3.04 The artist shall determine any matter of an artistic nature in his sole and unfettered discretion.

## ARTICLE IV

## BASIC RESPONSIBILITIES OF THE DEVELOPER

4.01 The Developer covenants and agrees with the Artist that they, either directly or through the Consultant, will;

a. upon the Artist's request, interpret the instructions and clarify all reasonable points of doubt in a reasonable and timely fashion. In the event the Developer is in breach of this obligation, any time deadline that the Artist is unable to meet as a result of such failure will be appropriately extended;

b. give attention to all queries, submissions, sketches, drawings and models, and provide written decisions, instructions, acceptances and any other information required in order to enable the Artist to carry out the work in an expeditious manner, acting reasonably. In the event the Developer is in breach of this obligation, any time deadline that the Artist is unable to meet as a result of such failure will be appropriately extended;

c. pay the Artist a fee in accordance with Schedule "B" hereof for services rendered hereunder;

d. provide reasonable assistance to obtain cooperation by other contractor(s) on site;

e. to insure the Artwork against all risks from the date of installation as would a prudent owner;

f. to prepare the site for installation by the artist. The Developer is responsible for laying the foundation according to specifications of the Artist. The foundation will ready on or before September 30, 2012, subject to delivery of installation base from Artist.

g. Be responsible for all storage and associated costs (transport/insurance) incurred if site is not ready on schedule

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h. Maintain and secure the Artwork and be solely responsible for all damage thereto from the date of installation, except for any deterioration as set out in 3.01 (g)

4.02 It is the intention of the Developer to register the project, which includes the Installation Site as a residential condominium corporation. The parties agree and acknowledge that the Developer shall have the right to assign this contract to the residential condominium corporation. Upon such assignment the Developer shall be relieved of all responsibility under this agreement except for payment of any monies owing to the Artist, provided the condominium corporation shall have agreed to assume the obligations of the Developer, including the obligation to maintain the Artwork in accordance with instructions in the manual provided by the Artist as per 3.01 (h).

4.03 Notwithstanding any other provision of this agreement, the Developer may, at any time, terminate this contract upon 90 days notice to the Artist. The Artist shall then render an account to the Developer for work end of the notice period in accordance with Article V of this Agreement. In the event that the Developer terminates the Agreement, the Developer shall reimburse the Artist for the actual costs to the Artist incurred in connection with the Artwork, including but not limited to costs incurred related to fabrication, disassembly, storage, disposal or sale, as well as any outstanding liability owed by the artist to the Artist's contractors, subcontractors, or employees. All rights in and to the Artworks shall revert to the Artist in event of early termination.

4.04 The developer represents and warrants that it has the full power, right and authority to enter into this Agreement and that there is no restriction on the Developer's ability to perform its obligations hereunder. Entering into and performing this Agreement shall not constitute a violation of the rights of any party or any agreement, obligation, instrument, ordinance, by-law or regulation by which the Developer may be bound.

## ARTICLE V

### Procedure for Draw Requests

5.01 The Artist shall be entitled to make a request for payment as milestones are achieved in accordance with the terms of Schedule "B".

5.02 Each draw request shall be accompanied by the following information:

a. written request for payment detailing the milestone achieved.

b. Statutory Declaration in the form attached hereto as Schedule "D". This form must be completed by the entity actually fabricating and installing the Artwork.

5.03 The draw request shall be submitted within the first five days of any month. If the draw request is submitted in a timely basis with the required documentation, the Developer shall pay within 45 days.

## ARTICLE VI

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**Wire Transfer and Currency Fluctuation**

6.01 If requested by the Artist funds shall be sent by wire transfer and the cost of the same shall be charged to the project budget. If such charges result in a budget overrun not covered by contingency, then the Artists shall absorb such charges.

6.02 All payments shall be made in Canadian dollars. Developer acknowledges that the Artwork is not being fabricated in Canada and that payments will be converted into other currencies. After the Artwork has been installed and accepted the Artist may request additional payments to compensate him for any losses covered by currency conversion, provided that such additional payment does not cause a budget overrun not covered by the contingency fund.

## ARTICLE VII

**Inspection Rights and Progress Reports**

7.01 The Artist agrees that the Consultant shall have the right at all reasonable times and on prior written notice of two (2) business days to inspect the progress of the Artwork during regular business hours and to require the Artist to submit progress reports with respect to the Artwork and with such frequency as required by the Consultant acting reasonably, such reports to be in the form specified by the Consultant, at that time.

7.02 It is understood and agreed by the Artist that, notwithstanding the provisions of paragraph 7.01 hereto, if at any time the Consultant, acting reasonably, is not satisfied that there has been progress or the standard of the Artwork, in accordance with the Milestones established by the Artist, no further payment shall be made to the Artist until sufficient progress has been made to the Artwork to satisfy the Consultant, acting reasonably provided all matters and decisions of an artistic nature shall remain in the Artist's sole and unfettered discretion.

## ARTICLE VIII

**Acceptance of Installation**

8.01 The Developer shall be deemed to have accepted ownership of the Artwork upon final completion of the installation of the Artwork by the Artist as certified by the Consultant acting reasonably and payment in full to the Artist. The Consultant shall provide the Developer and the Artist with a copy of such certificate of completion and installation as soon as available.

## ARTICLE IX

**Conflict of Laws**

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9.01 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any legal proceedings shall be brought before the courts of the Province of Ontario.

## ARTICLE X

### Delays/Extension

10.01 If the Artist is delayed at any time in the progress of the Artwork by *force majeure* including an act of God or by labour disputes, strikes, lockouts, fire, unusual delay by common carriers or unavoidable casualties or without limit to the foregoing by a cause beyond the Artist's control, the Developer will extend the Artist the time equivalent to the time lost by reason of such cause.

10.02 If payments or approvals are unreasonably or arbitrarily delayed, the Artist shall not be responsible for any delay that results by reason of the delay in payment or approval.

10.03 The Artist shall not be held responsible or liable for any delays resulting from acts or omissions by the Developer's agents, employees or contractors. If the Artist is delayed at any time in the progress of the Artwork by act or neglect of the Developer the Developer will extend to the Artist the time equivalent to the time lost by reason of such act or neglect and pay to the Artist any reasonable out of pocket expenses including storage of the Artwork occasioned by the Artist arising directly from such delay.

## ARTICLE XI

### Default

11.01 In the event that:

a. fails to complete the Artwork in accordance with the agreed upon specifications attached hereto as Schedule A as may be amended from time to time; or

b. the Artist is in material and continuing breach of any representation, warranty or covenant made by her, the Developer shall notify the Artist of such breach in writing (the "Default Notice").

The Artist shall have thirty (30) days to cure such default. In the event that the Artist does not cure his default within the said thirty (30) day period, the Developer at its sole option may terminate this agreement and retain all work and material of the Artist pertaining to the Artwork at no further cost to the Developer. In addition, the Developer shall be entitled to pursue all rights and remedies available to it in law or in equity.

11.02 The Artist shall have the right to terminate or suspend this agreement in the event of bankruptcy or insolvency of the Developer, should the Developer fail to remit payments to the Artist within 45 days of receipt of any invoice from the Artist or for any breach of any representation, warranty or covenant made by the Developer and the Artist shall notify the Developer of such breach in writing (the "Default Notice").

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## ARTICLE XII

### Ownership

12.01 The Artwork will upon final inspection and acceptance of the Artwork by the Developer and payment in full to the Artist, be the property of the Developer, or his assignee, save and except for copyright.

12.02 Upon final installation, written acceptance of the Artwork by the Developer and payment in full to the Artist, the Artist and Developer covenant and agree as follows:

a. the Artist shall indemnify the Developer for damages, costs and/or expenses (including reasonable lawyer fees) incurred by the Developer directly as a result of the breach by the Artist of any obligations or representation and warranty contained in this Agreement.

b. the Developer shall indemnify the Artist for damages, costs and/or expenses (including reasonable lawyers fees) incurred by the Artist directly as a result of any failure by the Developer to maintain the Artwork in accordance with the Artist's maintenance manual and in accordance with this Agreement.

c. that so long as the Developer exhibits the Artwork, to maintain and repair it substantially in accordance with the comprehensive maintenance manual to be provided by the Artist pursuant to paragraph 3.01 (h); and

d. that the Developer will use its best efforts to protect and conserve the Artwork's aesthetic integrity.

12.03 The covenants of the Developer contained in 12.02 shall be assignable to the future condominium corporation to be registered on the Installation Site, provided it will assume obligations of developer hereunder.

## ARTICLE XIII

### Copyright

13.01 Copyright of the Artwork shall continue to be owned by the Artist. In view of the intention that the Artwork in its final dimension be unique, the Artist shall not make any exact duplicate reproductions of the final Artwork, other than a foot by foot working model, nor shall the Artist expressly permit others to do so except with the written permission of the Developer, or its successors and assigns which permission may be arbitrarily withheld. Nothing in this contract shall, however, prevent the Artist from making other works of art that are materially different than the Artwork. The Artist hereby agrees to provide one of the prototypes produced to the Developer. All other maquettes, prototypes any samples produced are the exclusive property of the Artist.

13.02 The Artist agrees that the Developer shall have the right to take reproduce of the Artwork photographically or electronically for use by the Developer in promoting the

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Project or for inclusion in its corporate brochure or for photo displays of the Project in a future sales office for the Developer. The Developer should use its best efforts to advise the Artist of its intention to take and use such photographs.

13.03 Subject to the express provisions of this contract the Artist hereby grants full permission for exhibition rights in perpetuity to the Developer and any of is successors or assigns, limited, however, to the current installation. This license is given in exchange of a sum of $1.00 and for the other good and valuable consideration that will be considered as total payments of the Artist's rights. This sum is included in the total amount of this agreement.

13.04 The Artist agrees that the display of the Artwork at the installation site in no way constitutes a breach of any exhibition rights which may exist under the *Copyright Act.*

13.05 The Artist represents and warrants that the Artwork is original to the Artist and does not violate any copyright of any other person or entity. The Artist indemnifies the Developer against any loss, cost or expense suffered as a breach of this representation and warranty.

13.06 A plaque identifying the Artwork and authorship shall be affixed to the Artwork or to the building by the Developer and Artist approved by the Artist. The plaque's wording and design will be approved by the Artist and the Developer and its cost will be borne by the Developer, provided such cost is kept reasonable and does not exceed 2% of the total project cost shown on Schedule "B".

13.07 Except as otherwise provided, the ownership, property and risk in the Artwork shall be transferred to the Developer upon final payment for the Artwork and certification of completion by the Consultant.

13.08 If, at any future time, the Developer decides to remove the Artwork from the Installation Site, the Developer shall use its best efforts to contact the Artist to advise it of the decision to remove the Artwork. If the Artwork is moved to another site, the Developer will treat all components of the Artwork as integral and will use its best efforts to reinstall the Artwork as it was originally designed and installed. If the Artwork is to be removed from the Installation Site, and no appropriate alternative location can be determined, the Developer shall first off the Artwork to the Artist. The Developer shall remove the Artwork, at its expense, from its foundation and, if the Artist wishes to keep the Artwork or its component parts, the Artist shall, at its sole expense, pay for all costs for transporting and storing the Artwork or its parts as may be required.

13.09 The representations, warranties and covenants of the Artist shall survive for a period of two years.

13.10 This contract shall be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

13.11 The parties agree that this contract constitutes the entire agreement and that there are no other representations, warranties covenants, agreements or conditions (express or implied) relation to the subject matter of this contract other than as stated in this contract.

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## ARTICLE XIV

### Notice

14.01 All notices, requests, demands or other communications required or permitted to be given hereunder by one party to another shall be given in writing by registered mail, postage prepaid, addressed to such other party, or by fax or by personal delivery to such other party as follows:

To the Owner at: 10 Wanless Avenue
Suite 201
Toronto, Ontario
M4N 1V6

E-mail: lyager@plazacorp.com

To the Artist at: 71 Franklin Street SE
New York, New York
10200

E-mail: olaf@olafbreuning.com

or at such other addresses as may be given by any of them to the others in writing, from time to time. All such notices, requests, demands, acceptances and other communication shall be deemed to have been received when personally delivered (if personally delivered), on the business day following transmission if sent by fax and on the third (3rd) business day following the mailing thereof (if mailed); provided that if such notice , request, demand or other communication is mailed and if regular mail service shall be interrupted on or before the third (3rd) business day following the mailing thereof by strikes or other irregularities of which the public has notice, then such notice, demand, requires or other communication shall be deemed to have been received on the third (3rd) business day following the resumption of normal mail service unless otherwise personally delivered or sent by facsimile or e-mail.

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**IN WITNESS** whereof the parties hereto have executed this contract the day 26 of June, 2012.

Witness Makiko Aoki

Olaf Breuning

**KING WEST CENTRE (II) CORP.**

Per: Leslie Yag

I have authority to bind the Corporation.

**Schedule A**

*Guardians,* by Olaf Breuning, 2013

*Guardians* is composed of five abstracted figurative body shape sculptures that flank the entry walkway to 85 East Liberty Street, grouped in relationship to each other as if in a dialogue or a collective dance. The artist was inspired by the appearance of the monumental Easter Island stone sculptures, the Moais, which remain timeless protectors of the island.

Each sculpture is structured in 3 parts. The upper and lower parts, symbolizing the body, are made of galvanized steel coloured dark grey and have a textured and geometrically fragmented surface. The middle part, a polished stainless steel sphere with two concave sections, symbolizes an abstracted head. The metal will be treated so it remains the same over the years. The sculptures vary from 3 to 6 meters and will appear slightly out of balance. Each weighs a few tonnes and is anchored below grade with massive foundations.

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**Olaf Breuning**

**Schedule B**

**PAYMENT MILESTONES & DELIVERABLES SCHEDULE**

**February 19, 2013**

With regards to all Milestones:

1) The Artist will send an email confirmation of each milestone's progress with digital images as applicable.

2) Every time materials are purchased by Martin Hoppler, he will provide a Bill of Sale that confirms that the materials are covered by insurance while in his possession and that they belong to King West Centre (II), which is identified as a named insured.

3) Proof of insurance will be provided by Martin Hoppler and Olaf Breuning while onsite during foundation and/or artwork installation periods.

4) Stamped engineered drawings will be provided for the artwork and the foundations for approval by the client prior to start of fabrication.

5) All invoices from Martin Hoppler will be accompanied by a statutory declaration in the form set out in Schedule D.

Notes December 2012:

Items 3.8 and 3.9 in Milestone 3 will be considered 100% complete when Sculptures 1 and 2 are completely fabricated, exclusive of painting (a milestone 4 deliverable) and with only partial fabrication of spheres (wooden prototypes will represent this first stage of the finished chrome ball; finished ball will be delivered in milestone 4).

As well, deliverables for 1/3 of 3.6 will be understood to be preparatory surface work for galvanizing and 1/3 of 3.7 will be understood to be the selection of appropriate colour.

## Milestones

| | Description | Pos. | Others | Martin Hoppler | Olaf Breuning | Total | |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
| 1 | **MILESTONE** | | | | | | |
| | | | | | | | |
| | **Olaf Breuning** | | | | | | |
| | 1/5 Flights Zürich- NYC -Zürich, Hotel, Expenses | 7.2 | | | 5,000.00 | | |
| | Artist Fee, 1/10 | | | | 32,500.00 | | |
| | | | | | | | |
| | **Subtotal** | | | | 37,500.00 | **37,500.00** | |
| | | | | | | | |
| 2 | **MILESTONE** | | | | | | |
| | | | | | | | |
| | **Material Costs for Foundations** | | | | | | |
| | 300/300/16/ Steel Pipe Pillar Bottom Part | 1.4 | | 14, 311.00 | | | |
| | Steel Sheet 20 mm, Plate for Foundation with Holes | 1.6 | | 7,107.00 | | | |
| | | | | | | | |
| | **External Costs** | 2 | | | | | |
| | Static Calculations | 2.1 | | 4,885.00 | | | |
| | | | | | | | |
| | **Labor Costs** | 3 | | | | | |
| | Planning 3D | 3.1 | | 9,916.00 | | | |
| | Production Plans | 3.2 | | 8,830.00 | | | |
| | Production of Floor Slabs No1 - No5 | 3.4 | | 52,767.00 | | | |
| | Hot-Dip galvanize Floor Slabs Structure No1 - No5 | 3.5 | | 11,038.00 | | | |
| | | | | | | | |
| | **Olaf Breuning** | | | | | | |
| | 1/5 Flights Zürich- NYC -Zürich, Hotel, Expenses | 7.2 | | | 5,000.00 | | |
| | Artist Fee, 2/10 | | | | 65,000.00 | | |
| | | | | | | | |
| | **Subtotal** | | | 108,854.00 | 70,000.00 | **178,854.00** | |
| | | | | | | | |
| 3 | **MILESTONE** | | | | | | |
| | | | | | | | |
| | **Material Costs** | 1 | | | | | |
| | Aluminum round 12 mm | 1.1 | 1/3 | 1,775.00 | | | |
| | Aluminium sheet 4 mm | 1.2 | 1/3 | 7,952.00 | | | |
| | Steel Pipe, 260/260/13, Pillar Upper Part | 1.5 | 1/3 | 3,119.00 | | | |
| | Screws M20 DIN 8.8, Connection Bottom and Upper Part | 1.8 | 1/3 | 309.00 | | | |
| | | | | | | | |
| | **Fabrication** | 3 | | | | | |
| | Fabrication, Sculpture No 1 (4 People) | 3.3 | | 59,996.00 | | | |
| | Fabrication, Sculpture No 2 (4 People) | | | 64,206.00 | | | |
| | Hot-dip galvanize Interior Upper Part (Rust Protection) | 3.6 | 1/3 | 8,489.00 | | | |
| | Duroplex Color Surface Sculpture | 3.7 | 1/3 | 7,359.00 | | | |
| | Midde Part, Fabrication in Bronze, polished | 3.8 | 1/3 | 21,986.00 | | | |
| | Chrome Treatment for Middle Part | 3.9 | 1/3 | 5,384.00 | | | |
| | | | | | | | |
| | **Installation Toronto 2012** | 6 | | | | | |
| | Martin - Supervising Foundations, 2012 | 6.2 | | 3,231.00 | | | |
| | Crate for Inside Structure Foundations | 4.1 | | 3,920.00 | | | |
| | Shipping Inside Structure, Zuerich - Toronto | 4.2 | | 6,860.00 | | | |
| | | | | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | **Olaf Breuning** | | | | | | |
| | 1/5 Flights Zürich- NYC -Zürich, Hotel, Expenses | 7.2 | | | 5,000.00 | | |
| | 1/3, Flights New York - Toronto, Hotel, Expenses | 7.1 | | | 1,500.00 | | |
| | Artist Fee, 2/10 | | | | 65,000.00 | | |
| | | | | | | | |
| | **Subtotal** | | | 194,586.00 | 71,500 | **266,086.00** | |
| | | | | | | | |
| 4 | **MILESTONE** | | | | | | |
| | | | | | | | |
| | **Material Costs** | 1 | | | | | |
| | Aluminum round 12 mm | 1.1 | 2/3 | 3,550.00 | | | |
| | Aluminium sheet 4 mm | 1.2 | 2/3 | 15,904.00 | | | |
| | Steel Pipe, 260/260/13, Pillar Upper Part | 1.5 | 2/3 | 6,238.00 | | | |
| | Screws M20 DIN 8.8, Connection Bottom and Upper Part | 1.8 | 2/3 | 618.00 | | | |
| | | | | | | | |
| | **Fabrication** | | | | | | |
| | Fabrication, Sculpture No. 3 (4 People) | 3.3 | | 49,956.00 | | | |
| | Fabrication, Sculpture No. 4 (4 People) | 3.3 | | 46,956.00 | | | |
| | Fabrication, Sculpture No. 5 (4 People) | 3.3 | | 45,444.00 | | | |
| | | | | | | | |
| | Hot-dip galvanize Interior Upper Part (Rust Protection) | 3.6 | 2/3 | 16,978.00 | | | |
| | Duroplex Color Surface Sculpture | 3.7 | 2/3 | 14,717.00 | | | |
| | Middle Part, Fabrication in Bronze, polished | 3.8 | 2/3 | 43,972.00 | | | |
| | Chrome Treatment for Middle Part | 3.9 | 2/3 | 10,768.00 | | | |
| | | | | | | | |
| | **Olaf Breuning** | | | | | | |
| | 1/5 Flights Zürich- NYC -Zürich, Hotel, Expenses | 7.2 | | | 5,000.00 | | |
| | Artist Fee, 2/10 | | | | 65,000.00 | | |
| | | | | | | | |
| | **Subtotal** | | | 255,101.00 | 70,000.00 | **325,101.00** | |
| | | | | | | | |
| 5 | **MILESTONE** | | | | | | |
| | | | | | | | |
| | **Transport Sculptures 2013** | 5 | | | | | |
| | Crates for Sculptures, 1 x 40 Zoll Container | 5.1 | | 19,599.00 | | | |
| | Shipping Sculptures, Zuerich - Toronto | 5.2 | | 18,899.00 | | | |
| | Custom Taxes Material 20 % (1, without 1.7) | 5.3 | | *10,624.00 | | | |
| | | | | | | | |
| | **Olaf Breuning** | 7 | | | | | |
| | 1/5 Flights Zürich- NYC -Zürich, Hotel, Expenses | 7.2 | | | 5,000.00 | | |
| | 1/3, Flights New York - Toronto, Symposium | | | | 1,500.00 | | |
| | Artist Fee, 2/10 | | | | 65,000.00 | | |
| | | | | | | | |
| | **Subtotal** | | | 49,122.00 | 71,500.00 | **120,622.00** | |
| | | | | | | | |
| 6 | **MILESTONE** | | | | | | |
| | | | | | | | |
| | **Installation Toronto 2013** | | | | | | |
| | Flights, Hotel, 4 Persons - 2 Weeks, 2013 | 6.3 | | 16,153.00 | | | |
| | Installation Toronto, 4 Persons - 2 Weeks, 2013 | 6.4 | | 26,922.00 | | | |
| | Rental Toronto, Crane, Lifting Platform, Material, 2013 | 6.5 | *50,000.00 | | | | |
| | | | | | | | |
| | **Olaf Breuning** | | | | | | |
| | 1/3, Flights New York - Toronto, Installation | | | | 1,500.00 | | |
| | Artist Fee, 1/10 | | | | 32,500.00 | | |
| | Liabillity Insurance over 2'000'000 | 6.6 | | | *3,500.00 | | |
| | Plaques for Sculptures | 6.7 | | | 3,000.00 | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
| | **Subtotal** | | *50,000.00 | 43,075.00 | 40,500.00 | **133,575.00** | |
| | | | | | | | |
| | | | | | | | |
| | **Description** | **Pos.** | **Others** | **Martin Hoppler** | **Olaf Breuning** | **Total** | **Status** |
| | **MILESTONES - SCHEDULE** | | | | | | |
| | | | | | | | |
| | **1 - June 2012** | | | | 37,500.00 | **37,500.00** | payed |
| | | | | | | | |
| | **2A - August 2012** | | | 54,427.00 | 35,000.00 | **89,427.00** | payed |
| | | | | | | | |
| | **2B - September 2012** | | | 54,427.00 | 35,000.00 | **89,427.00** | payed |
| | | | | | | | |
| | **3A - September 2012** | | | 90,288.00 | 35,000.00 | **125,288.00** | payed |
| | | | | | | | |
| | **3B - by end of December 2012** | | | 104,299.00 | 36,500.00 | **140,799.00** | open |
| | | | | | | | |
| | **4 - by end of January 2013** | | | 255,101.00 | 70,000.00 | **325,101.00** | open |
| | | | | | | | |
| | **5 - by end of March 2013** | | | 49,122.00 | 71,500.00 | **120,622.00** | open |
| | | | | | | | |
| | **6 - by may / June 2013** | | 50,000.00 | 43,075.00 | 40,500.00 | **133,575.00** | open |
| | | | | | | | |

**Budget:**

| | **Description** | **Pcs** | | **SFr.** | **Ca$** | |
|---|---|---|---|---|---|---|
| **1** | **Material** | | | | | **60,883.00** |
| 1.1 | Aluminum round 12 mm | | | | 5,325.00 | |
| 1.2 | Aluminium sheet 4 mm | | | | 23,856.00 | |
| 1.4 | Steel Pipe, 300/300/10, Pillar Bottom Part | | | 13,289.00 | 14,311.00 | |
| 1.5 | Steel Pipe, 250/250/10, Pillar Upper Part | | | 8,690.00 | 9,358.00 | |
| 1.6 | Steel Sheet 20 mm, Plate for Foundation with Holes | 5 | 1,320.00 | 6,600.00 | 7,107.00 | |
| 1.8 | Screws M20 DIN 8.8, Connection Bottom and Upper Part | 100 | 8.60 | 860.00 | 926.00 | |
| | | | | | | |
| **2** | **External Costs** | | | | | **4,885.00** |
| 2.1 | Static calculations | | | 4,536.00 | 4,885.00 | |
| | | | | | | |
| **3** | **Fabrication** | | | | | **478,764.00** |
| 3.1 | Planning 3-D | | | 9,208.00 | 9,916.00 | |
| 3.2 | Production plans | | | 8,200.00 | 8,830.00 | |
| | | | | | | |
| 3.3 | Fabrication, Sculpture No. 1 (4 People) | | | 55,713.00 | 59,996.00 | |
| | Fabrication, Sculpture No. 2 (4 People) | | | 59,623.00 | 64,206.00 | |
| | Fabrication, Sculpture No. 3 (4 People) | | | 46,390.00 | 49,956.00 | |

| | | | | | | |
|---|---|---|---|---|---|---|
| | Fabrication, Sculpture No. 4 (4 People) | | | 43,604.00 | 46,956.00 | |
| | Fabrication, Sculpture No. 5 (4 People) | | | 42,200.00 | 45,444.00 | |
| | | | | | | |
| 3.4 | Production of Floor Slabs No1 - No5 | 5 | | | 52,767.00 | |
| 3.5 | Hot-Dip galvanize Floor Slaps Structure No 1 - No 5 | 5 | | | 11,038.00 | |
| 3.6 | Hot-dip galvanize (Rust Protection) | 5 | 4,730 | 23,650.00 | 25,468.00 | |
| 3.7 | Duroplex Color Surface Sculpture | 5 | 4,100 | 20,500.00 | 22,076.00 | |
| 3.8 | Middle Part, fabricated in Bronze, polished.... | 5 | 12,250 | 61,250.00 | 65,958.00 | |
| 3.9 | Chrome Treatment for Middle Part | 5 | 3,000 | 15,000.00 | 16,153.00 | |
| | | | | | | |
| **4** | **Transport Inside Structure Foundations 2012** | | | | | **10,780.00** |
| 4.1 | Crate for Inside Structure Foundations | | | 3,640.00 | 3,920.00 | |
| 4.2 | Shipping Inside Structure, Zuerich - Toronto | | | 6,370.00 | 6,860.00 | |
| | | | | | | |
| **5** | **Transport Sculptures 2013** | | | | | **49,122.00** |
| 5.1 | Crates for Sculptures, 1 x 40 Zoll Container | | | 18,200.00 | 19,599.00 | |
| 5.2 | Shipping Sculptures, Zuerich - Toronto | | | 17,550.00 | 18,899.00 | |
| 5.3 | Custom Taxes Material 20 % (1, without 1.7) | | | | *10,624.00 | |
| | | | | | | |
| **6** | **Installation Toronto 2012 / 2013** | | | | | **102,806.00** |
| | | | | | | |
| 6.2 | Martin - Supervising Foundations, 2012 | | | 3,000.00 | 3,231.00 | |
| | | | | | | |
| 6.3 | Flights, Hotel, 4 Persons - 2 Weeks, 2013 | | | 15,000.00 | 16,153.00 | |
| 6.4 | Installation Toronto, 4 Persons - 2 Weeks, 2013 | | | 25,000.00 | 26,922.00 | |
| 6.5 | Rental Toronto, Crane, Lifting Platform, Material, 2013 | | | | *50,000.00 | |
| | | | | | | |
| 6.6 | Liabillity Insurance over 2'000'000 | | | | *3,500.00 | |
| 6.7 | Plaques for Sculptures | | | | 3,000.00 | |
| | | | | | | |
| **7** | **Studio Olaf Breuning** | | | | | **29,500.00** |
| 7.1 | Flights New York - Toronto, Hotel, Expenses | 3 | | | 4,500.00 | |
| 7.2 | Flights Flights Zürich- NYC -Zürich, Hotel, Expenses | 5 | | | 25,000.00 | |
| | | | | | | |
| **9** | **Artist Fee, 25%** | | | | 325,000.00 | **325,000.00** |
| | | | | | | |
| **10** | **Contingency** | | | | 150,000.00 | **150,000.00** |
| | | | | | | |
| | **TOTAL** | | | | | **1,211,740.00** |
| | | | | | | |
| | | | | | | |
| | *** Estimates** | | | | | |

"Schedule C"

Streamliner Fabrication Inc.

19R Atlantic Ave
Toronto, ON, M6K 3E7
416.588.3825
steve_richards@mac.com

# INVOICE # SAMPLE

BILL OF SALE

Sept,15,2009

Sold To: Studio inc.

Atlantic Ave. Toronto, ON.

Project: Grand Hyatt Shenzhen.

Item. Transit Lobby Sculpture.

Architectural bronze (c-385) flat bar.
Mechanically laminated multiple flat bars producing organic curves as per model.
Sculpture disassembles for transport.
Stainless steel base plates for chemical anchoring in water feature.

NOTE: Installation charges will be billed separate of this invoice.

| | | |
|---|---|---|
| Fabrication as above: | | $00,000.00 |
| Packaging for shipping.(container) | | $ 0 |
| | Total | $00,000.00 |
| | HST | $00,000.00 |
| | Total | $00,000.00 |
| less payment rec. | 00/00 | $00,000.00 |
| | Total Due | $0 |

Streamliner Fabrication Inc HST registration # 881100564RT0001



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**Schedule D**

**Statutory Declaration**

I, Martin Hoppler, of the City of Zurich, in Switzerland do solemnly declare as follows:

1. I have been contracted by Olaf Breuning to fabricate an Artwork entitled "Guardians" for installation at 65 to 85 East Liberty Street, Toronto, Ontario, Canada.

2. I have received payment in the amount of $_____.

3. I have purchased material in the amount of $_____, which material is stored at _____. This material is the property of King West Centre (II) Corp., a corporation registered in the Province of Ontario and carrying on business in Toronto, Ontario, Canada.

4. The material is insured in the amount of $_____, which policy of insurance remains in full force and effect and shows King West Centre (II) Corp. as a named insured.

5. That all sub-contractors, labour and accounts for materials and equipment relating to the fabrication of "Guardians" have been paid in full up to _____.

AND I MAKE THIS SOLEMNLY DECLARATION
conscientiously believing it to be true.

| | | |
|---|---|---|
| SWORN before me<br>this _____ of _____, 2012 | )<br>)<br>)<br>)<br>) | _____<br>Martin Hoppler |
| _____<br>(signature of notary) | )<br>) | |

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