



CITY COUNCIL STAFF REPORT

DATE: April 15, 2009

NEW BUSINESS

SUBJECT: APPROVE THE PUBLIC ARTS COMMISSION RECOMMENDATION TO ENTER INTO AN AGREEMENT FOR PURCHASE AND SALE OF PUBLIC ARTWORK BETWEEN THE CITY OF PALM SPRINGS AND BRIAN BIEDUL FOR \$58,000 AND APPROVE AN AGREEMENT FOR PLACEMENT OF ARTWORK ON PRIVATE PROPERTY AND GRANT OF EASEMENT BETWEEN THE CITY OF PALM SPRINGS AND THE PROPERTY OWNER OF 787 NORTH PALM CANYON DRIVE.

FROM: David H. Ready, City Manager

BY: Community & Economic Development

SUMMARY

This action is to approve the recommendation by the Public Arts Commission to purchase the artwork entitled "Intersecting Cubes" by Brian Biedul for placement in the Uptown District. The artwork will be placed on private property at 787 North Palm Canyon Drive. The Owner of the property is willing to enter into an Agreement for Placement of Artwork on Private Property and Grant of Easement with the City. The installation will be placed on the north side of the property adjacent to 803 North Palm Canyon.

RECOMMENDATION:

- 1) Approve an Agreement for Purchase and Sale of Public Artwork between the City of Palm Springs and Brian Biedul for \$58,000 in a form acceptable to the City Attorney.
- 2) Approve an Agreement for Placement of Artwork on Private Property and Grant of Easement with the owner of 787 North Palm Canyon Drive, James M. Casey, Trustee of Sweet Pea Trust.
- 3) Authorize City Manager to execute all necessary documents.

STAFF ANALYSIS:

The developer of 803 North Palm Canyon expressed interest in placing public art at his project, given the significance of the site as an entryway to the Uptown District. Because of the unique location Staff encouraged the developer to consider paying the art fee and allowing the City to select and purchase a more significant work of art for the

ITEM NO. 5.A.

site. The developer's public art fee totaled \$9,208, which would be applied to the purchase and placement of the artwork. The Developer agreed to work with Staff to find an artist and a location on his site that was mutually agreeable.

The 803 North Palm Canyon project has a zero lot line setback on the front and sides of the lot. The south sidewalk adjacent to the building and the western extension of Tamarisk Road are located on the adjacent parcel at 787 North Palm Canyon. The owner of the 787 property, James M. Casey, Trustee of Sweet Pea Trust, is willing to enter into an Agreement for Placement of Artwork on Private Property and Grant of Easement with the City. Under these terms the sculpture would be installed on the northwest corner of the 787 property, adjacent to the 803 North Palm Canyon building.

On September 11, 2008 the artist Brian Biedul made a presentation to the Public Arts Commission. A maquette of the artwork and computer images of the sculpture was provided showing the piece at the proposed location adjacent to 803 North Palm Canyon. The sculpture represents, a three dimensional line drawing of cubes intersecting with a vertical element. "Intersecting Cubes" is designed to compliment the architecture of the buildings it resides within the Uptown District. The sculpture is 4' wide x 4' wide x 18' tall, constructed of zinc-aluminum metallized steel tubing and finished with a clear powder-coat. The total cost of the sculpture is \$58,000 and includes engineering, fabrication, installation and lighting.

At the November 13, 2008 meeting the Public Arts Commission discussed the cost of the artwork and recommended that payment of the sculpture be divided into two fiscal years. A portion of the sculpture would be paid in the 2008-09 fiscal year and the remainder be paid during the 2009-10 fiscal year. A motion was made to acquire the sculpture "Intersecting Cubes" by Commissioner Kabler and seconded by Commissioner Butler, the motion carried 5/1 in a roll call vote. Aye votes were Commissioners Butler, Kabler, Mazure, Stern and Chair Stone; nay vote was Commissioner Stearns.

The artist is ready to start fabrication and have the work completed for a early summer installation date.

FISCAL IMPACT:

The Finance Department collects and maintains the public art fees collected on all projects with accounting records established to sufficiently identify and control these funds. The public art fees paid for the 803 North Palm Canyon project are \$9,208. There is no negative fiscal impact to the City and no General Fund money will be used for this project. The cost of the purchase shall be made from the Public Arts Account #150-30-4408-50015.

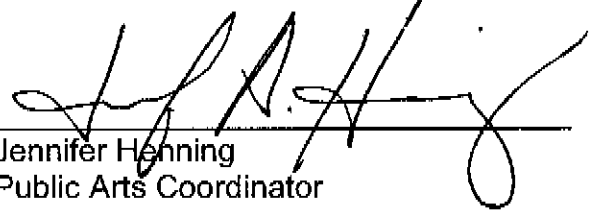
City Council Staff Report

April 15, 2009 – Page 3

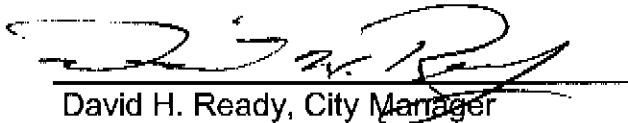
Approve Recommendation to purchase the sculpture "Intersecting Cubes" by Brian Biedul and Agreement for Placement of Artwork on Private Property and Grant of Easement with the Property Owner of 787 North Palm Canyon Drive



Thomas Wilson
Assistant City Manager



Jennifer Henning
Public Arts Coordinator



David H. Ready, City Manager

Attachments:

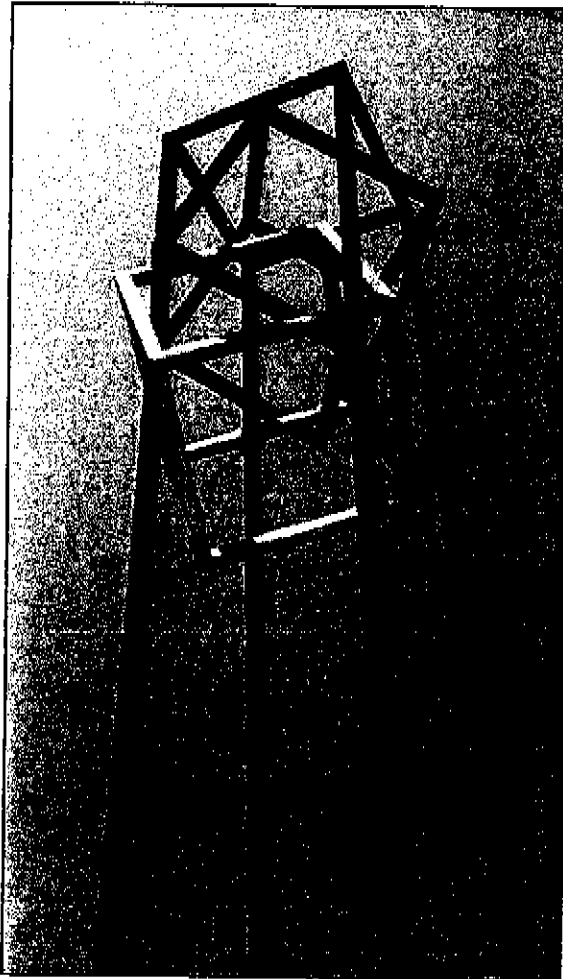
Picture and description of Artwork

Agreement for Placement of Artwork and Grant of Easement

Agreement for Purchase and Sale of Public Artwork

Intersecting Cubes

BY
BRIAN BIEDUL



803 north palm canyon drive

proposal for
the palm springs public arts commission

**Anamalia
Chordata
Vertebrata
Mammalia
Theria
Eutheria
Primate
Anthropidea
Hominoidea
Hominidae
Homo
Sapien
Biedul
Brian**

self-portrait, type, 2007

BRIAN BIEDUL Artist Biography

Born in Colorado Springs in 1955, Brian spent the better part of his adolescence in Europe where his love of art began. While living in Paris he was enrolled in his first art class under the



instruction of Siegfried Hahn. After returning to America he spent time in various cities across the United States including New York, Chicago and Los Angeles where he later settled. In 1984 he graduated with a BFA from Art Center College of Design where he later taught Saturday figure drawing classes.

Biedul's artistic development can be divided into several periods. In his early years he began with figurative painting in oils influenced heavily by the Morogor system. Later he began creating works of abstract expressionism influenced by the works of Mark Rothko and Franz Kline.

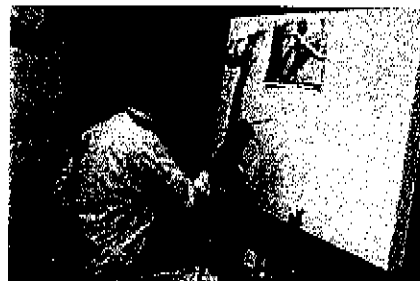
He followed that period with installations and earthworks in the desert where his idea of Theoretical Architecture was born. Through this experimentation he found the content that would define his future work.

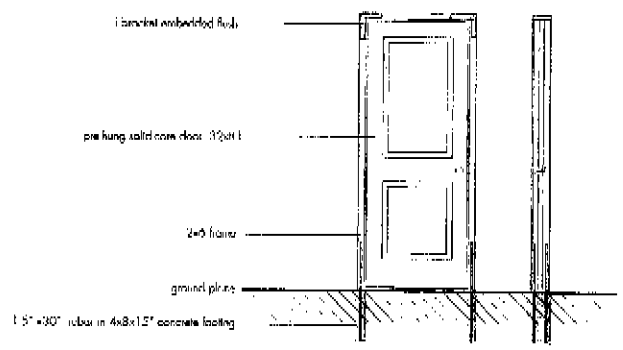
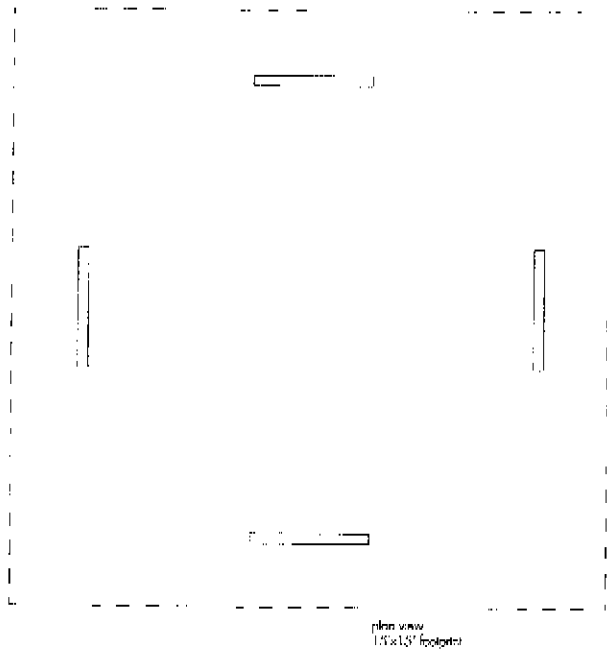
In 1992 he co-created the short film "Lazlo: A Portrait of the Artist In White." The film is a critical commentary on contemporary art where the fictitious artist Lazlo discovered that the true meaning of art is for the artist alone and once the work is completed and in its most perfect state, he conceals it in a shroud of ordinary white house paint.

Following the completion of his film, Biedul discovered that almost his entire body of work had been destroyed in an accident. That event resulted in a six-year break from creating art. It was the death of a close personal friend that caused him to pick up where he left off.

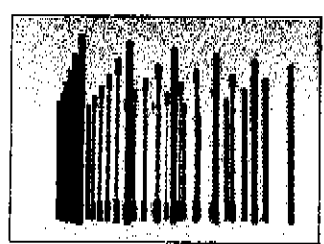
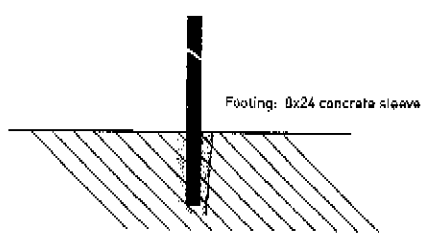
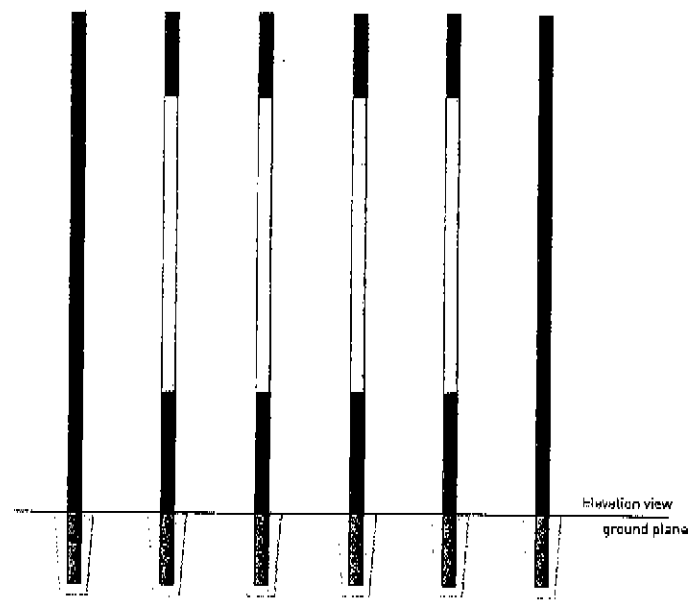
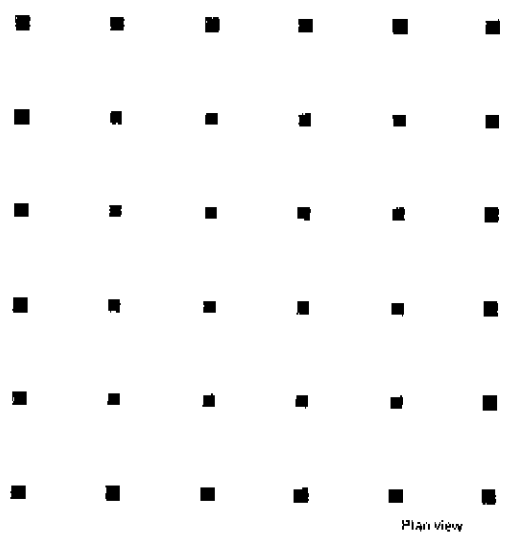
Combining his passion for form with his explorations into Theoretical Architecture he began work on Spaces, a series in three phases. The first phase is entitled Rectangles which are paintings created to articulate a two-dimensional space. Using the human form the threshold of inside space is defined by the boundaries of the canvas. Rectangle 1, the first in the series premiered in a group show in New York's Viridian Gallery July 2006, juried by Robert Rosenblum, past curator of The Guggenheim Museum.

Brian Biedul currently resides in Santa Monica, California with his wife Dawn Rosenquist.





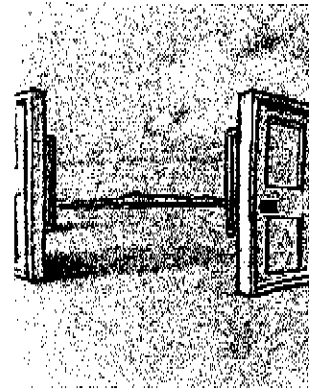
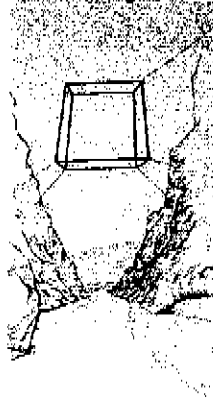
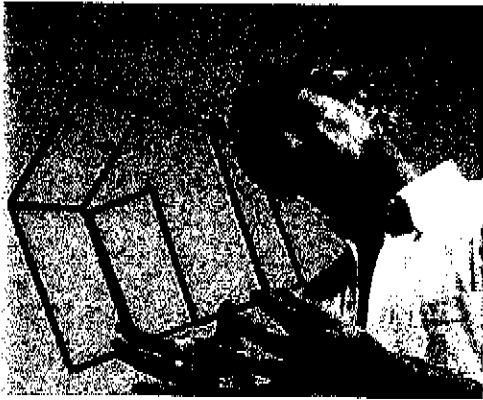
DC2085
15'x 15' gaskit space
created by fixing four foundations, walking solid core doors
on the center of four intersecting planes
©2007 Brian Biedul



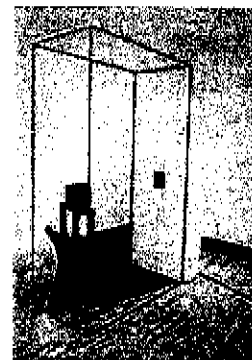
columns, gestalt cube.
4\"/>
 36 square steel tubing powder coated
columns set in grid on 27\"/>
 ©2007 brian biedul

Top: Drawings for "Doors" temporary installation in Palm Springs.
 Bottom: Drawing for "Columns" future public art sculpture at the corner of Palm Canyon Drive and Tramway.
 For Dennis Cunningham and Palm Springs Modern Homes

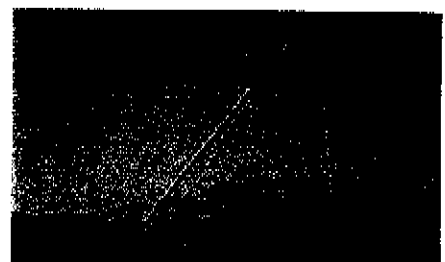
Artist Statement



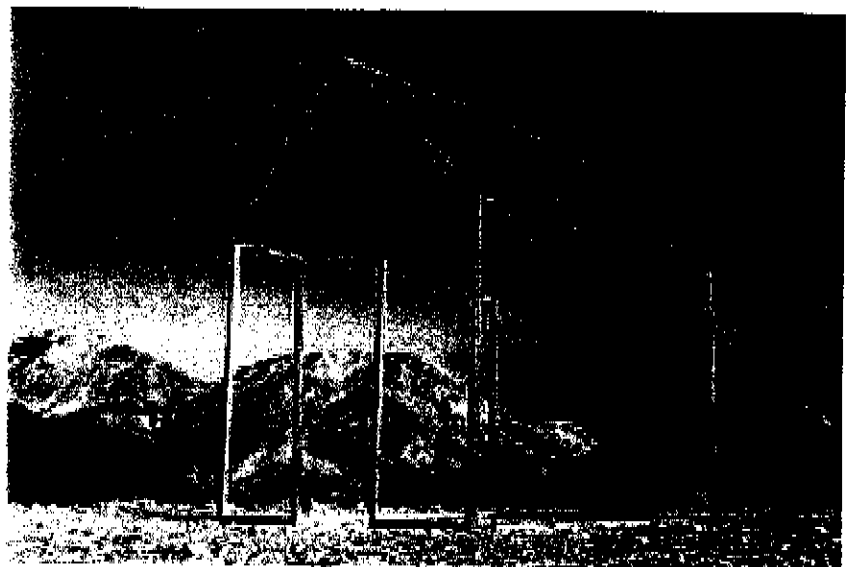
Over the last twenty-five years I have been experimenting with what I call theoretical architecture. The content of my work is to define the threshold between the inside and outside of conceptually articulated space. The spaces I create exist in the mind of the viewer as a gestalt experience. This is for me an exploration into the very definition of art.



As a sculptor of gestalt space, I have used fire, light, vegetation, water, rope, steel, vinyl, wood and other mediums.



In observing the art, it is important to understand that the art is the defined space itself. There are no lines, background, color fields or image to extend beyond the boundaries of the art. For Rectangles and Squares, the art absolutely ends at the edge of the canvas.





x-series, charcoal on paper, 1985



ed, clay, 2007



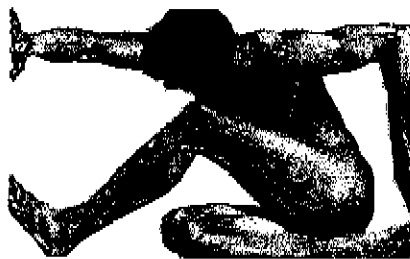
contraposto, cast bronze, 2000



lazio, still from film, 1995



house, steel, 2008



reclangle one, oil, 2006



square two, oil, 2008



Exhibitions:

- Group Show: Art Center Student Show. Pasadena, CA 1984
- Group Show: Santa Barbara Art Association. Santa Barbara, CA 1985
- Group Show: DesignARC: Ten Years, Ten Artists. Santa Barbara, CA 1986
Installation
- Solo Exhibition: Guerilla Gallery: "Eyestrain" Mar Vista, CA 1990
Installation
- Solo Exhibition: Experiments in the Desert, Death Valley 1990-present
Earthworks and Installations
- Group Show: El Camino College Student Curatorial Project:
See Between The Lines Los Angeles, CA 2004
- Group Show: Viridian Artists Group Show. New York City, NY 2006
Juried by Robert Rosenblum, Curator, Guggenheim Museum
July 2006
- Solo Exhibition: Rectangles
Palm Springs Modern: 43@ Racquet Club Palm Springs, CA January 2007
- Group Show: The Battle of The Sexes
Art Murrur, Los Angeles, CA February 2007
- Solo Exhibition: Eye Strain 2007
The A+ D Architecture And Design Museum, Los Angeles June 2007
- Group Show: Timmons Gallery April 2007
Rancho Santa Fe, CA
- Two Man Show: Bledul & Gehry: Raw Space
DCA Fine Art, Santa Monica, CA November – December 2007
- Group Show: Bridge Art Fair
Art Murrur, Los Angeles, CA December 2007
- Group Show: The Body as Art
The Hewitt Gallery of Art New York, NY January- February 2008
- Lectures:** Palm Springs Art Museum Artist In Action, Lecture and Installation The Figure In Space
Palm Springs, CA January 11, 2007
- Palisades Art Association
January 2007
- Figure Drawing Instructor, 2007, 2008, 2009
Palm Springs Art Museum, Palm Springs, CA
- Publications:** The Nude Male: 21st Century Visions by David Leddick
September 2008 Rizzoli Publications

The book is the latest and most current survey of the male nude form, as seen through the eyes of today's most important and influential artists. This collection showcases such prominent artists as David Hockney, Chuck Close, Sam Taylor-Wood, Clive Barker and Nan Goldin.

Press

Various articles in local and national publications.

"Brian Biedul's first installation of a three-part series titled Rectangles ventures into the world of "Theoretical Architecture," his term for the point where interior and exterior spaces coalesce. The exhibition explores this compelling concept using the accessible inroad of the human form as reference - Something we should all be able to relate to."

- *Dwell, Feb 2007*

"The male figure in Biedul's paintings is rendered so skillfully, so sinuously, it comes as a surprise to learn that the process wasn't an easy one."

- *The Bottomline, Dec 2006*

"Santa Monica based artist Brian Biedul is known for conceptual installations and earthworks, but recently has been considering the figure through an initiative called Spaces."

- *Fine Art Connoisseur, Jan 2007*

"For Biedul, the body is a form within space, inside and outside are explored in distinct compositions that, if anything, remind us just how restrictive a canvas can be. The austerity and hard right angles of white backgrounds contrast strikingly with the contorted forms of highly rendered nude figures, which push unsuccessfully towards the space beyond."

- *Art and Living, Fall 2007*

LA Times - The Guide feature article
November 2007

Flavor Pill
November 2007

Moco Loco
November 2007

Santa Monica Sun - Cover story
November 2007

Art Ltd.
November 2007

Scene4
April/May issue 2007

Dwell - In The Modern World /Exploration of Space
February 2007

The Desert Sun - Article: Painting Outside The Box
February 2007

Art Ltd - Artist Profile
February 2007

Fine Art Connoisseur - Galleries & Artists
January/February 2007

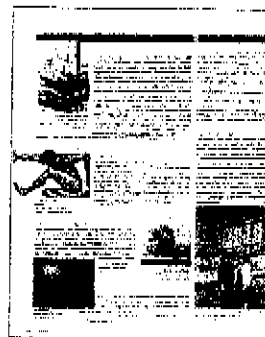
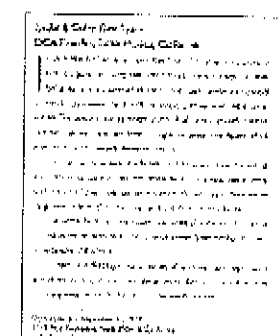
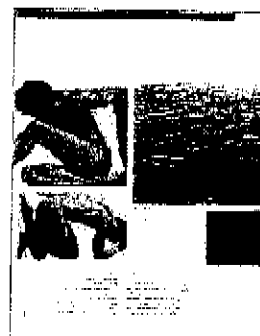
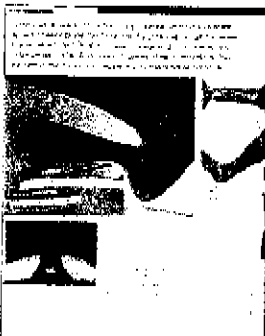
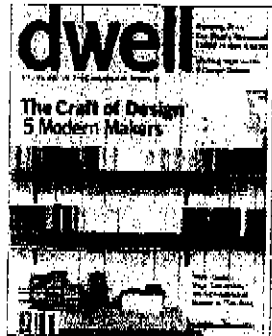
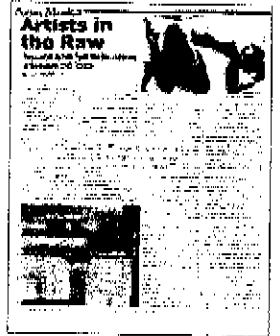
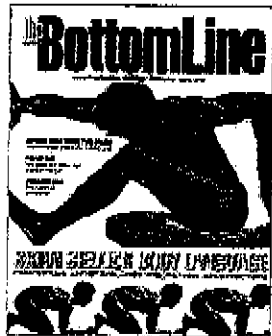
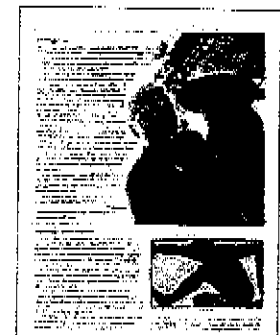
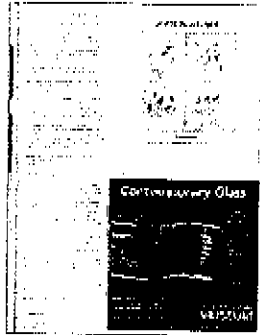
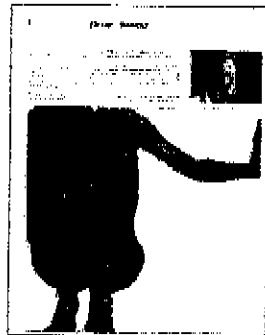
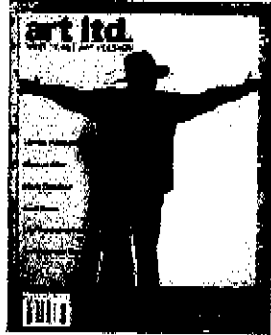
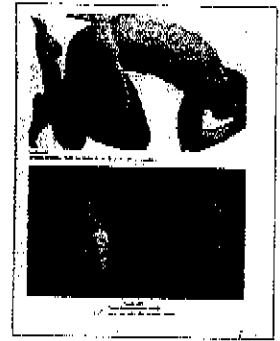
Palm Springs Life - Article: Thinking Inside The Box
January 2007

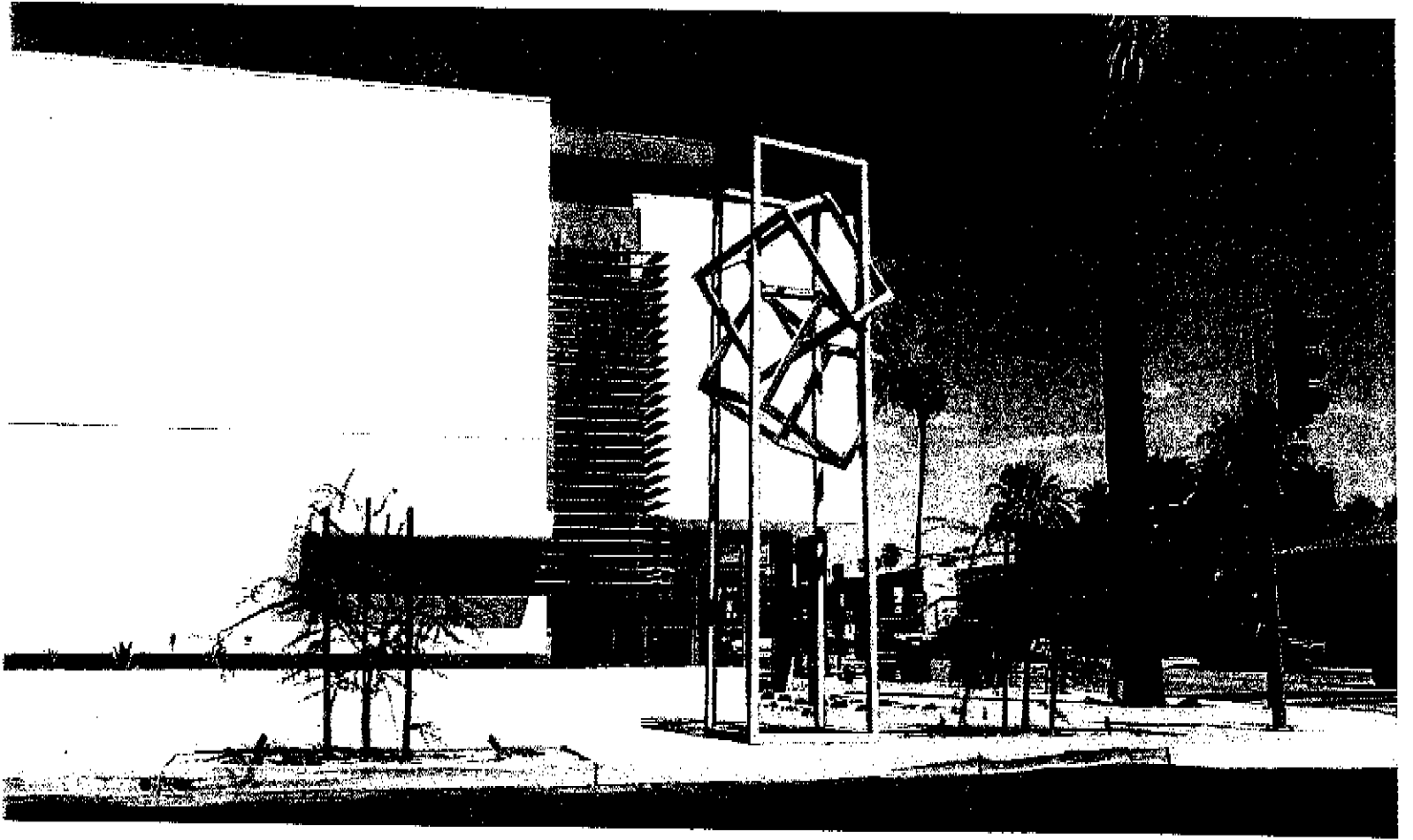
The Palisadian Post - Article: Art Association Hosts Artist
Brian Biedul
January 2007

International Artist - Finalist People & Figures
December/January 2007

The Bottomline - Cover story: Brian Biedul's Body Language
Conceptual artist explores Theoretical Architecture
December 2007

Artillery - Plugz section
December 2007





Proposed new public art for Palm Springs
Intersecting Cubes, Brian Biedul, 2008
803 N. Palm Canyon Dr. Palm Springs, CA

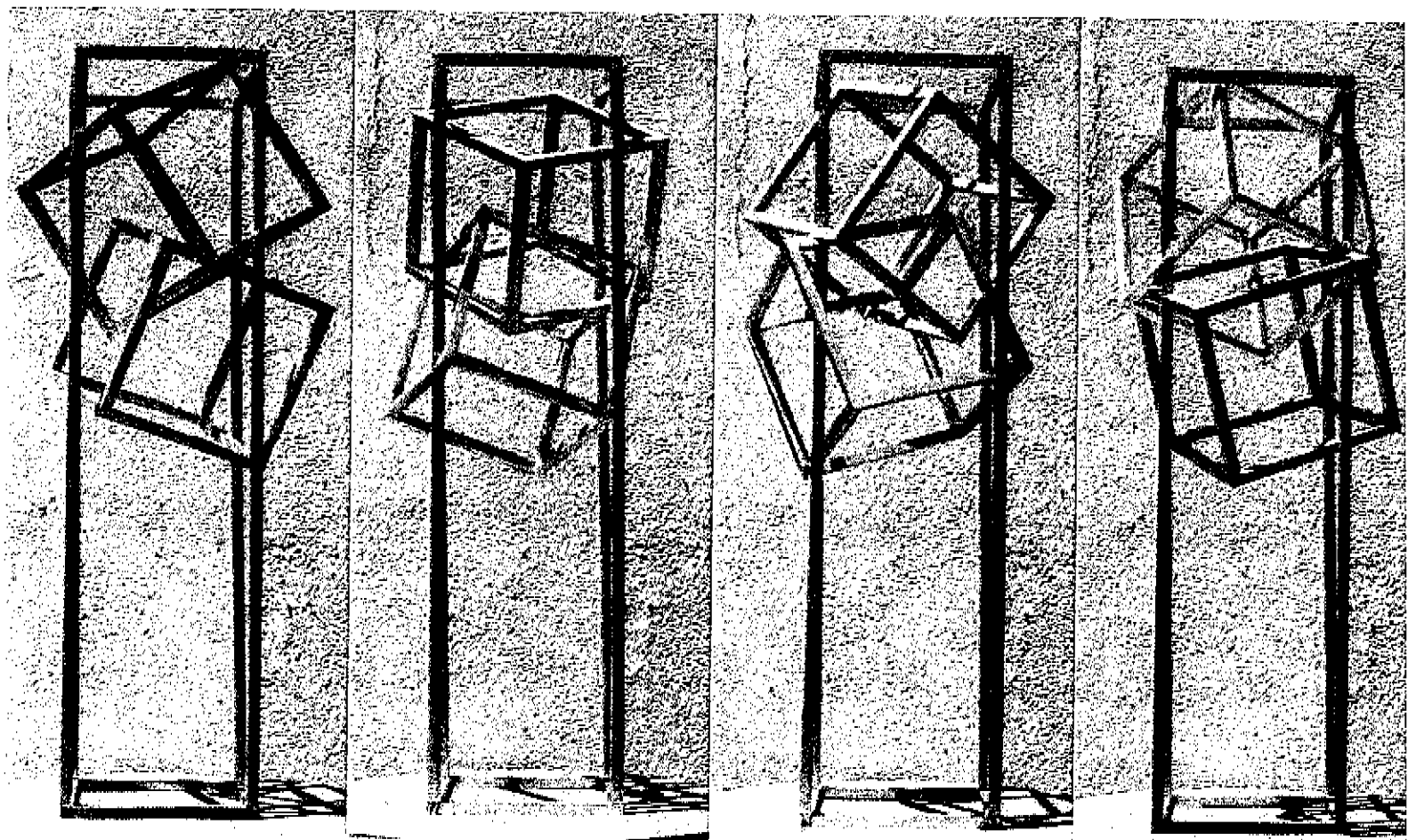
Size: 48"x48"x 216"
Material: 3" square steel tubing
Finish: Zinc-Aluminum metallized and clear powder-coated
Foundation: Set in concrete and steel below-grade housing
Lighting: 8 flush-mounted SistemaLux minizip LEDs

Overview:

This sculpture represents in steel, a three dimensional line drawing of cubes intersecting with a vertical element. The mind of the viewer fills in the voids of these gestalt spaces. Intersecting Cubes is designed to compliment the architecture of the building it resides with. The piece will also create a dramatic visual experience on North Palm Canyon Drive at night. Due to it's size and design it will have a great deal of presence without dominating the corner.

Maintenance:

The piece is designed to be very low maintenance and low impact. The steel will be coated in a zinc aluminum process called metallizing and then will be powder-coated clear. This will make the piece rust-resistant. The base foundation will be engineered by Concord Consulting, a firm that has worked on many projects in and around Palm Springs. The lighting will be tied into the 803 N. Palm Canyon building.



Cost

Intersecting Cubes, Brian Biedul, 2008

Proposed public art for 803 North Palm Canyon Drive, Palm Springs

Two separate bids were secured to fabricate, engineer and install.

Bid one:

Using the premiere Art fabricator "Carlson and Co." They have worked with Claus Oldenberg, Elsworth Kelly and Jeff Koons.

\$142,650

This price covers only costs associated with the creation and installation of the piece. This price does not include the insurance required to indemnify the City of Palm Springs for the duration of the fabrication and installation of *Intersecting Cubes*. This price does not include the artist fee.

Bid two:

The artist acting as project manager. All work will conform to specifications by the Engineering firm Concord Consulting. They will handle all wind load, center of gravity, welding specs and foundation design. *This price does include the artist's fee.*

\$58,000

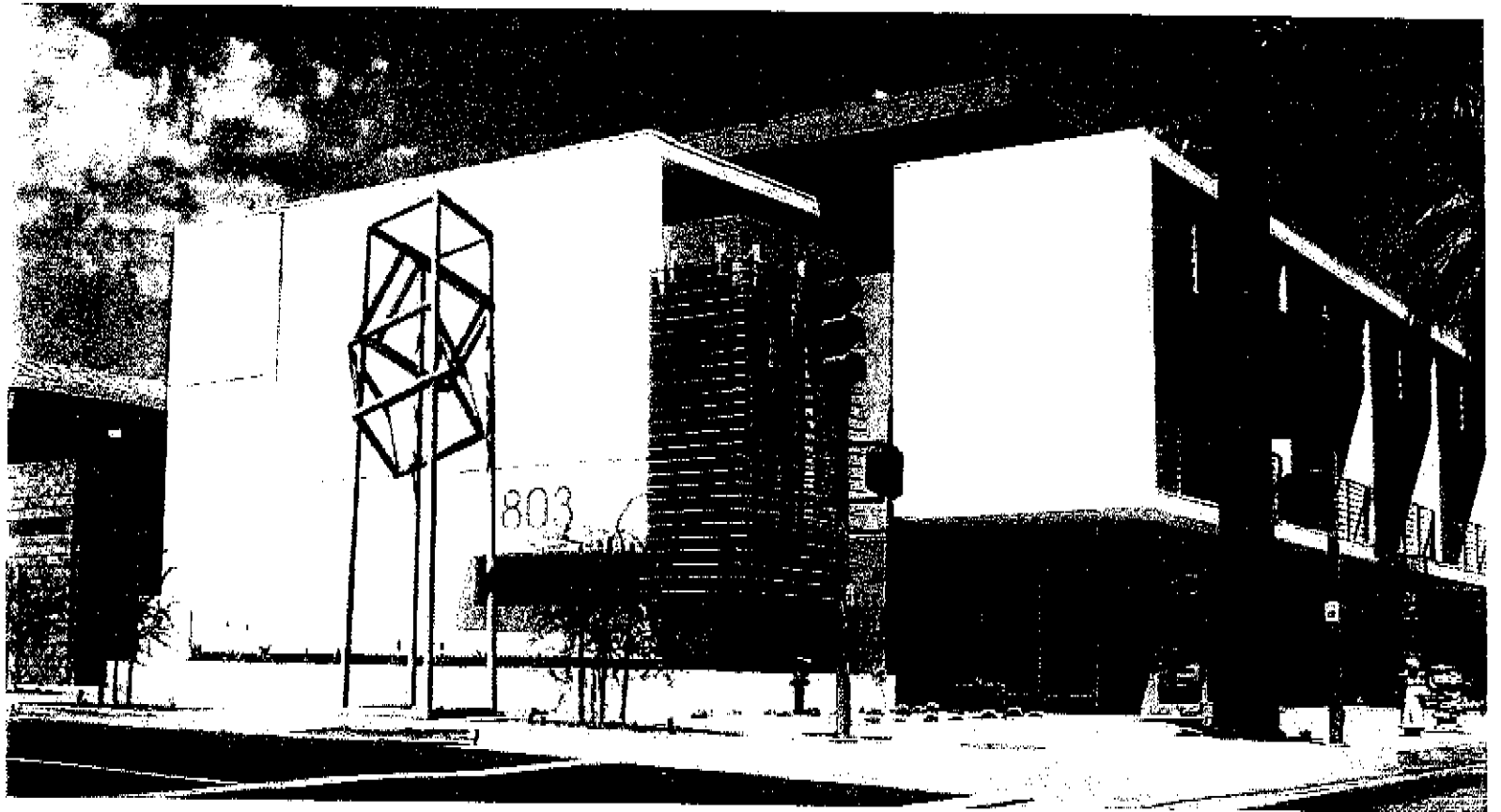
(\$11,000 from 803 NPC and \$47,000 from the City of Palm Springs)

This price is all inclusive and covers all costs associated with the creation and installation of the piece. This price also includes the insurance required to indemnify the City of Palm Springs for the duration of the fabrication and installation of *Intersecting Cubes*. This price includes the artist's fee.

Timeline

The piece can be installed within 8 weeks of funding.

We can coordinate installation around a Palm Springs event to increase awareness.



Summary

Intersecting Cubes aligns with the design sensibility of Uptown.

The sculpture can be a significant marker for the North Palm Canyon Drive Uptown district.

Dramatic lighting design creates a strong visual presence at night on the North Palm Canyon Drive.

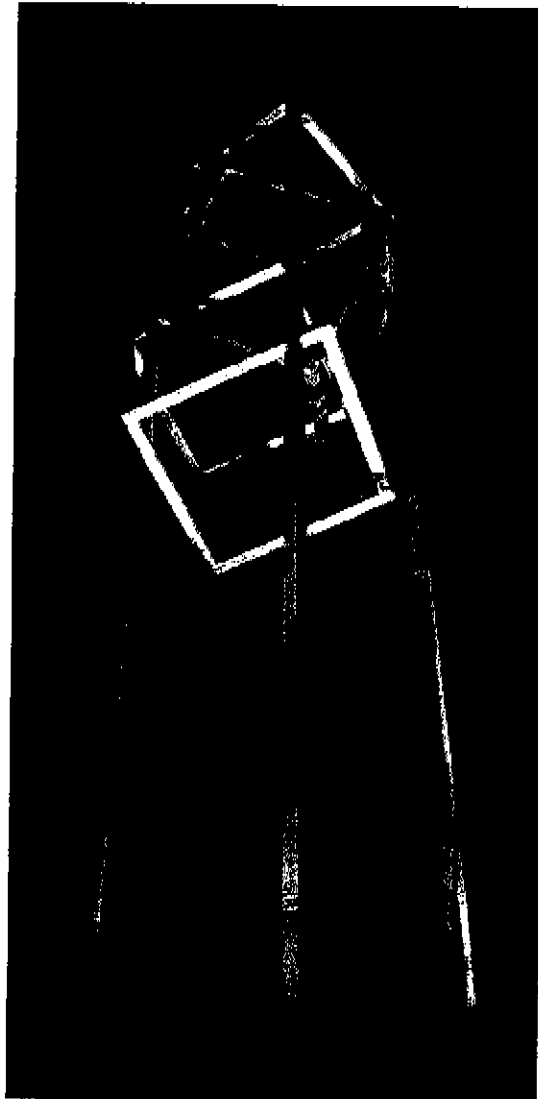
The mayor has been sensitive to the needs of Uptown and a new significant piece of art can be an integral part of the city campaign to elevate the visibility and image of Uptown.

Intersecting Cubes reflects the character of the neighborhood.

Design – Modern – Décor – Art – Architecture

With the installation of *Intersecting Cubes*, *Columns* and the temporary public art projects approved by the commission, Theoretical Architecture will be a presence in Palm Springs...the city of desert modern architecture.

Konductivity will provide (at no cost to the city) local, regional and national press coverage.



For information: Brian Biedul or Dawn Rosenquist
phone: 310.452.8949 cell: 310.570.3329 or 310.570.5529
bbiedul@roadrunner.com
www.biedul.com

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

**CITY OF PALM SPRINGS
City Clerk
P.O. Box 2743
Palm Springs, CA 92263-2743**

Space Above this Line Reserved for Use by Recorder

**AGREEMENT FOR PLACEMENT OF ARTWORK ON PRIVATE PROPERTY AND
GRANT OF EASEMENT**

This AGREEMENT FOR PLACEMENT OF ART ON PRIVATE PROPERTY AND GRANT OF EASEMENT ("Agreement") is entered into as of _____, 2009 by and between the CITY OF PALM SPRINGS, a municipal corporation ("City") and SWEET PEA TRUST, TRUSTEE JAMES M. CASEY ("Owner").

RECITALS:

A. The City has established a Public Arts Program as established by Chapters 2.24 and 3.37 of the Palm Springs Municipal Code ("Public Art Ordinance") which authorizes the placement of works of art on appropriate private property which encourages public access and viewing of the artwork.

B. Under the Public Art Fee Program, artwork may be acquired through the Public Arts Fund, either on City or private property, whether on loan, as a gift or purchase.

C. The City has acquired a work of art and desires to have such work of art placed on the Owner's property in accordance with this Agreement and the City of Palm Springs Public Art Program.

NOW THEREFORE, to comply with the requirements of the Public Art Ordinance, and for good and valuable consideration, the parties hereto hereby agree as follows:

1. Grant of Easement for Display of Public Art. Owner hereby grants and conveys to the City of Palm Springs an easement for permanent use of the Site (as shown in Exhibit "B") for purposes of locating and displaying the Artwork and allowing the public access to the Site to view and enjoy the Artwork at reasonable times and in a reasonable manner ("Contract"), as described in Exhibit "B"; under the terms described in Section 4(b) of this Agreement.

2. Maintenance. The City shall provide all maintenance necessary as recommended by the artist with respect to the Artwork to preserve such Artwork in first class condition. City agrees to maintain the access paths, landscaping and other improvements to the Site. City shall repair and/or replace any damage to the Artwork within a reasonable time after such discovery. When necessary, City shall consult the artist or another competent Artwork conservationist or restoration specialist to determine the best methods of such restoration or repair.

3. Identification. The Artwork shall be identified by a plaque stating the artist's name, the title, the date the Artwork was completed and stating that the Artwork was funded through the City of Palm Springs Public Arts Program. The plaque will be placed in an appropriate location near the Artwork that facilitates viewing by the public.

4. City Representative. The City Manager, or his designee, a Contract Officer of the City ("City Manager"), shall be the City's designated representative with respect to this Agreement. Under the direction of the City Council, the City Manager shall have the authority to give approvals or consents required hereunder and to otherwise act on behalf of the City for purposes of this Agreement.

5. Owner and Representative. The Owner is the owner of certain property ("Property") generally known as 787 North Palm Canyon Drive, as shown on Exhibit "B" attached hereto and incorporated herein. The Owner has agreed to Grant an Easement for the placement of Artwork on a portion of the Owner's property which portion is generally depicted and described as the "Site" on Exhibit "B".

6. Location and Removal of Artwork. In addition to any other remedies provided herein, in the event that the Artwork is destroyed, removed from the Site or improperly maintained by the City, the Owner may require that the City replace the Artwork with substitute Artwork of a comparable quality and value as determined at the sole discretion of the City and with consent of the Owner.

7. Insurance. The City shall procure and maintain, at its sole cost and expense, in a form and content consistent with industry standards, with an insurer qualified to do business in California and rated "A" or better in the most recent edition of Best Rating Guide with a financial class category of Class VII or better, unless such requirements are waived by the Risk Manager of the City, during the entire term of this Agreement and at all times while the Artwork is located on the Site.

8. Indemnification. The City hereby agrees to indemnify, defend, and hold harmless the Owner from and against any and all actions, suits, claims, damages, losses, costs, penalties, obligations, errors, omissions or liabilities (collectively "Claims or Liabilities") arising out of or in any way connected with any act, omission or negligence of City, its agents, employees, or contractors, or from the existence of the Artwork on the Site, or related to this Agreement, including, without limitation, bodily injury to or death of persons, injury or damage to property and attorneys' fees, but excluding such Claims or Liabilities resulting from the negligence or willful misconduct of the Owner, its officers, agents, representatives, or employees.

9. Compliance with the Law. City hereby agrees to comply with all applicable statutes, ordinances, orders, laws, rules and regulations, and the requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and offices thereof, which may be applicable to the display of Artwork on the Site or to the use or manner of use of the Site. Without in any way limiting the foregoing, City agrees to comply with The Visual Artists Rights Act of 1990 (17 U.S.C. 101, *et seq.*).

10. Successors and Assigns. The rights and obligations of Owner under this Agreement shall be applicable to Owner's successors and assigns.

11. Integration. This Agreement and other documents expressly incorporated herein by reference contain the entire and exclusive understanding and agreement between the parties relating to the matters contemplated hereby and all prior or contemporaneous negotiations, agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

12. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

13. Counterparts. This Agreement may be executed in counterparts which, when taken together, shall constitute one executed document as though all signatures appeared on one copy.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

"OWNER"

OWNER: Sweet Pea Trust
MANAGER: _____

By: [Signature]
Name: JAMES H. CASEY
Its: Trustee

By: _____
Name: _____
Its: _____

"CITY"

CITY OF PALM SPRINGS,
a municipal corporation

ATTEST:

By: _____
City Clerk

By: _____
City Manager

APPROVED AS TO FORM:

EXHIBIT "A"

(Artwork)

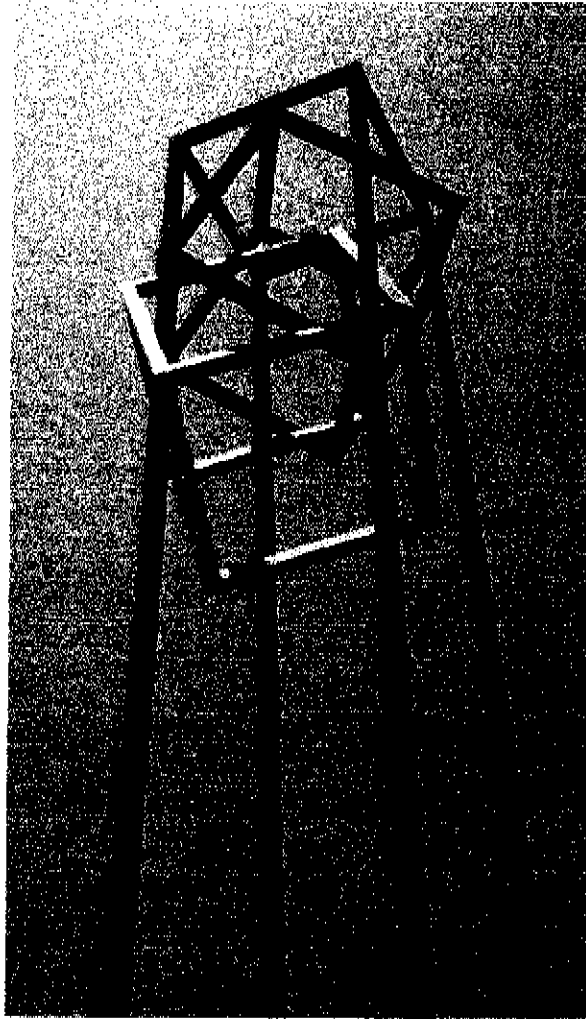


EXHIBIT "B"
ART WORK EASEMENT

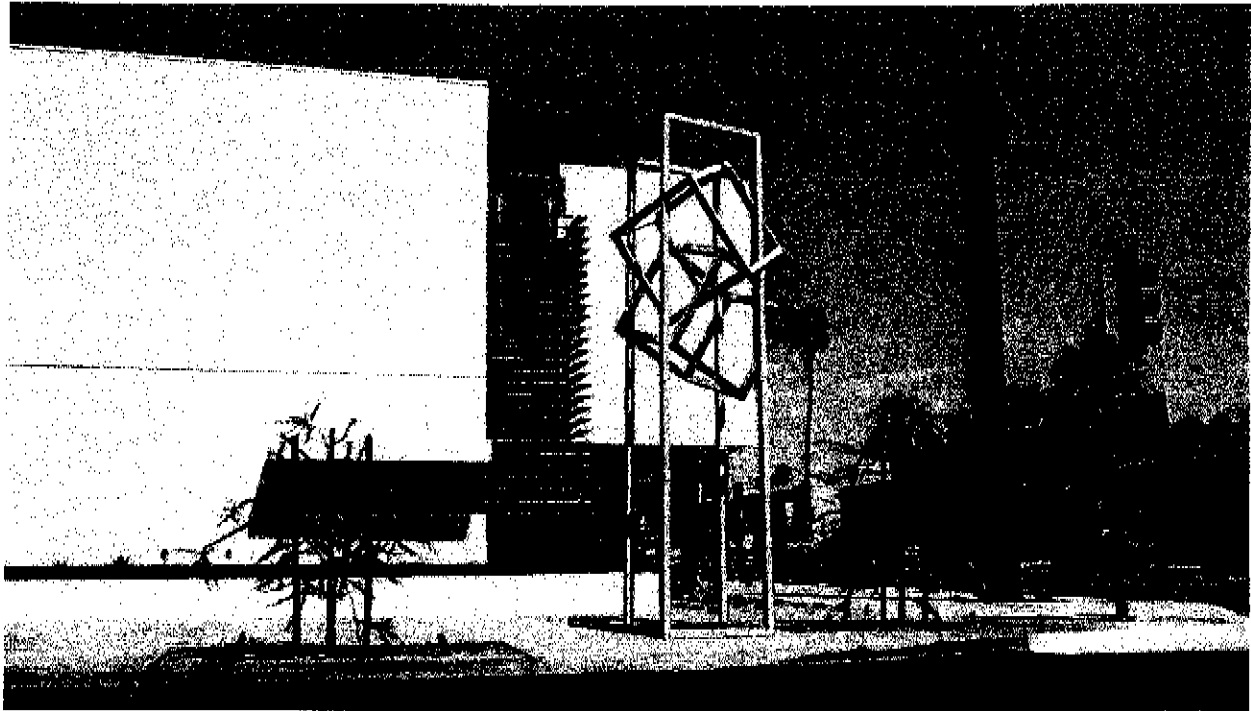


EXHIBIT "B"
(SITE)
PUBLIC ART EASEMENT

Being a portion of Lot 117 of Merito Vista Tract, recorded in Map Book 12, Page 94, official records of Riverside County Recorder, located in the City of Palm Springs, California, in said county, and more particularly described as follows:

Commencing at the Northeast corner of Lot 117, of said tract, thence South 89°36'00" West, a distance of 12.15 feet,

Thence South 0°00'00" West, a distance of 13.50 feet, to the **True Point of Beginning;**

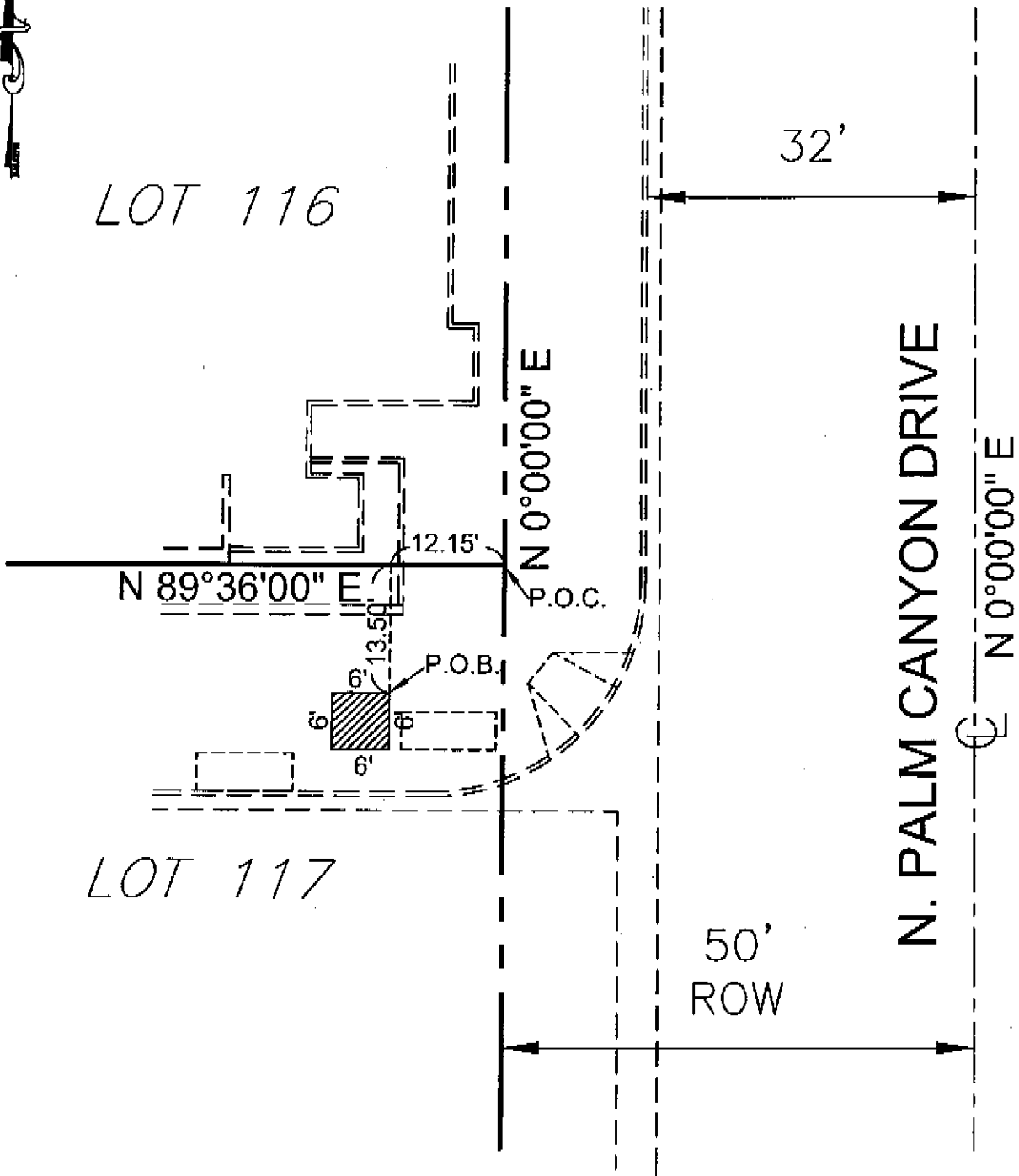
Thence South 89°36'00" West, a distance of 6.00 feet;

Thence South 0°00'00" West, a distance of 6.00 feet;

Thence North 89°36'00" East, a distance of 6.00 feet;

Thence North 0°00'00" East, a distance of 6.00 feet, to the **True Point of Beginning.**

EXHIBIT "B"



MERITO VISTA TRACT, MB 12, PAGE 94, R.C.R.

27

PUBLIC ART EASEMENT

DESIGN BY:
FUP

SCALE:
NTS

FILE NO.:
R 09-007A

CHECKED BY:

DATE
04/06/09

SHEET NO.:
1 OF 1

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles }

On March 23, 2009 before me, Heather J. Santana/Notary Public
Date Here: Insert Name and Title of the Officer

personally appeared James M. Casey
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(e) whose name(e) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(e), or the entity upon behalf of which the person(e) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature [Handwritten Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

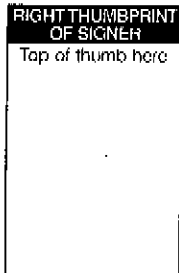
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

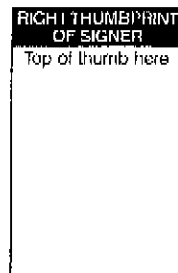
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

AGREEMENT FOR PURCHASE AND SALE OF PUBLIC ARTWORK

THIS AGREEMENT FOR PURCHASE AND SALE OF PUBLIC ART WORK ("Agreement") is entered into this _____ day of _____ 2009, by and between the CITY OF PALM SPRINGS, a municipal corporation ("City"), acting by and through its City Manager, or his designee, a Contract Officer of the City ("City Manager") and Brain Biedul ("Artist").

RECITALS

A. Pursuant to Municipal Ordinance No. 1479, City established the Commission and an Art In Public Places Program ("Program").

B. Artist submitted a proposal to the Commission for the sale and installation of an art piece referred to herein as "Intersecting Cubes" ("Artwork"). The Artwork is offered for sale to the City, acting by and through the City Manager, or his designee, a Contract Officer of the City ("City Manager"). The Proposal, including all relevant specifications, is attached hereto as Exhibit "A" and incorporated herein by reference. Where the Proposal and the terms of Exhibit "A" conflict, the terms of Exhibit "A" shall control.

C. The Proposal provides that the Artwork will be installed in a public space located in Palm Springs more particularly depicted on Exhibit "B" attached hereto (the "Site").

D. Consistent with the objectives of the Commission, and in furtherance of the Program, City desires to purchase from Artist, and Artist desires to sell to City, artwork described in the Proposal.

NOW, THEREFORE, City and Artist, for the consideration and under the conditions hereinafter set forth, and pursuant to the authority, terms and conditions set forth in Municipal Ordinance No. 1479, agree as follows:

1. Scope of Services.

1.1 Fabrication and Completion of the Artwork. Artist has fabricated or caused to be fabricated, the Artwork under the personal supervision of the "Artist" and in conformity with the Proposal, procedures and timeline set forth in the Schedule of Performance (the "Schedule"), attached hereto as Exhibit "C" and incorporated herein by reference. The Artwork shall not deviate in specifications, including, but not limited to, size, design or material from the Proposal, unless the change is approved in writing by motion of the Commission and the City. In addition to the requirements described in Exhibit "A", Artist shall create, transport, and install the Artwork to the Site at its sole cost and expense. The Artist shall install the Artwork with the highest standards of care, giving special consideration to protecting the Artwork from theft and/or breakage.

1.2 City's Installation Costs. City shall not bear, any installation costs as it pertains to the site as described in Exhibit "B", relating to any landscaping alterations, lighting enhancements, and concrete materials, as the City reasonably determines is necessary.

1.3 Consultations and Deviations from Proposal. The Parties agree to cooperate and consult each other during installation of the Artwork to assure compliance with the specifications in the Proposal. Artist will present any proposed installation design changes to the Commission for its approval and acceptance. The Commission shall have sole discretion to approve and accept any such installation design changes.

1.4 Modifications to Installation. The Commission shall have the right, before acceptance of the Artwork as defined in Exhibit "D", to request modifications to the installation of the Artwork. Should such modifications result in an increase in cost to Artist, full documentation of such costs shall be submitted to the City in writing and subject to approval by the City. Upon approval, such increased costs shall be paid to Artist in accordance with the time frames and terms set forth by the City, in addition to the fee to be paid to Artist pursuant to Section 4 below. In the event the modifications result in a reduction of costs to Artist, the fees owed to Artist pursuant to Section 2 below outlined in Exhibit "C" shall be reduced by a like amount. Except as expressly provided in this Agreement, City shall not intentionally damage, alter, modify or change the Sculpture, without the prior written consent of Artist, except in such cases where damage results from an emergency or as set forth in Section 6.2 below.

1.5 City's Removal or Transfer of Artwork. City may remove or transfer the Artwork to another location, provided, however, that the Artwork is not destroyed, mutilated, or modified, as those terms are used in 17 U.S.C. §106A, and so long as the Artwork can be described as created by the Artist.

2. Commencement of Installation of Artwork. Artist shall commence installation of the Artwork upon the receipt of a written "Notice to Proceed" from the City. The Artwork shall be completed in accordance with the Schedule of Performance contained in the Proposal, a copy of which is attached hereto as Exhibit "C".

3. Ownership of Documents, Models. All studies, drawings, designs, and models prepared and submitted by Artist to City relative to this Agreement shall become the property of City. The Commission may permit Artist to borrow such items as needed for the installation of the Artwork. City agrees not to reuse such studies, drawings, and models for the purpose of constructing a full-sized duplicate of the Artwork. City acknowledges and agrees that Artist is the exclusive intellectual property right owner of any and all designs, drawings, models and artwork created by Artist pursuant to this Agreement.

4. Fee and Interim Payments. As consideration for the Artwork and all services by Artist hereunder, City shall pay Artist the fees set forth on the attached Exhibit "D" in accordance with the time frames provided therein ("Fee Schedule").

THE MAXIMUM AMOUNT OF CITY'S OBLIGATION UNDER THIS AGREEMENT IS THE AMOUNT SPECIFIED UNDER THIS SECTION 4 OF THIS AGREEMENT. ARTIST WILL COMPLETE THE WORK AND SERVICES REQUIRED UNDER THIS AGREEMENT FOR THE DESIGN, DEVELOPMENT, CONSTRUCTION, AND INSTALLATION OF THE ARTWORK WITHOUT LIABILITY ON THE CITY'S PART FOR ANY PAYMENT BEYOND SUCH MAXIMUM AMOUNT.

5. Artist's Rights; City's Ownership Rights.

5.1 Alterations. The City, having expended considerable public funds to commission the Artwork, and pursuant to its governmental and proprietary responsibilities, intends to display the Artwork at the Site as originally created by Artist and to maintain the Artwork in good condition. The City must preserve complete flexibility to operate and manage City property in the public's interest. Therefore, City retains the absolute right to alter the Artwork in City's sole judgment.

For example, City may alter the Artwork to eliminate hazard, to comply with the ADA, to otherwise aid City in the management of its property and affairs, or through neglect or accident. If, during or after the term of this Agreement, City finds the Site to be inappropriate, City has the right to cause the Artwork to be installed at an alternate location that City chooses in its sole reasonable discretion.

5.2 Waiver. With respect to the Artwork produced under this Agreement, Artist waives any and all claims, arising at any time and under any circumstances, against City, its officers, agents, employees, successors and assigns, arising under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If the Artwork is incorporated into a building or the Site such that the Artwork cannot be removed from the building or Site without alteration of the Artwork, Artist waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for alteration of the Artwork.

5.3 Good Faith. Where time permits, prior to altering the Artwork, City shall make reasonable good faith efforts to notify and consult with Artist, at the last phone number or address provided by Artist to the City, and to come to a mutually agreeable plan for disposition of the Artwork. Such consultation shall be without charge by Artist unless otherwise specifically agreed in writing. If the Artwork is

altered and City intends to maintain the Artwork on display, City shall make a reasonable good faith effort to engage Artist in the restoration of the Artwork and to compensate Artist for Artist's time and efforts at fair market value, which may be the subject of a future agreement between Artist and City. However, City has no obligation under this Agreement to restore the Artwork to its original condition or to compensate Artist for any restoration work. If Artist fails or refuses to negotiate with City in good faith with respect to any restoration, City may contract with any other qualified art conservator or artist for such restoration.

5.4 Disclaimer. If City alters the Artwork without Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the Artwork in accordance with California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).

6. Artists' Warranties/Waivers.

6.1 Defects in Materials or Workmanship. Artist warrants that the Artwork and Artist services hereunder will be free of defects in workmanship or materials, and that Artist will, at Artist's own expense, remedy any defects due to faulty workmanship or materials appearing during the twelve (12) month period immediately following completion of the installation of the Artwork. This warranty includes any workmanship or materials which cause the Artwork, or the installation, to deteriorate over said twelve (12) month period in a manner inconsistent with the design, the approved plans and specifications or as would otherwise be expected from products made of similar materials, or from any quality within the materials which comprise the Artwork, or their installation, which, either alone or in combination, result in the tendency of the Artwork, or their installation, to deteriorate.

6.2 Public Safety. City and Artist shall cooperate to ensure that the Artwork, or the installation, incorporate no feature which is a danger to the public such as sharp edges or points. The Commission shall review the Artwork and installation plans and shall request any modification relative to public safety prior to installation. Any modifications requested by the Commission shall be governed pursuant to Section 1.3 above. Should hazards in relation to the apparent after installation, City shall have the right to make adjustments and modifications thereto to eliminate such hazards. Artist agrees to cooperate in making adjustments to the site or pedestal or display of the Artwork, if necessary, to eliminate other hazards which become apparent within one (1) year of the date the Artwork is finally accepted by City. City shall solely bear the cost of any such modifications.

6.3 Title. Artist warrants that the Artwork is the result of the artistic efforts of Artist and that the Artwork will be installed and transferred to City free and clear of any liens, claims, or other encumbrances of any type, exclusive of intellectual property rights of Artist.

7. Excuse or Suspension of Contractual Obligations; Force Majeure. The time period(s) specified in the Proposal for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Artist, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if Artist, within fifteen (15) days of the commencement of such delay, notifies the Commission in writing of the causes of the delay.

8. Maintenance of the Artwork. Upon completion of the installation of the artwork, Artist shall provide City with written instructions for appropriate maintenance and preservation of the Artwork.

9. Default; Remedies.

9.1 Disputes. In the event of any dispute arising under this Agreement, the injured party shall notify the defaulting party in writing of the breach or dispute and the facts giving rise thereto. The injured party shall continue performing its obligations hereunder so long as the defaulting party commences to cure such default within fifteen (15) days of receipt of such notice and completes the cure of such default within thirty (30) days after receipt of the notice, or such longer period as may be permitted by the injured party; provided that if the default is or presents an immediate danger to the health, safety and general welfare, City may take immediate action. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to seek arbitration, and such compliance shall not be a waiver of any party's right to seek arbitration in the event that the dispute is not cured.

9.2 Waiver. No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver unless such waiver, delay or omission is memorialized in writing. A party's consent to or approval of any act by the other party requiring the first party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act unless such consent or approval is memorialized in writing. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

9.3 Rights and Remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereunder are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

9.4 Arbitration. In addition to any other rights or remedies, either party may seek arbitration to cure, correct, or remedy any default or to recover damages for any default. Arbitration shall occur in the State of California according to the rules of the American Arbitration Association. The prevailing party shall be entitled to recover reasonable attorney's fees, in addition to all other sums provided by law. The internal laws of the State of California shall govern this Agreement (exclusive of the conflicts of laws provision).

9.6 Termination for Default of Artist. City shall have the right to terminate this Agreement for cause upon any material breach by Artist of the obligations imposed upon Artist under this Agreement, subject to the requirements of Section 9.1 above. In such event, City may after compliance with the provisions of Section 9.1 above, take over the Artwork and complete the installation of the Artwork as such installation is contemplated hereunder, and Artist shall be liable for the reasonable costs City incurs in completing the same. City may withhold payments to Artist for the purpose of off set or partial payment of the amounts owed City as previously stated.

9.7 Termination for Default of City. Artist shall have the right to terminate this Agreement for cause upon any material breach by City of the obligations imposed upon City under this Agreement, subject to the requirements of Section 9.1 above.

9.8 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or is made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs which are incurred in such arbitration and on appeal.

10. Insurance. Artist shall procure and maintain, at its sole cost and expense, until completion of installation of the Artwork, the following policies of insurance:

10.1 Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit.

10.2 Workers' Compensation Insurance. Artist shall maintain insurance and shall provide a copy for City upon execution of this Agreement.

10.3 Automotive Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than either (i)

bodily injury liability limits of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) per person and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) per occurrence and property damage liability limits of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per occurrence and TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) in the aggregate, (ii) combined single limit liability of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), or (iii) limits as set by the City Risk Manager. Said policy shall include coverage for owned, non-owned, leased and hired cars.

All of the above policies of insurance shall be primary insurance and shall name City, its officers, employees and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against City, its officers, representatives, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or canceled without providing thirty (30) days prior written notice by registered mail to City. In the event any of said policies of insurance are canceled, Artist shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the Commission. No work or services under this Agreement shall commence until Artist has provided City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverage's and said Certificates of Insurance or binders are approved by City.

The policies of insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City Risk Manager due to unique circumstances.

11. Intellectual Property and Publicity Rights

11.1. Copyright. Except as noted in this Agreement, the Artist shall retain all copyrights in all original works of authorship produced under this Agreement. Artist's copyright shall not extend to predominantly utilitarian aspects of the work, such as landscaping elements, furnishings, or other similar objects. Notwithstanding any other provision to the contrary, Artist shall not grant, sell, give, or in any way convey to any person or entity of any kind a copy of the Artwork or any component thereof or any likeness or reproduction of the Artwork or any component thereof without the express written approval of the City. Nothing herein shall prohibit the Artist from providing two dimensional images of the Artwork or portions thereof to be included in any portfolio or other resume of the Artist demonstrating or depicting representative samples of the Artist's work.

11.2. City's Intellectual Property License. Artist grants to City, and to City's agents, authorized contractors and assigns, an unlimited, exclusive, and irrevocable license to all rights worldwide with respect to the Artwork and any and all intellectual property or other property of any nature produced, created, or suggested by the

Artist during the term of this Agreement or resulting from the Artist's services shall be deemed a work made for hire and shall be the sole and exclusive property of the City. Such license rights include, but are not limited to the following with respect to the Artwork and any original works of authorship created under this Agreement, whether in whole or in part, in all media (including electronic and digital) throughout the universe:

11.2.1 Implementation, Use, and Display. City may use and display any and all graphic representations or models of the Artwork, as well as the Artwork. To the extent the Artwork involves design elements that are incorporated by City into the design of the Site, City may implement such elements at the Site.

11.2.2 Reproduction and Distribution. City may make and distribute, and authorize the making, display, and distribution of, photographs and any other two or three-dimensional reproductions. City may use such reproductions for any purpose, including advertising, educational, and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multimedia publicity, gifts for City benefactors, documentation of City's Civic Art Collection, and catalogues or similar publications. City shall ensure that such reproductions are made in a professional and tasteful manner, in the sole and reasonable judgment of the City. The proceeds from the sale of any such reproductions shall be used to maintain and support the Artwork or for any other governmental or charitable purpose as determined at the sole discretion of City.

11.2.3 Public Records Requests. Any documents provided by Artist to City are public records and City may authorize third parties to review and reproduce such documents pursuant to public records laws.

11.2.4 Title to Work Product. Without limiting the generality of the foregoing, title to all drawings, plans, ideas, concepts, specifications, models, or other tangible work product produced by the Artist pursuant to this Agreement shall become the property of the City when produced. The City shall own the worldwide right, title and interest in such work product. Artist shall deliver all such original work product to the Commission upon the completion or sooner termination of the Artist services under this Agreement but may retain copies thereof for its permanent records so long as the same are not used without the City's prior express written consent.

11.3 Third Party Infringement. The City is not responsible for any third party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.

11.4 Credit. Artist hereby agrees that all formal references to the Artwork and any reproductions of the Artwork in any form shall include the following credit: "Collection of the City of Palm Springs, CA." City shall credit Artist for the Artwork upon publication of any two or three dimensional reproductions of the Artwork.

11.5 Publicity. City shall have the right to use Artist's name, likeness, and biographical information, in connection with the display or reproduction and distribution of the Artwork including all advertising and promotional materials regarding the City. Artist shall be reasonably available to attend any inauguration or presentation ceremonies relating to the public dedication of the Artwork.

11.6 Trademark. In the event that City's use of the Artwork creates trademark, service mark, or trade dress rights in connection with the Artwork, City shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress. Artist may not use the Artwork in any manner that would cause a likelihood of confusion as to source or sponsorship by City, its agents or assigns, or to dilute the distinctive quality of such mark.

11.7 Unique. Artist warrants that the design of the Artwork as expressed in the Proposal is an edition of one, and that neither Artist nor Artists' agents will execute or authorize another to execute another work of the same or substantially similar image, design, dimensions, and materials as the Artwork. Artist may create works that utilize or incorporate various individual art elements that comprise the Artwork, so long as the work utilizing or incorporating such individual elements (1) does not consist predominantly of such elements; (2) is not the same or substantially similar in image, design, dimensions, and materials as the Artwork; and (3) is not displayed in an environment that is the same or substantially similar to the environment in which the Artwork is to be displayed at the Site. This warranty shall continue in effect for a period consisting of the life of Artist plus 70 years or for the duration of the Artwork's copyright protected status, whichever is longer, and shall be binding on Artist and Artist's heirs and assigns. In the case where Artist is comprised of two or more individual persons or a group of people, the measuring life shall be the life of the last surviving individual person comprising Artist. Recognizing that City has no adequate remedy at law for Artist's violation of this warranty, Artist agrees that, in the event Artist breaches this warranty, City shall be entitled to enjoin Artist's breach.

11.8 Resale Royalty. If City sells the Artwork as a fixture to real property, and if the resale value of the Artwork is not itemized separately from the value of the real property, the Parties agree that the resale price of the Artwork shall be presumed to be less than the purchase price paid by City under this Agreement. Thus, City has no obligation to pay resale royalties pursuant to California Civil Code §986 or any other law requiring the payment of resale royalties. If City sells the Artwork as an individual piece, separate from or itemized as part of a real property

transaction, City shall pay to Artist a resale royalty to the extent required by law, based upon the sale price of the Artwork.

12. Documentation. To the extent possible, Artist shall provide information on the Artwork requested by the Commission for its registration files.

13. Repair and Restoration. It is the current policy of the Commission to consult with Artist regarding repairs and restoration which are undertaken during Artist's lifetime when that is practical. To facilitate consultation, Artist will, to the extent feasible, notify the Commission of any change in his professional address.

14. Reputation.

14.1 City's Commitment. The City agrees that it will not use the Artwork or Artist's name in a way which reflects discredit on the Artwork or on the name of Artist or on the reputation of Artist.

14.2 Artist's Commitment. Artist agrees that it will not make reference to the Artwork or reproduce the Artwork or any portion thereof in a way which reflects discredit on City or the Artwork.

14.3 No Assignment or Transfer. The personal skill, judgment and creativity of Artist are essential elements of this Agreement. Therefore, Artist shall not voluntarily or involuntarily assign, convey, subcontract, hypothecate, encumber or otherwise transfer any portion of this Agreement or any of the services to be performed hereunder without the express written consent of City, which consent may be withheld in City's sole and absolute discretion. In the event of such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void.

15. Artist as Independent Contractor.

15.1 Neither City nor any of its employees shall have any control over the manner, mode or means by which Artist, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Artist employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Artist shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Artist shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of the City. City shall not in any way or for any purpose become or be deemed to be a partner of Artist in its business or otherwise or a joint venture or a member of any joint enterprise with Artist.

15.2 City and the Commission may require Artist to make such revisions to the Proposal as are necessary for the installation of the Artwork to comply with applicable statutes, ordinances or regulations governing the services of Artist hereunder. Artist acknowledges (i) that Labor Code Section 1771 may require the payment of prevailing wages and (ii) the Public Contracts Code may require that certain aspects of the installation of the Artwork be publicly bid. Upon request of City, Artist shall make such revisions to the installation of the Artwork and/or supply data to City as is necessary for the installation of the Artwork to comply with the Labor Code or Public Contracts Code; provided, however, that any such changes that increase Artist costs to complete the installation shall be paid to Artist in advance of the installation of the Artwork.

16. Conflict of Interest. No officer, representative or employee of City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer, representative or employee participate in any decision relating to the Agreement which effects his or her financial interest or the financial interest of any corporation, limited liability company, partnership or association in which he or she is, directly or indirectly, interested, in violation of any Federal or California statute or regulation. Artist warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

17 Covenant Against Discrimination. Artist covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Artist shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

18. Integration; Amendments. This Agreement contains all of the agreements of the parties and cannot be modified, terminated or rescinded, in whole or in part, unless written and signed by authorized representatives of the parties hereto. No prior oral or written understanding shall be of any force with respect to those matters covered in this Agreement.

19. Governing Law. This Agreement and all matters pertaining thereto shall be construed according to the laws of the State of California.

20. Licenses, Permits and Fees. Any licenses, permits, and approvals required by law for installation of the Artwork on City property shall be obtained by the City at City's sole cost and expense.

21. Further Responsibilities of the Parties. Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and

take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the services of the other.

22. City Manager. The City Manager shall be the City's designated representative with respect to this Agreement. Unless otherwise specified herein, any approval of the City required hereunder shall mean the approval of the City Manager. Except as otherwise directed by the City Council, the City Manager shall have the authority to give any approvals or consents required hereunder and to otherwise act on behalf of City in order to carry out the terms of this Agreement.

23. Notices. Any notice which either party may desire to give to the other party under this Agreement must be in writing and may be given by personal delivery or by mailing the same by registered or certified mail, return receipt requested, to the party to whom the notice is directed at the address of such party hereinafter set forth, or such other address and to such other persons as the parties may hereafter designate, or by facsimile when followed by a facsimile confirming receipt:

To Artist: Brain Biedul
 2507 20th Street
 Santa Monica, CA 90405

To City: City Manager
 Public Arts Administrator
 City of Palm Springs
 P.O. Box 2743
 Palm Springs, CA 92263

Copy to: City Attorney
 City of Palm Springs
 P.O. Box 2743
 Palm Springs, CA 92263

A change in the designation of the person or address to which submittals, requests, notices or reports shall be delivered is effective when the other party has received notice of the change by certified mail or by facsimile when followed by a return facsimile confirming receipt.

24. Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original on the same counterpart.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

"ARTIST"

a : _____

By: _____

Its: _____

"CITY"

CITY OF PALM SPRINGS,
a municipal corporation

ATTEST:

By: _____
City Clerk

By: _____
City Manager

APPROVED AS TO FORM:

EXHIBIT "A"
(PROPOSAL)
(Specifications)

The Artist proposal and specifications for the artwork titled "Intersecting Cubes" is as follows:

General Description: Zinc-Aluminum metallized and clear powder-coated and welded together. The sculpture stands eighteen (18) feet in height, four (4) feet in width by four (4) in width. The sculpture will be fabricated by the artist, Brain Biedul, at his studio located in Santa Monica, CA.

Maintenance: The sculpture will need periodic wipe down with sponge and water to remove sand and dust. The City will assume maintenance responsibility.

One of a Kind: The sculpture is unique and will not be reproduced. There is a maquette which will be given to the City of Palm Springs.

Costs: The \$58,000 cost includes all materials to fabricate the steel sculpture and delivery and installation charges.

City Responsibility: The City will assume maintenance responsibility after the sculpture has been installed.

Timeline: The sculpture will be completed within four (4) months after the execution of this Agreement by all parties.

EXHIBIT "A"

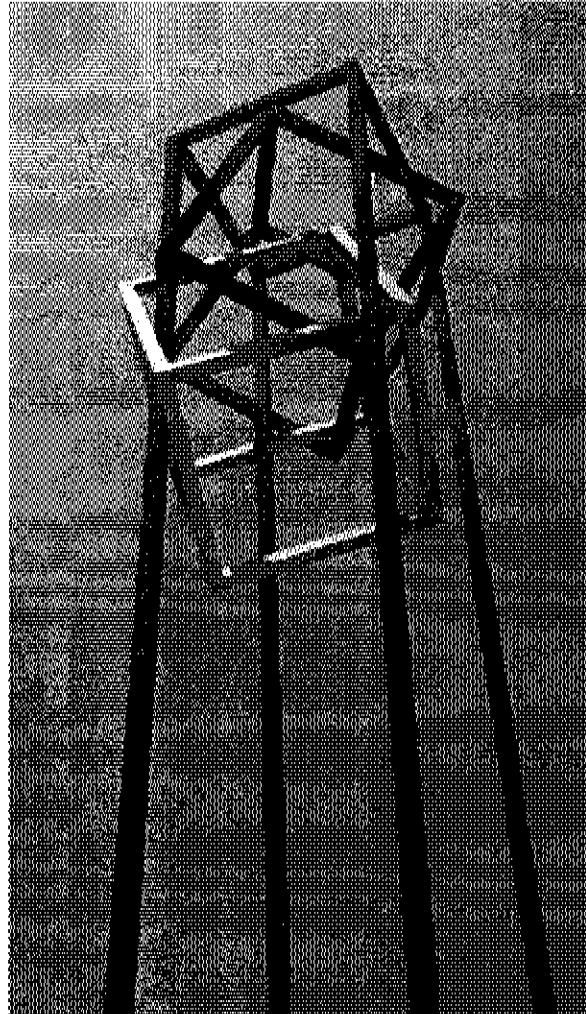


EXHIBIT "B"
(SITE)
PUBLIC ART EASEMENT

Being a portion of Lot 117 of Merito Vista Tract, recorded in Map Book 12, Page 94, official records of Riverside County Recorder, located in the City of Palm Springs, California, in said county, and more particularly described as follows:

Commencing at the Northeast corner of Lot 117, of said tract, thence South 89°36'00" West, a distance of 12.15 feet,

Thence South 0°00'00" West, a distance of 13.50 feet, to the **True Point of Beginning;**

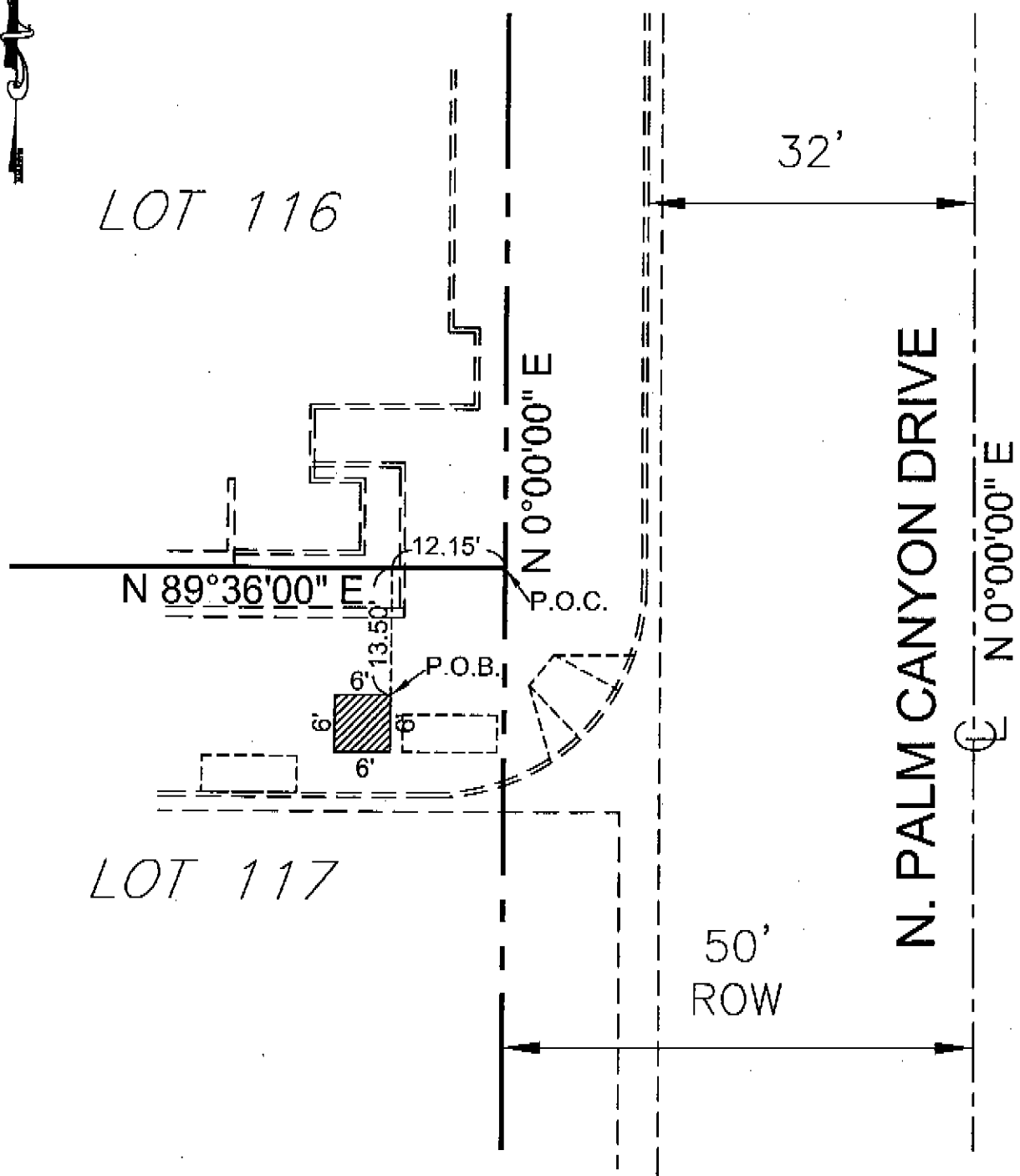
Thence South 89°36'00" West, a distance of 6.00 feet;

Thence South 0°00'00" West, a distance of 6.00 feet;

Thence North 89°36'00" East, a distance of 6.00 feet;

Thence North 0°00'00" East, a distance of 6.00 feet, to the **True Point of Beginning.**

EXHIBIT "B"



MERITO VISTA TRACT, MB 12, PAGE 94, R.C.R.

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PUBLIC ART EASEMENT

DESIGN BY: FUP	SCALE: NTS	FILE NO.: R 09-007A
CHECKED BY:	DATE 04/06/09	SHEET NO.: 1 OF 1

EXHIBIT "B"
(SITE)

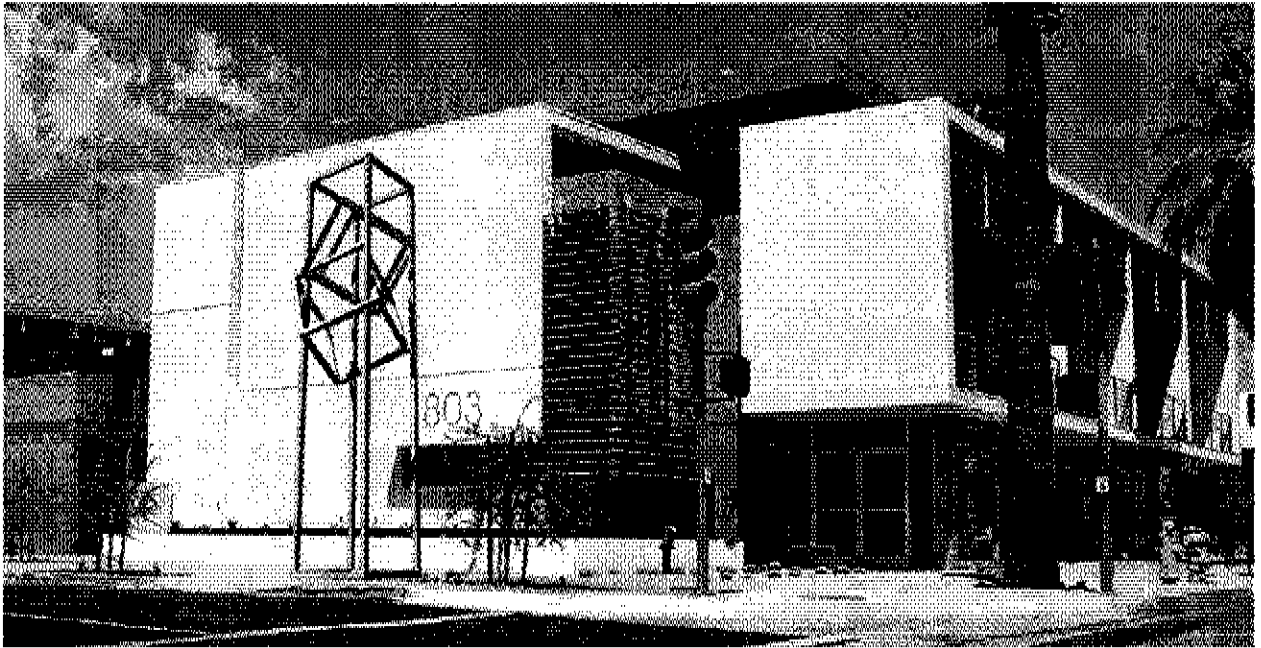


EXHIBIT "C"
(SCHEDULE OF PERFORMANCE)

The artist shall begin fabrication of the sculpture within 15 days after the full execution of this Agreement.

The finished sculpture will be delivered to the site within four (4) months after the execution of this Agreement.

Artist shall furnish to the Commission, within 30 (thirty) days after the execution of this Agreement, a schedule for completion of fabrication of sculpture and estimated date of delivery.

Artist shall furnish to the Commission, every 15 (fifteen) days after the start of fabrication of the sculpture, photocopies of any working drawings or photographs showing the progress of the fabrication process.

EXHIBIT "D"
(FEE SCHEDULE)

The \$58,000 cost includes all materials necessary to fabricate the sculpture, delivery and installation charges, lighting enhancements, landscaping alterations and concrete materials as determined necessary. Payment for the "Intersecting Cubes" Sculpture shall be as follows:

First payment in the amount of \$14,500 shall be payable upon execution of this Agreement;

Second payment in the amount of \$43,500 shall be payable within 30 days after July 1, 2009, commencement of the 2009-2010 fiscal year.

EXHIBIT "D-1"
(SPECIAL REQUIREMENTS)

Waiver of certain Insurance Requirements as specified under Section 10 of this Agreement.

1. Contractor is a sole proprietor; therefore, Section 10.2 Workers' Compensation Insurance does not apply.

EXHIBIT "E"
(BILL OF SALE)

BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT is made as of _____ from _____ (Seller) to the CITY OF PALM SPRINGS, a municipal corporation ("Buyer").

That for good and valuable consideration to be paid pursuant to the provisions of that certain Agreement for Purchase and Sale of Public Art Work dated _____, 2009 between Buyer and Seller (the "Purchase Agreement") Seller does hereby sell, assign, transfer and deliver unto Buyer, and its successors and assigns, that certain work created by Seller entitled _____ "(the "Property")", including all right, title and interest therein, and shared copyrights thereto.

Seller does hereby represent and warrant to Buyer that Seller is the lawful owner of such personal property, and that Seller had good right to sell the same as aforesaid and will warrant and defend the title thereto unto buyer, its successors, subsidiaries, parent corporations, affiliates and loan participant.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the date first above written.

_____, Artist

(Tax.I.D. Number)

By: _____
Signature

CITY OF PALM SPRINGS
a municipal corporation

By: _____
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY: _____