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CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA PROVIDING FOR TEXT AMENDMENTS TO THE CITY OF CORAL GABLES OFFICIAL ZONING CODE, ARTICLE 3, "DEVELOPMENT REVIEW", DIVISION 20, "ART IN PUBLIC PLACES", AMENDING THE ART IN PUBLIC PLACES CODE PROVISIONS AND ARTICLE 8, "DEFINITIONS", AMENDING AND CREATING NEW DEFINITIONS; AND PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, in 2010, the City hired professional public art consultants, VIA Partnership and Todd Bressi (collectively the "Consultant") to assist with creation of a Public Art Master Plan and Guidelines for the City's new Art in Public Places program; and,

WHEREAS, the City Commission adopted the Master Plan and Guidelines on September 14, 2010, through Resolution No. 2010-199; and,

WHEREAS, as part of their scope of work, the Consultant provided the City with detailed input on suggested revisions to the Art in Public Places Zoning Code provisions set forth in the City Zoning Code as Article 3, Division 20 to align the Code with the adopted Guidelines, and to clarify certain provisions; and,

WHEREAS, the City has been administering the Art in Public Places program for about two years, and finds that certain amendments to the Code would be beneficial to its administration; and,

WHEREAS, City Staff is requesting Zoning Code text amendments to amend and clarify the Art in Public Places Code Provisions, as set forth herein; and,

WHEREAS, the Cultural Development Board on April 25, 2012, reviewed the proposed changes and unanimously recommended approval with certain changes that were incorporated; and,

WHEREAS, the Historic Preservation Board on December 20, 2012, reviewed the proposed changes and unanimously recommended approval; and,

WHEREAS, after notice duly published, public hearings were held before the Planning and Zoning Board on February 13, 2013 and May 8, 2013, at which hearing all interested parties were afforded the opportunity to be heard; and,

WHEREAS, the Board on May 8, 2013 was presented with the text amendment to the Official Zoning Code, and after due consideration, recommended (approval/denial) (vote: _-_) of the text amendment; and,

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WHEREAS, after notice duly published, a public hearing for First Reading was held before the City Commission on May 28, 2013, at which hearing all interested parties were afforded the opportunity to be heard; and,

WHEREAS, the City Commission was presented with a text amendment to the Zoning Code, and after due consideration and discussion, (approved/denied) the amendment on First Reading (vote: __-__).

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA:

SECTION 1. The foregoing 'WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2. The Official Zoning Code of the City of Coral Gables is hereby amended as follows:

Article 3, Division 20 is hereby replaced with the following:

Division 20. Art in Public Places Program

Section 3-2001. Purpose.

The City of Coral Gables has adopted a municipal program providing for the acquisition and maintenance of art in public places, as contemplated by, and consistent with, Section 2-11.15 of the Miami-Dade County Code of Ordinances entitled "Works of Art in Public Places," as it shall be amended from time to time. It is the purpose of this Division to establish a formal requirement for the City pertaining to the funding, acquisition, placement and maintenance of Public Art and Historic Public Art. This requirement, and the policies and procedures that implement it, are referred to as the City of Coral Gables Art in Public Places Program.

The policies and procedures for this program are outlined in the Guidelines, which may be revised and clarified from time to time upon the recommendation of the Cultural Development Board and final approval by Resolution of the City Commission. It is the intention of this program to preserve the City's artistic heritage, enhance its character and identity, contribute to economic development and tourism, add beauty and interest to spaces visible to the public and increase opportunities for the public to experience and participate in the arts through the acquisition and installation of world-class art in publicly accessible areas.

Section 3-2002. Applicability.

The Art in Public Places Program applies to Municipal and Non-Municipal Construction Projects. The minimum requirements for new governmental buildings are governed by the Miami-Dade County Code as amended, namely Ordinance No. 94-12, which requires not less than one and one-half percent (1½%) of the construction cost of new governmental buildings be devoted towards the acquisition, repair, and maintenance of public art. The provisions in this Division are supplemental to and generally more restrictive than Miami-Dade County Code provisions. If the Miami-Dade County Code provisions relating to new governmental buildings are not enforced by the City, Miami-Dade County may enforce the same. Should a conflict arise between these provisions and Miami-Dade County provisions, the more restrictive shall apply. A commercial property owner who is not subject to the Art in Public Places Program may opt into the Program by submitting proposed Public Art to the review process outlined in Section 3-2003, as such section applies to the acquisition or commissioning of Public Art; provided, however, the requirements regarding value shall not apply.

Section 3-2003. Art in Public Places Fund Requirements, Waivers, and Exemptions.

A. Fund Requirements. Two funds will be established for the Art in Public Places Program (each a "Fund" and collectively "Funds"). The first fund will be entitled Historic Public Art Fund and will be funded through payments from budgets of one percent (1%) of Municipal Construction Projects. The second fund will be entitled Art Acquisition Fund and will be funded through Art in Public Places Fees as well as one-half percent (½%) of Municipal Construction Projects. Each of these funds will be interest bearing and revolving and may only be used for the purposes outlined in the Guidelines. Persons or entities other than those required to make payments to the Funds pursuant to this Ordinance may make a voluntary donation to either of the Funds by specifying that the use of such donation shall be deposited in the expressly identified Fund.

1. Historic Public Art Fund. One (1.0%) percent of the Aggregate Project Value for City of Coral Gables Municipal Construction Projects shall be transferred to an account entitled Historic Public Art Fund which will be used for the restoration, Extraordinary and Ordinary Maintenance and acquisition of Historic Public Art. Application of this Fund shall be approved by the City Commission with recommendations from the Historic Preservation Board and the Historical Resources Department.

2. Art Acquisition Fund. The Developer of any Non-Municipal Construction Project with an Aggregate Project Value of one million dollars ($1,000,000.00) or more and not exempted as provided in subsection C below, shall contribute One (1.0%) percent of the Aggregate Project Value to the Art Acquisition Fund established by the City. In addition, one-half percent (½%) of Municipal Construction Projects that fall under the Miami-Dade County Code provisions described in Section 3-2002, shall be deposited in the Art Acquisition Fund. A Developer may seek a waiver of the requirement of this Section A-2 as provided in subsection B below. Application of this Fund shall be in accordance with the Guidelines and Master Art Plan.

B. Waiver of the Art in Public Places Fee. A Developer of a Non-Municipal Construction Project that is not exempt as set forth in subsection C below may petition to waive the Art in Public Places Fee requirement by one or more of the following:

1. Acquiring or commissioning artwork, which has an appraised value equal to or greater than the amount of the Art in Public Places Fee that otherwise would be required, with such artwork to be incorporated within the Developer's project; or

2. Donating and installing artwork to the City with an appraised value equal to or greater than the amount of the Art in Public Places Fee that otherwise would be required, and providing for the perpetual maintenance of such artwork; or

3. Causing the purchase, designation, restoration, or perpetual maintenance of historically significant buildings in an amount equal to or greater than the amount of the Art in Public Places Fee that otherwise would be required; or

4. Causing the purchase of parcels identified in the City's Parks and Open Space Inventory Analysis in an amount equal to or greater than the amount of the Art in Public Places Fee that otherwise would be required and donating such parcels to the City.

A Developer seeking a waiver pursuant to subsections B1 or B2 herein shall submit the proposed Artist and artwork concept to the Cultural Development Board for review, with assistance of the Arts Advisory Panel, in accordance with the Guidelines. The Cultural Development Board shall recommend to the City Commission whether to approve, deny, request further information or approve with conditions, the selection and location of artwork, and the City Commission shall have final approval of the concept (if work is to be commissioned) or the artwork (if the artwork is extant). The value of donated or acquired artwork shall be confirmed by a certified art appraiser (or person with professional arts credentials otherwise acceptable to the City), with the cost of such appraisal to be borne by the Developer and which shall not be included in the 1% budget for art. The value of commissioned work will be determined by the value of the contract for such commission, including construction, design, engineering, permitting, legal,

and installation costs. Landscaping and lighting, unless integral to the art piece structure, are not part of the value of the commissioned work. Ownership and title of works incorporated into private construction shall remain with the property owner, who will be required to maintain the artwork in good condition. The property owner's obligations regarding maintenance and access for such artwork shall be set forth in a recorded restrictive covenant acceptable to the City Attorney's Office, which obligations shall run with the land. Removal or alteration of artwork incorporated into private property shall only be permitted with City approval in accordance with the Guidelines, and shall require payment to the Art Acquisition Fund of the Art in Public Places Fee that otherwise would have been originally required. Ownership of works donated to the City and placed on City property shall be owned by the City. Any Public Art created or installed through a partnership between a Developer and the City to place free-standing Public Art on City property to satisfy all or part of that Developer's Art in Public Places Fee requirement may be presented to the City Commission for review and approval without any prior board review. All contracts for artwork that will be acquired or accepted for ownership by the City must be reviewed and approved as to form and legal sufficiency by the City Attorney's Office,

A Developer seeking waiver pursuant to subsections B3 or B4 herein shall submit the request to the City Commission for approval with a recommendation of the Historic Preservation Board for B3 and Parks and Recreation Advisory Board for B4, as well as staff. The value of donations shall be determined by a qualified appraiser acceptable to the City, which in the case of real estate shall be by an appraiser who is an Appraisal Institute member holding the MAI designation and the cost of such appraisal will be borne by the Developer.

No other waivers of the Art in Public Places Fee shall be permitted.

C. Exemptions from the City of Coral Gables Art in Public Places Program. The following are exempt from the requirements of this Division and are not required to pay into a Fund or seek a waiver from paying into a Fund:

   1. New construction, additions and modifications to single-family residences;

   2. Construction projects, which are required to pay a public art fee pursuant to other applicable Miami-Dade County regulations, provided payment has been paid, documented and approved to the City's satisfaction;

   3. Non-Municipal Construction Projects with an Aggregate Project Value of less than one million dollars ($1,000,000.00); and

   4. Construction Projects at an accredited college and/or university that maintains at its campus a publicly accessible permanent collection of art of at least thirty (30) sculptures and/or other Public Art in accordance with a Campus Art Master Plan. In order to maintain this exempt status, the accredited college and/or university must satisfy all of the following criteria:

      a. A Campus Art Master Plan shall initially be submitted for review and approval by the City Commission to confirm the sufficiency of the Campus Art Master Plan; and

      b. A report of the Campus Art Master Plan, demonstrating changes to the collection of Public Art on the campus shall be made to the City Commission in December 2010, and every third (3rd) year thereafter.

D. Applicants wishing to pursue installation of Art in Public Places must meet the special design and administrative considerations discussed below in Section 3-2004. After submission to and review by the applicable boards, the City Commission, in its sole and absolute discretion, may approve the submitted concept for Public Art. It is the intention and direction of the City that Public Art approved through the City's Art in Public Places Program shall be permitted with regard to aesthetic characteristics after a review is conducted and a determination is made that the Public Art is appropriate in design and proposed construction.

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Section 3-2004. Administration.

A. Annual Inventory Priorities. The Historic Preservation Board or its designee, as determined by the City Manager, shall submit to the City Commission an annual report that recommends priorities for the disbursement of Historic Public Art Funds as they become available.

B. Master Art Plan and Guidelines. The Cultural Development Board shall recommend a Public Art Master Art Plan, which shall be reviewed and recommended by the Board of Architects specifically to consider locations recommended for future placement of artwork. The recommendation of each Board shall be subject to final review and approval by the City Commission. If approved, the Master Art Plan will govern location and selection criteria for art work. Written Guidelines shall include policies and procedures for managing City-initiated public art projects, guiding Developers who have an Art in Public Places requirement, and managing the Art Acquisition Fund and Historic Public Art Fund. The Guidelines shall govern the manner and method of submission of proposed works of art to the Cultural Development Board, the process by which the Arts Advisory Panel shall make recommendations to the Cultural Development Board, and the process by which the Cultural Development Board shall recommend to the Coral Gables City Commission.

C. Accounting. The Historic Preservation Board and the Cultural Development Board, or their designees as determined by the City Manager, shall each submit an annual report providing a detailed accounting of monies spent or earmarked for future expenditures from the Funds to the City Manager.

D. Selection of Public Art by the City Using the Art Acquisition Fund. The selection of Public Art using the Art Acquisition Fund, shall be by Resolution of the Coral Gables City Commission upon recommendation by the Economic Sustainability Department and Cultural Development Board with the assistance of the Arts Advisory Panel, as needed. The principles governing selection criteria for Public Art are more fully set forth in the Guidelines and Master Art Plan, but at a minimum shall require that works of art satisfy all of the following:

1. Are publicly accessible.

2. Are created by an Artist.

3. Demonstrate excellence in aesthetic quality, workmanship, innovation and creativity;

4. Are appropriate in scale, form, content and of materials/media suitable for the site;

5. Demonstrate feasibility in terms of budget, timeline, safety, durability, operation, maintenance, conservation, security and/or storage and siting; and

6. Bring diversity to the City's public art collection in terms of media, artistic discipline and/or artistic approach.

E. Ownership and Maintenance.

1. The City shall be deemed the owner of and shall retain title to each work of Public Art acquired using either of the Funds. The City is charged with the custody, supervision, and preservation of such works of art.

2. Artists, as part of any contractual agreement with the City for the provision of a work of art, shall be required to submit to the Cultural Development Board a "Maintenance and Inventory Sheet", including the annual cost projections, which details the maintenance and ongoing care of the work and signage/credit recommendations. The City may require an assessment by a professional conservator.

Section 3-2005. Enforcement.

A. The City shall not issue a building permit for a Municipal or Non-Municipal Construction Project where the Developer has chosen to pay the Art in Public Places Fee until the required contribution has been

deposited in the appropriate Fund as described herein and in the Guidelines and Master Art Plan. There shall be no reimbursements of Art in Public Places Fees once deposited in the appropriate Fund.

B. The City shall not issue a building permit for a Non-Municipal Construction Project where the Developer has chosen to obtain a waiver of the Art in Public Places Fee payment until the City Commission has by Resolution approved the waiver by approving a concept plan for incorporation of Public Art into the Project, approving a concept plan and location of Public Art elsewhere in the City, or accepting a waiver for contribution to a historically significant building or purchase of a parcel of land for the City's parks and open space, as outlined above.

C. The City shall not issue a certificate of occupancy for a Non-Municipal Construction Project where the Developer has chosen to obtain a waiver of the Art in Public Places Fee payment until all approved Public Art has been installed in accordance with approved plans and/or required documentation regarding the waiver and/or Public Artwork has been provided to the City.

ARTICLE 8 – DEFINITIONS is amended by adding the following, most of which have been relocated from Article 3, Division 20, "Art in Public Places":

Aggregate Project Value means the total of all hard and soft construction and design costs associated with a particular construction or renovation project regardless of the number of permits associated with the project, or whether it is a phased project.

Arts Advisory Panel means a panel composed of art experts who shall make recommendations to the Cultural Development Board on commissions and acquisitions of individual artwork projects. Arts Advisory Panel members are professionals in the visual arts, art history, design, architecture, landscape architecture or urban design.

Art Acquisition Fund means a separate, dedicated, interest bearing and revolving fund established in the City Treasury into which Art in Public Places Fees are collected and deposited for acquisition, commissioning, exhibition, Extraordinary Maintenance and Conservation of Public Art.
Art in Public Places or Public Art means tangible creations by artists that exhibit the highest quality of skill and aesthetic principles, including but not limited to the following: paintings, sculptures, stained glass, projections, light pieces, statues, bas reliefs, engravings, carvings, frescoes, mobiles, murals, collages, mosaics, tapestries, photographs, drawings, monuments and fountains or combinations thereof, and that are one-of–a-kind or part of an original, numbered series. The artwork must be created for placement in a public place or publicly accessible private space, or integrated into the underlying architecture, landscape design or site. 'Art in Public Places" and "Public Art" do not include items manufactured in large quantities by the means of industrial machines, reproductions or architectural elements unless designed by a professional Artist. Works of art may be permanent, temporary or functional, and can encompass the broadest range of expression, media and materials.

Art in Public Places Fee means the amount paid by a Developer for a non-exempt Non-Municipal Construction Project to the City in fulfillment of the Art in Public Places Program requirements, as set forth in Section 3-2003.

Artist means an individual generally recognized by critics and peers as a professional practitioner of the visual arts, as judged by the quality of that professional practitioner's body of work, educational background, experience, past public commissions, exhibition record, publications, receipt of honors and awards, training in the arts, and production of artwork.

Campus Art Master Plan means a plan prepared by an accredited college or university in the City that outlines the selection, criteria, placement and maintenance of a permanent collection and future sculptures and other Public Art on the campus, and describes plans for the evolution and growth of such Public Art collection over time.

Developer means the person or entity undertaking a Non-Municipal Construction Project or Public-Private

Joint Venture Project that is subject to the Art in Public Places Fee.

Guidelines means *The City of Coral Gables Art in Public Places Program: Funding, Goals, and Implementation Guidelines*, which is a guide that outlines policies and procedures for the Art in Public Places program. The Guidelines may be revised from time to time and may be approved by Resolution of the City Commission upon recommendation of the Cultural Development Board.

Construction Cost means the total cost of a construction or renovation project, as determined by the Building Official in issuing a building permit for construction or renovation. The Construction Cost includes all labor, structural materials, plumbing, electrical, mechanical, infrastructure, design, permitting, architecture, engineering, lighting, signage, site work, architectural design, engineering, financing, legal fees prior to permitting and other costs. All construction and renovation costs shall be calculated based on good faith projections for the whole project, and paid as of the date the building permit is issued. This definition is not intended to include the Florida Building Code definition for Construction Cost.

Extraordinary Maintenance means any non-routine repair or restoration to sound condition of Public Art or Historic Public Art that requires specialized professional services.

Historic Public Art means plazas, entrances, fountains, murals, sculptures and other decorative features that have been designated as local historic landmarks or fine arts such as paintings and ceramics that represent the original civic art of the City or the history of the City. Murals, sculptures and decorative features must be an integral component of the original architecture, landscape design or urban design of the designated landmark feature. Appropriate historical furniture may be considered Historic Public Art.

Historic Public Art Fund means a separate, dedicated, interest bearing and revolving fund established in the City Treasury into which Public Art payments generated by Municipal Project Construction Projects are collected and deposited, and will be used for the restoration, maintenance and acquisition of Historic Public Art.

Municipal Construction Project(s) means any remodel project over $100,000 or new construction project to the extent paid for wholly or in part by the City or other governmental entity, regardless of the source of the monies, for any public buildings, public decorative structures, public parking facilities and parks or that portion of a Public-Private Joint Venture Project determined by the City to be a public portion of the project. Notwithstanding the foregoing, "Municipal Construction Projects" do not include projects to the extent funded from the Historic Public Art Fund or historic related grant funding or projects that solely consist of historic restoration, utility, drainage or roadway work.

Non-Municipal Construction Project(s) means as any construction or renovation project to the extent not paid wholly or in part by the City of one million dollars ($1,000,000.00) or more, excluding single-family homes. "Non-Municipal Construction Projects" includes the private portion of any Public-Private Joint Venture Project.

Ordinary Maintenance means any routine maintenance necessary to maintain the Public Art or Historic Public Art that is undertaken on a regular basis.

Public Art Collection means the works of Public Art that are commissioned, acquired, or accepted by the City pursuant to the requirements of this Ordinance, or when Public Art is expressly accepted into the collection using the City's Donation Policy.

Public-Private Joint Venture Project means a project where a construction or renovation project undertaken by a private entity occurs on City-owned land, or where the City is a party to a public- private joint venture agreement on City-owned land. To the extent a Public-Private Joint Venture Project can be divided into public and private portions, the public portions shall be considered a Municipal Construction Project and the private portions shall be considered a Non-Municipal Construction Project, the percentage of each to be determined by the City. It is acknowledged that Miami-Dade County's Art in Public Place Ordinance may apply to public portions of the Public-Private Joint Venture Projects.

Public Art Master Art Plan or Master Art Plan means a five-year plan developed to further define the City as a unique city of artistry and beauty while ensuring open access to Public Art. The Master Art Plan

identifies locational placement priorities, standards for installation, detailed criteria for Artist and artwork selection, and a Conservation/Extraordinary and Ordinary Maintenance protocol.

Publicly Accessible with regard to Art in Public Places means exterior locations that are highly visible and accessible twenty-four hours a day, seven days a week at no charge to public.

Remodel with regard to Art in Public Places means any construction or renovation to an existing structure other than repair or maintenance.

SECTION 3. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 4. If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

SECTION 5. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of Ordinance No. 2007-01 as amended and known as the "Zoning Code" of the City of Coral Gables, Florida, which provisions may be renumbered or re-lettered and the word ordinance be changed to "section", "article", or other appropriate word to accomplish such intention.

SECTION 6. If the Official Zoning Code Table of Contents or other reference portions is affected by these provisions, then changes are approved as a part of this Ordinance.

SECTION 7. This ordinance shall become effective _____, 2013.

PASSED AND ADOPTED THIS _____ DAY OF _____, A.D. 2013.

APPROVED:

JIM CASON
MAYOR

ATTEST:

WALTER FOEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

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CRAIG E. LEEN
CITY ATTORNEY

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