

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2011-275

**RESOLUTION AUTHORIZING A TEMPORARY PUBLIC ART
DISPLAY BY FAIRCHILD TROPICAL BOTANIC GARDEN,
INC. OF WORK BY WILL RYMAN IN CARTAGENA PLAZA.**

WHEREAS, Fairchild Tropical Botanic Garden (“Fairchild”) located in the City of Coral Gables is one of the premier conservation and education based gardens in the world and presents an internationally recognized annual art exhibition; and

WHEREAS, from December 1, 2011 through May 31, 2012, Fairchild is presenting the work of Will Ryman, who is internationally known for his large-scale figurative sculptures based on oversized flora; and

WHEREAS, Fairchild would like to place a Will Ryman piece in Cartagena Plaza on a temporary basis during the show; and

WHEREAS, the temporary exhibition of work by significant Art in Public Places artists will enhance the culture and quality of life within the City; and

WHEREAS, Fairchild has agreed to pay all costs involved with the display, as well as provide appropriate insurance and indemnification of the City;

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

SECTION 1. That the foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon the adoption hereof.

SECTION 2. That a Hold Harmless and Restrictive Covenant Encroachment Agreement is hereby approved (the “Agreement”) in substantially the form attached hereto as Exhibit “A.”

SECTION 3. That the City Commission does hereby authorize the City Manager to execute the Agreement with such modifications to the form attached hereto as Exhibit “A” as may be approved by the City Manager and City Attorney and are necessary to implement the intent of this resolution.

SECTION 4. That this resolution shall become effective upon the date of its passage and adoption herein.


PASSED AND ADOPTED THIS EIGHTH DAY OF NOVEMBER, A.D., 2011.

(Moved: Anderson / Seconded: Quesada)
(Yeas: Cabrera, Quesada, Anderson, Cason)
(Majority: (4-0) Vote)
(Absent: Kerdyk)
(Agenda Item: C-7)

APPROVED:


JIM CASON
MAYOR

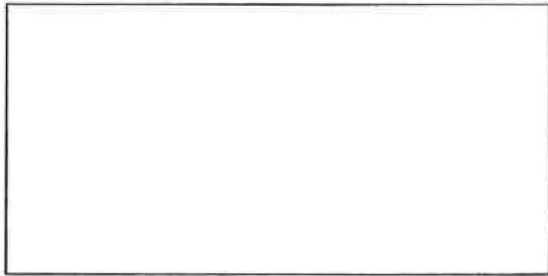
ATTEST:


WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:


CRAIG E. LEEN
CITY ATTORNEY

EXHIBIT A
PROPOSED HOLD HARMLESS & RESTRICTIVE COVENANT
ENCROACHMENT AGREEMENT



COMMERCIAL

RESIDENTIAL

**HOLD HARMLESS & RESTRICTIVE COVENANT
ENCROACHMENT AGREEMENT**

THIS AGREEMENT is made and entered this ____ day of _____, 2011, by and between Fairchild Tropical Botanic Garden, Inc. ("Fairchild"), whose address is 10901 Old Cutler Road, Coral Gables, FL 33156 and the City of Coral Gables, a Florida municipal corporation ("City").

RECITALS

WHEREAS, Fairchild desires to install a temporary art exhibition of a sculpture entitled "The Roses" shown on Exhibit A attached hereto by artist Will Ryman, who is internationally known for his large-scale figurative sculptures based on oversized flora, in Cartagena Plaza (the "Encroachment Area") from approximately December 5, 2011 through Mid-March 2012 (the "Exhibition");

WHEREAS, the City is willing to allow Fairchild to encroach upon the Encroachment Area without prejudice to the City's right to have the encroachment removed at a later date at Fairchild's expense; and

WHEREAS, Fairchild understands that at any time the City may require Fairchild to remove or relocate the sculpture from the Encroachment Area.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and as further consideration for the City's approval to encroach upon its right-of-way, the sufficiency of which is hereby acknowledged by the parties hereto, the parties agree as follows:

1. The foregoing Recitals are true and correct and incorporated herein.
2. The City hereby grants permission for Fairchild to place "The Roses" in the Encroachment Area during the Exhibition. Fairchild shall restore the Encroachment Area to its prior condition at the end of the Exhibition. The installation and securing of the sculpture requires burying the base in the ground. Fairchild will work with Public Works to locate the exact location for the sculpture in the Encroachment Area, which shall not conflict with the ability to replace the "Shoes" sculpture previously located in the Encroachment Area.

3. Fairchild shall be solely responsible for installation, insurance, bonding, and maintenance of the sculpture, as well as all costs of the exhibition related expenses.
4. Fairchild shall cleanup and restore damage caused by Fairchild to the Encroachment Area; provided, however, City shall fill in the hole after removal of the sculpture by Fairchild, replace the sod, and shall handle removal of any trash and garbage. In the event that Fairchild fails to make repairs caused by them that are not otherwise to be performed by City within ten (10) days after the end of the Exhibition, the City may restore such areas, and Fairchild shall pay any costs incurred. Fairchild agrees to pay the City for damage to City property any facilities resulting from use of the Encroachment Area by Fairchild.
5. At any time, the City may require either the permanent or temporary removal of the sculpture from the Encroachment Area, and Fairchild both for itself and its successors in interest agree, that at such time as the City requires temporary or permanent removal of the aforesaid, it will do so promptly and at its own expense and that, if it should fail to do so within thirty (30) days of mailing of a written request from the City for removal, the City may remove the aforesaid encroachment and impose the cost of removal thereof on Fairchild. In the event of an emergency, the City shall have the right to remove any encroachment without notice to Fairchild without any obligation or liability to Fairchild for damage to the encroachment.
6. To the fullest extent permitted by law, Fairchild, jointly and severally, hereby hold harmless, indemnify and defend the City, its representatives, officers, agents, employees, the administration and elected and appointed officials from and against all suits, actions, claims, costs, expenses or demands (including, without limitation, suits, actions, claims, costs or demands resulting from death, personal injury and property damage) including reasonable attorney's fees, costs and appeals, arising or resulting in whole or in part, as a result of any tort, intentional action, negligent acts or omissions on the part of Fairchild, for the construction, location, and maintenance of the aforesaid encroachments and banners. In no event shall City be liable for any damage or loss to the sculptures, the installation, maintenance, and security of which shall be the sole responsibility of Fairchild. In no event shall Fairchild bring onto the Encroachment Area any hazardous materials or substances.
7. That all parties to this agreement will obtain, for the purposes of this agreement, insurance policies, naming the City of Coral Gables as an additional insured, that will comply with the current City Insurance Requirements for special events and will evidence this insurance to the Risk Management Division of the City of Coral Gables. Evidence will not be approved unless all of the minimum requirements of the City Insurance Requirements have been met. The aforesaid insurance requirements shall be in effect during the entire period of time that the sculpture is up and encroachments exist upon the City's right-of-way, sidewalk, swale area, or other such right-of-way.
8. As further part of this Agreement, it is hereby understood and agreed that any official Inspector of the City of Coral Gables, or its agents duly authorized, may have the privilege at any time during normal working hours of entering and inspecting the

Encroachment Area to determine whether or not the requirements of the Building and Zoning regulations and the conditions herein agreed to are being met.

9. In the event the terms of this Agreement are not being followed the City is hereby authorized to remove the encroachments immediately and terminate this Agreement.
10. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations or policies of the City now in effect and those hereinafter adopted.
11. The location for settlement of any claims, controversies, disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be in Miami-Dade County, Florida.
12. Fairchild agrees that he shall be liable for reasonable attorney's fees incurred by City, if City is required to take any actions, through litigation or otherwise, to enforce this Agreement.
13. City shall be entitled as a matter of right to an injunction issued by any court of competent jurisdiction restraining any violation of this agreement, as well as recovery of any and all costs and expenses sustained or incurred by City in obtaining such an injunction including, without limitation, reasonable attorney's fees.
14. This Agreement constitutes the entire Agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Any amendments to or waivers of the provisions herein shall be made by the parties in writing.
15. If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto.
16. Fairchild acknowledges that it has had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement, and that either, Fairchild represents and warrants that he has sought such independent legal advice and counsel or has knowingly and voluntarily waived such right.
17. The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arms length and that this Agreement and all documents executed in connection herewith were prepared and executed without undue influence exerted by any party or on any party. Further, this Agreement was drafted jointly by all parties, and no parties are entitled to the benefit of any rules of construction with respect to the interpretation of any terms, conditions or provisions of this Agreement in favor of or against any person or party who drafted this Agreement.
18. The effective date of this Agreement is the date of its execution.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

Approved as to Insurance:

AS TO CITY:

Print Name: _____
Risk Management Division

Patrick G. Salerno
City Manager

Approved by
Department Director or head of
Negotiations team as to
the negotiated business terms

ATTEST:

Print Name: _____
Department: _____

Walter J. Foerman
City Clerk

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:**

Craig E. Leen
City Attorney

**EXHIBIT A
SCULPTURE
"The Roses", Will Ryman**

