



X ☐ **COMMERCIAL**

☐ **RESIDENTIAL**

HOLD HARMLESS & RESTRICTIVE COVENANT
ENCROACHMENT AGREEMENT

THIS AGREEMENT is made and entered this 11th day of January, 2011, by and between Ca'd'Oro, LLC, d/b/a Ca' d'Oro Art Gallery, whose address is 135 S. Lorenzo Avenue, Suite 130, Coral Gables, FL 33146 hereinafter referred to as "GALLERY" and the City of Coral Gables, a Florida municipal corporation, hereinafter referred to as "CITY".

RECITALS

WHEREAS, GALLERY desires to install a temporary art exhibition of approximately twenty-one (21) large snail sculptures throughout the City, commencing as of January 11, 2011 and running for approximately two (2) months, called the REgeneration Art Project in various rights of way, parks, and on City property in locations that are mutually agreeable to the GALLERY and the CITY (collectively the "Encroachment Areas");

WHEREAS, the CITY is willing to allow GALLERY to encroach upon CITY's parks, City property, right-of-way, sidewalk, swale area, or other such public property in the Encroachment Areas without prejudice to the CITY's right to have the encroachment removed at a later date at the GALLERY's expense; and

WHEREAS, the CITY is willing to allow GALLERY to use the non-metered nine (9) parking spaces to the East of the building located at 4520 Ponce de Leon as a temporary staging area (the "Staging Area") from January 11 to January 31 to clean the sculptures before they are placed in the Encroachment Areas; and

WHEREAS, GALLERY understands that at any time the CITY may require GALLERY to remove or relocate a sculpture from an 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 GALLERY to place large plastic pink snail sculptures, a sample of which is attached hereto as Exhibit A, in the Encroachment Areas during the exhibition. In addition, the CITY grants GALLERY a temporary use

of the Staging Area for the period of time set forth above for the purpose of washing and preparing the sculptures for placement. Snails measure approximately 7'7" H X 5'11" W X 10'6"L. The GALLERY shall not stake the grass or use any other anchoring method that can damage public property. The installation and securing of the snail sculptures involves a flatbed truck in which they will be transported to different locations. Once placed on the ground, they will be weighted down with sand bags or water that will be placed inside the body of the snail. GALLERY will work closely with representatives from the CITY's Parks & Recreation and Public Works departments to finalize locations.

3. GALLERY shall be solely responsible for installation, insurance, bonding, and maintenance of the snail sculptures, as well as all costs of the exhibition related expenses.
4. GALLERY shall cleanup and restore the Encroachment Areas, including, but not limited to, the removal of all temporary structures, equipment, trash and garbage removal, and any other restoration of City property and facilities as deemed necessary by the CITY. In the event that GALLERY fails to comply within ten (10) days after the end of the exhibition, the CITY may remove and restore such areas, and GALLERY shall pay any costs incurred. GALLERY agrees to pay the CITY for damage to CITY property any facilities resulting from use of the Encroachment Areas by GALLERY.
5. At any time, the CITY may require either the permanent or temporary removal of any sculpture from an Encroachment Area, and GALLERY both for themselves and their successors in interest agree, that at such time as the CITY requires temporary or permanent removal of the aforesaid, they will do so promptly and at their own expense and that, if they 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 GALLERY. In the event of an emergency, the CITY shall have the right to remove any encroachment without notice to GALLERY without any obligation or liability to GALLERY for damage to the encroachment.
6. To the fullest extent permitted by law, GALLERY, 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 the GALLERY, for the construction, location, and maintenance of the aforesaid encroachments. 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 GALLERY. In no event shall the GALLERY bring onto any Encroachment Area or the Staging 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 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 Areas and Staging 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. GALLERY 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. GALLERY acknowledges that he/she has had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement, and that either, GALLERY 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. Foeman
City Clerk

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

Lourdes Alfonsin-Ruiz
Acting City Attorney

As to GALLERY

_____(sign)
(Print Name): _____
(Title): _____

Two Witnesses:

_____(sign)
(Print Name) _____

_____(sign)
(Print name) _____

EXHIBIT A
SAMPLE OF SNAIL SCULPTURES

