

Artwork Installation And Preservation Agreement

This Artwork Installation And Preservation Agreement (the “Agreement”) is made this ___ day of _____, 2019, by and between the **City of Coral Gables**, a municipal corporation existing under the laws of the State of Florida (the “City”); and **Logistics Fine Arts, LLC**, a Florida limited liability company, with address at 311 NW 28 Street, Miami, FL 33127 (the “Service Provider”).

WITNESSETH:

WHEREAS, the City has implemented the Art in Public Places program pursuant to Coral Gables Zoning Code, Article 3, Division 21 by allocating funding for the establishment and display of artwork in public places, and

WHEREAS, pursuant to Resolution Nos. 2018-151 and 2019-___ adopted by the City Commission on May 22, 2018 and on _____, respectively, the City wishes to acquire certain work of art (the “Artwork”) created by Carlos Cruz- Diez (the “Artist”), to be fixed on two of the crosswalks located in front of the City Hall, and more particularly described in **Exhibit “A”** attached hereto and made a part hereof, the purpose of which is to enhance the community and to promote and reinforce the arts and culture in the City;

WHEREAS, pursuant to that certain Sale of Art and Copyright Limited License Agreement (the “License Agreement”) contemporaneously executed with this Agreement, the City has acquired a perpetual, royalty-free, non-exclusive, non-transferable limited license to install, reproduce, publicly perform, display, transmit, and distribute visual content of the Artwork (as defined in Section 2.1 below) for non-commercial purposes as determined in the License Agreement;

WHEREAS, pursuant the License Agreement the City is required to install and repair the Artwork by precisely following Atelier’s instructions set forth in **Exhibit “C”** attached hereto and made a part hereof;

WHEREAS, the Parties hereto desire to execute this agreement establishing the parties’ rights and responsibilities with respect to the installation and preservation of the Artwork, as hereafter set forth.

NOW, THEREFORE, the City and the Service Provider, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

Article 1 Incorporation of Recitals

1.1 Recitals. The foregoing recitals are true and correct and are hereby incorporated by reference.

Article 2 Scope of Work

2.1 Services. Service Provider shall perform all the work (the "Work") described in this Agreement and **Exhibits "A" and "A-1"** in connection with the installation, fabrication, inspection, and preservation of the Artwork to be located next to the City Hall at LeJeune Road and Biltmore Way (crossing Biltmore Way) and at LeJeune Road and Coral Way (crossing Coral Way on the westbound, south crosswalk) (collectively the "Site"), such location being more particularly described in **Exhibit "B"** attached hereto and made a part hereof. For purposes of this Agreement, the term "Artwork" shall mean an exclusive Artist-designed schematic composition consisting in a series of pictorial elements presented in a specifically arranged pattern to give it visual expression in harmony with the artist's intentions.

2.2 Equipment and Supplies. Except as otherwise provided in Section 4.1 of this Agreement, Service Provider shall furnish all supplies, materials and equipment as necessary for the fabrication and installation of the Artwork, either directly or through qualified subcontractors, including, but not limited to materials, tools, equipment, personnel, and all other items incidental to producing a complete and acceptable Work, and undertake the installation and integration of the Artwork at the Site.

2.3 Subcontractors. The Service Provider may subcontract and/or assign portions of the Work to additional parties not previously identified by Service Provider, but the Service Provider will still be held ultimately responsible for all portions of the Work and the City shall have no liability whatsoever, whether financial or otherwise, with regard to same.

2.4 Third Party Vendors. In the event that the services of the Service Provider are integrated into, combined, or otherwise coordinated with services by third parties employed by City and not within the control of Service Provider, the Service Provider shall not be responsible for such third party services.

2.5 Duty to Report Discrepancies. If any part of the Service Provider's Work depends upon proper execution or results from the work of the City or a third party responsible to the City, the Service Provider shall have an ongoing duty to promptly report to the City any apparent discrepancies or other defects in such other work which renders it unsuitable for proper

execution and results by the Service Provider, prior to proceeding with the Service Provider's Work. The City shall immediately take such actions as necessary in accordance with this Agreement to solve the discrepancy.

Article 3. Service Provider's Covenants and Obligations

3.1 Project Management. The Service Provider shall perform the Service Provider's services and administer any project authorized pursuant to this Agreement, each exhibit referred to and attached to this Agreement and any amendments or revisions thereto. The Service Provider shall provide and/or coordinate the services necessary and reasonably inferable for the complete performance of the Work pursuant to this Agreement.

3.2 Period of Installation. The Service Provider shall begin the Work after the execution of this Agreement and payment of the first fee installment pursuant Section 5.1(a), at a time mutually agreed upon by the Service Provider and the City. Notwithstanding the foregoing, the Service Provider shall begin the Work no later than November 1, 2019 provided entry to the Site has been granted to Service Provider by the City pursuant Section 4.3 of this Agreement. Unless otherwise agreed by the parties, the Service Provider hereby covenants to complete the installation of the Artwork for delivery to the City no later than December 31, 2019 (the "Delivery Date").

3.3 Preservation of the Artwork.

(a) The Service Provider shall be responsible during the Term of this Agreement (as defined in Section 6.1 below) for the preservation and conservation of the Artwork as provided for and in the manner set forth in Section 3.3(b) herein.

(b) Commencing one (1) year after the Delivery Date and continuing on or about the same date each following year of the ten (10) year period of this Agreement, and provided the City has paid the Service Provider at least 50% of the Annual Fixed Price for the specific year, the Service Provider shall perform the cleaning of the Artwork and removal of any mild atmospheric soil and dirt by application of medium pressure water (the "Preservation Activities"). On that occasion, the Service Provider will conduct an inspection of the Artwork and reapply a new paint surface coating to the Artwork that will restore the Artwork to its original design (the "Restoration Treatment") at no additional cost to the City, provided deterioration shown by the Artwork is due to normal wear and tear and not as a result of the events described in Section 9.1 of this Agreement. The Service Provider warrants the quality of the Work, Preservation Activities, and Restoration Treatment for a period of up to one (1)

year after each reapplication of a new paint surface coating.

(c) If the Artwork is not preserved by Service Provider in the manner set forth in Section 3.3(b) above, the City may notify the Service Provider in writing of the need to perform Preservation Activities and/or the Restoration Treatment. The Service Provider will perform the Preservation Activities and/or the Restoration Treatment necessary in the manner set forth in Section 3.3(b). If, after forty-five (45) days from the date of City's notification to the Service Provider of the need to perform Preservation Activities and/or the Restoration Treatment, the Service Provider has not performed the Preservation Activities and/or the Restoration Treatment necessary for compliance with this provision, the City may, at its option and notwithstanding anything contained herein, terminate this Agreement.

3.4 Excluded Services. The Preservation Activities and/or the Restoration Treatment do not include restoration or repairs to the Artwork for sustained injury or decay as a result of the events described in Section 9.1 of this Agreement.

3.5 Initial Painting. The Service Provider agrees to provisionally paint the Artwork within the edge lines of the Crosswalk as described in "**Exhibit A-1**" (unless the City initially requests that the Artwork be painted as described in Exhibit A). Thereafter, upon City's request, the Service Provider will re-paint the Artwork in full as described in **Exhibit A**, at an additional cost to the City, to be mutually agreed upon by both parties. If the City and the Service Provider are unable to agree on a price to re-paint the Artwork, the Service Provider shall have no obligation to re-paint the Artwork, but the next annual Restoration Treatment shall include painting the Artwork in full as described in **Exhibit A**.

3.6 Additional Services. In the event that the City needs the Service Provider to assume additional repair and restoration responsibilities not included in the Preservation Activities, including but not limited to the re-painting activities described in Section 3.5 above, the City and the Service Provider will negotiate for additional services ("Additional Services"). Prior to commencing any Additional Service, Service Provider shall prepare and submit for acceptance by the City a proposal (the "Additional Services Proposal"), which shall describe in detail the nature or scope of the Additional Services to be rendered, the basis upon which Service Provider has determined that such services are Additional Services, and the maximum amount of fees and reimbursable expenses for which Service Provider is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Services. Any Additional Services shall be authorized or confirmed in writing by the City and the Service Provider shall be entitled to Additional Compensation pursuant Section 5.2 of this Agreement.

3.7 Representative: Service Provider shall designate a primary contact as its authorized representative with respect to all matters pertaining to this Agreement (the "Project Manager"). The designated representative shall act on behalf of Service Provider with respect to all phases of the Work and shall be available as required for the benefit of any Work and the City.

3.8 Standard of Care. Service Provider agrees to use its best professional efforts, skill, judgment, and abilities to perform the Work in an expeditious and timely manner as is consistent with professional standards of care and the orderly progress of any project authorized pursuant to this Agreement. Service Provider shall at all times provide a sufficient number of qualified personnel to accomplish the Work within the time limits set forth in each schedule.

Article 4

City's Covenants and Obligations

4.1 Licenses and Permits. The City acknowledges that it shall be responsible for ensuring that the installation of the Artwork complies at all times with all policies, procedures and directives of the City of Coral Gables and Miami-Dade County, and thus, the City hereby agrees that it shall be solely responsible for obtaining any required licenses, consents, and building permits from the Miami-Dade Transportation and Public Works Department. In addition, the City hereby agrees to develop a traffic plan and provide the necessary equipment, such as signage and barricades on the dates scheduled by Service Provider for the Work to be performed and to prevent City-caused delays in Service Provider's completion of the Work. In no event shall the Service Provider be responsible or liable for failure to comply with public right-of-way licenses or any other permits issued by the City or County for the location of the Artwork or for any crosswalk marking insufficiencies or inadequacies; failure to comply with safety guidelines or standards for pedestrians; penalties, fines, costs, or expenses of whatever kind; claims or actions of any nature whatsoever, including inability to use the Crosswalks, which arise out of, or in connection with the Artwork, whether such actions arise in or are claimed to arise in contract, tort or statute.

4.2 Representative. The City shall designate one of its agents to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement.

4.3 Entry on Site. The City shall be solely responsible for all cost and expense for preparation of the Site before installation of the Artwork, and employ the labor services of any third parties as needed for the cleaning and preparation of the Crosswalks so that Service Provider may start performing services pursuant to this Agreement. The City shall give prompt written notice to Service Provider whenever the City becomes aware of any development that affects the scope or timing of the Work

4.4 Special Information. The City shall provide Service Provider, upon reasonable request, but without warranty or representation by City of any kind, and to the extent in City's possession, any background materials and information on matters affecting the Site. In addition, the City shall furnish, to the extent in City's possession, boundary, easement, right-of-way, topographic and utility surveys; plans and specifications, as needed, and special data and

conditions relevant to the Site.

4.5 Time for Response. The City shall furnish the required information and render approvals as soon as reasonably practical for the orderly progress of the Work, and the City shall: (i) give written notice to Service Provider within a reasonable time after the discovery of any failure, defect, or damage; (ii) give prompt written notice to Service Provider whenever the City becomes aware of any development that affects the scope or timing of the Work; and/or (iii) respond promptly to any reasonable requests from Service Provider for instructions, information, or approvals required to provide the services.

4.6 Time for Processing Payments. The City shall pay any undisputed amounts when due under this Agreement no later than thirty (30) days after receipt of the invoice from the Service Provider.

4.7 Cooperation. The City shall cooperate with Service Provider in its performance of the Work and provide access to the Site, the City's premises, employees, contractors, and equipment as reasonably requested to enable Service Provider to accomplish the Work.

4.8 Extensions. The City shall grant a reasonable extension of time to Service Provider after the Delivery Date in the event that there is a delay on the part of the City in performing its obligations hereunder; or in making the Site available to Service Provider for proceeding with the Work.

4.9 The City shall reasonably assure that the Artwork is properly maintained, taking into account the recommendations of Service Provider, as set forth in **Exhibit "C"**.

Article 5 Compensation for Work

5.1 Payment. In consideration for the provision of the services herein (not including Additional Services) City shall pay the Service Provider each year during the Term (as defined below) an annual fee of Eighteen Thousand and 00/100 Dollars (\$18,000.00) (the "Annual Fixed Price") in accordance with the terms of this Agreement, and as follows:

(a) The first Annual Fixed Price shall be paid by the City to the Service Provider in two (2) installments of Nine Thousand and 00/100 (\$9,000) each. The first such installment shall be paid to the Service Provider following the execution of this Agreement and no later than thirty (30) days after receipt of the invoice from the Service Provider. The second installment shall

be paid by the City promptly following the Delivery Date and no later than thirty (30) days after receipt of the invoice from the Service Provider.

(b) Commencing on January 2020, and continuing on each following year of the ten (10) year period of this Agreement, the City shall pay the Annual Fixed Price in two (2) installments of Nine Thousand Dollars and 00/100 (\$9,000.00) each, due and payable no later than thirty (30) days after receipt of the invoice by the City from the Service Provider, as follows: the first in January of each and every year, and the second, upon completion of the Annual Preservation Activities for that year.

5.2 Payment for Additional Services. Unless otherwise provided in the Additional Services Proposal, Service Provider shall be compensated on an hourly rate basis or on a per-service fee basis (“Additional Compensation”) in accordance with Service Provider’s Additional Services Proposal. Service Provider shall proceed only after written acceptance by City of the Additional Services Proposal. Service Provider’s amount of fees and expenses shall be paid by the City in the following manner: (i) fifty per cent (50%) at least forty-five days in advance to the date in which performance of the Work is scheduled to commence; and (ii) fifty percent (50%) after the Work has been completed, within thirty (30) days of receipt by the City of an invoice from Service Provider.

5.3 Late Payments. Service Provider shall be entitled to suspend the provision of any Preservation Activities if the City fails to pay any undisputed amounts when due hereunder and such failure continues for thirty (30) days following written notice thereof.

5.4 Costs and Expenses. The City acknowledges that the Service Provider will perform all works and services identified in this Agreement, either directly or through qualified subcontractors. Service Provider shall pay, out of Service Provider’s fees, for all subcontractor services and costs associated with subcontractor’s services under this Agreement, either for the Preservation Activities or any Additional Services as the case may be. City is not responsible for any such subcontractor fees or costs unless otherwise specified herein or agreed to in writing.

Article 6

Term, Extension, and Termination

6.1 Term. This Agreement shall have a term of ten (10) years from the date of execution (the “Term”) by both parties, unless terminated earlier pursuant to the terms and provisions of this Agreement.

6.2 Extension. Upon the expiration of the Term or any renewal term, this Agreement shall

automatically renew for an additional ten (10) year period, unless, at least sixty (60) days prior to the renewal date, either party gives the other party written notice of its intent to terminate this Agreement. During any renewal term, the terms and conditions set forth in this Agreement shall remain in effect.

6.3 Termination by Service Provider. Notwithstanding anything to the contrary in Section 6.4 herein, Service Provider may terminate this Agreement before the expiration date of the Term or any renewal term, on written notice if City fails to pay any amount when due hereunder: (a) and such failure continues for forty-five (45) days after City's receipt of written notice of nonpayment; or (b) more than two (2) times in any 12 month period.

6.4 Termination by the City. The City may elect to terminate this Agreement for any reason before the expiration date of the Term or any renewal term upon sixty (60) days prior written notice to the Service Provider. Upon termination of this Agreement, the City shall have the right to contract with another service provider for the Preservation of the Artwork. In the event of termination under this Article, the Service Provider shall be fully discharged from any and all liabilities, duties and terms arising out of/or by virtue of this Agreement.

6.5 Default. The following shall be "Events of Default" by the Service Provider:

(a) The Service Provider has breached any portion of this Agreement, and the Service Provider does not cure such breach within any applicable cure periods hereunder after receipt of written notice of such breach.

(b) The Service provider fails to timely provide and/or satisfactorily perform any task, deliverable, services or other work required under this Agreement and has not cured said breach within thirty (30) calendar days.

(c) The Service Provider shall be deemed insolvent, including if it has ceased to pay its debts for at least thirty (30) days in the ordinary course of business, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Service Provider is insolvent within the meaning of such laws.

(d) If there has been a filing of a voluntary or involuntary petition regarding the Service Provider under the Federal Bankruptcy Code.

(e) If there has been an appointment of a receiver or trustee for the Service Provider; and

(f) If there has been an execution by the Service Provider of a general assignment for the benefit of creditors.

6.6 No Waiver. Failure of the City to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but the City shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, in law and/or in equity. No waiver of any term, provision, condition or covenant of this Agreement by either party, or the failure of either party to insist upon strict performance of one or more covenants or conditions of this Agreement shall be deemed to imply or constitute a further waiver by said party of any other term, provision, condition or covenant of this Agreement.

6.7 City's Remedies. Upon the occurrence and continuation of any Event of Default that remains uncured beyond any applicable cure periods, the City shall have the right to immediately terminate this Agreement.

Article 7 Installation Guidelines

7.1 Installation Specifications. The Service Provider shall install and/or repair the Artwork, as the case may be, by precisely following Atelier's instructions set forth in **Exhibit "C"** attached hereto and made a part hereof, and the location guidelines in **Exhibit "B"**, unless otherwise approved by Atelier and the City in writing.

7.2 Performance Dates. The City acknowledges that the painting and coating treatment of the Crosswalks must be performed during daylight and under dry weather conditions. Service Provider shall use reasonable efforts to meet any performance dates specified in each and any order confirmation, but any such dates shall be estimates only, since the final performance dates will depend on the various events not under Service Provider's control such as the weather, the conditions of the roads in the Site, the prompt availability of materials, permits, licenses, among others.

7.3 Notice and Schedule of Installation. Prior to commencing the installation of the Artwork, the Service Provider shall provide the City with a detailed schedule of the installation process, including an anticipated Delivery Date and the dates and times the Service Provider intends to install the Artwork. The City shall make all arrangements and take all steps necessary pursuant City's obligations as set forth in Article 4 of this Agreement.

7.4 Cost of Materials. The Service Provider shall be responsible for providing, at its cost, all materials necessary to perform the Work.

Article 8 Removal of Artwork

8.1 Removal. The City may, at its sole and absolute discretion, decide to remove the Artwork at any time at City's cost and expense. Nonetheless, the City shall give notice of such decision to the Service Provider within ten (10) days after removal of the Artwork has taken place. At all times, the Service Provider shall be entitled to immediate payment by the City of any payment installment due of the Annual Fixed Price for that year as of the date of the removal.

Article 9 Restoration Treatment due to Extraordinary Deterioration

9.1 In the event the Crosswalks are damaged or defaced or otherwise experience extraordinary erosion, wear and tear, whether due to vandalism, force majeure, exposure to extraordinary elements (e.g. oil spills, heavy fork lift traffic or increase in traffic fluctuation, chemical wash-downs, etc.) the City shall make, or cause to be made, within a reasonable time after receipt of Service Provider's written notice, the necessary restoration and/or repairs to the Crosswalks. Any Restoration Treatment and/or repairs by Service Provider for extraordinary damage, deface or otherwise shall be deemed Additional Services as defined in Section 3.6 of this Agreement, and therefore, all fees, costs and expenses shall be the sole responsibility of the City pursuant to Sections 5.2 and 5.4 of this Agreement. Notwithstanding the foregoing, the Service Provider and the City agree to work together in good faith so that to the extent possible, any restoration and/or repairs necessary to address any of the foregoing conditions can be scheduled to coincide with and incorporated into the annual Preservation Activities and Restoration Activities to minimize or eliminate any additional fees, costs, and expenses incurred by the City.

Article 10 Risk of Loss or Damage

10.1 The Artwork shall be deemed to be in custody of the City from the Delivery Date to the City by Service Provider. As of the Delivery Date the City shall be responsible for the safekeeping of the Artwork and assumes all risk of loss or damage to the Artwork in its possession.

Article 11 Insurance and Indemnification

11.1 Insurance. The Service Provider shall obtain Commercial General Liability Insurance,

protecting the Service Provider, and their respective servants, agents or employees against damages arising from bodily injury (including death) and from claims for property damage which may arise while performing the Work directly or indirectly out of the operations of the Service Provider, and its agents or employees under this Agreement. Such insurance shall be for an amount acceptable to the City and shall in any event be not less than one million dollars (\$1,000,000) per occurrence adding the City as an additional insured on a primary and non-contributory basis with a waiver of subrogation in favor of the City.

11.2 Independent Contractors Insurance. For services performed by third parties as independent contractors under the supervision of Service provider pursuant to Section 2.3 of this Agreement, the Service Provider shall furnish the corresponding third party's Certificates of Insurance as set forth in Section 11.1 prior to the commencement of any Work hereunder.

11.3 Indemnification.

(a) Indemnification by Service Provider. The Service Provider hereby agrees to defend, hold harmless, and indemnify the City, and any of its elected or appointed officers, for any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind the City incurs, and reasonable attorneys' fees in connection with the Artwork caused by the actions of the Service Provider, its officers, employees, or agents, affiliates, successors, and assigns or any person under its control insofar as permitted by law, or arising out of or in connection with any third-party claim, suit, action, or proceeding relating to any actual or alleged breach by the Service Provider of its representations, warranties, covenants, or other obligations hereunder.

(b) Indemnification by City. The City hereby agrees to defend, hold harmless and indemnify Atelier and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, the Service Provider incurs, including but not limited to claims and actions pursuant to Section 4.1 of this Agreement, and reasonable attorneys' fees in connection with the Artwork caused by the actions of the City, its elected or appointed officers, or agents, or any person under its control insofar as permitted by law, or arising out of or in connection with any third-party claim, suit, action, or proceeding relating to any actual or alleged breach by the City of its representations, warranties, covenants, or other obligations hereunder, including but not limited to failure to obtain any required permits.

(c) No Waiver. Nothing in this Agreement shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes § 768.28, any

other sections of the Florida Statutes, case law, or any other source of law.

Article 12 Intellectual Property

12.1 License Agreement. The City, its permitted successors and/or assigns, has been granted a perpetual, royalty-free, non-exclusive, non-transferable, and non-sublicensable right and license in the Artwork, pursuant to that certain limited Copyright License Agreement that is being executed concurrently with the execution of this Agreement.

Article 13 Miscellaneous Provisions

13.1 Limitation of Liability.

(a) In the event the Agreement is terminated pursuant to Section 6.4 of this Agreement, Service Provider shall within forty-five (45) days after the effective date of termination, refund to City the pro rata portion of any fees paid in advance by the City for any Work not yet completed by the Service Provider up to and including the date of termination.

(b) IN NO EVENT SHALL ONE PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(c) IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT, OR OTHERWISE, EXCEED TWO (2) TIMES THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER PURSUANT TO THIS AGREEMENT IN THE QUARTERLY PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

13.2 No Assignment. Except as explicitly set forth in Section 2.3 herein, this Agreement cannot be, directly or indirectly, assigned, transferred, or pledged, without the City's prior written consent.

13.3 Modification and Amendments. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

13.4 Invalidity of Provision. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

13.5 Governing Law; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of Florida, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in Miami-Dade County.

13.6 Headings. All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

13.7 Entire Agreement. This Agreement together with the Exhibits constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes all other oral or written provisions.

13.8 Counterparts. This Agreement may be executed in multiple counterparts and signatures may be exchanged by facsimile or electronically, each of which shall be deemed to be an original document, and all of which together shall constitute one and the same document.

13.9 Relationship of the Parties. Nothing contained in the Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties shall at all times be that of independent contractors. Neither party shall have authority to contract for or bind the other in any manner whatsoever. The Agreement confers no rights upon either party except those expressly granted herein.

13.10 Holidays. It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given on a Saturday or Sunday or on a legal holiday observed in the City, it shall be postponed to the next following business day.

13.11 Exhibits. Each Exhibit referred to and attached to this Agreement is an essential part

of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement and incorporated herein. The Exhibits referred to and attached to this Agreement are as follows:

Exhibit A – Artwork

Exhibit A-1 – Initial design painting.

Exhibit B – Location

Exhibit C - Atelier's instructions and recommendations.

13.12 Force Majeure. The Service Provider shall have no responsibility or liability for delay, failure, loss or damage in connection with this Agreement if the Service Provider's availability or Work is prevented by acts of God, labor unrest, terrorist acts or threats of terrorism, shortage of supplies, strikes, orders or other interventions by governmental authorities or any other causes that are beyond the Service Provider's control. Service Provider may request, and the City may grant, reasonable extensions of time to perform the Work if any such event prevents Service Provider from timely complying with its obligations to perform such Work. Failure to fulfill contractual obligations due to conditions due to force majeure shall not be considered a breach of contract.

13.13 Florida Public Records Law. Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. The Service Provider acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. The Service Provider also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, the Service Provider agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.

IF THE SERVICE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SERVICE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-460-5210, cityclerk@coralgables.com, 405 Biltmore Way, First Floor, Coral Gables, FL 33134.

13.14 Waiver to Trial by Jury. THE PARTIES TO THIS AGREEMENT HEREBY AGREE TO EXHAUST ALL ADMINISTRATIVE REMEDIES BEFORE FILING A LAWSUIT IN

CIVIL COURT TO RESOLVE THE DISPUTE. THE CITY AND THE SERVICE PROVIDER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THE LOT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY.

13.15 Successors and Assigns. This Agreement binds and benefits the Parties and their respective permitted successors and assigns.

13.16 Sovereign Immunity. Notwithstanding anything to the contrary herein, the Service Provider and the City acknowledge that the Florida Doctrine of Sovereign Immunity limits all claims against the City other than claims arising out of this Agreement. The term “this Agreement” means this document, and other terms and conditions which are included in the exhibits and documents that are expressly incorporated by reference herein, as well as any amendments thereto. Specifically, the Service Provider acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of this Agreement or any other existing agreement between the City and the Service Provider, or in accordance with Florida Statutes Chapter 768.28. Nothing in this Agreement is intended to increase or otherwise waive any limits of liability, or to waive any immunity as set forth in the Florida Constitution and Florida Statutes Chapter 768.28.

13.17 Attorney Fees. In the event either party commences legal proceedings for the enforcement of this Agreement, the prevailing party shall be entitled to recovery of its attorney’s fees, litigation expenses, and court costs incurred in the action brought thereon. Attorney’s fees and litigation expenses shall include without limitation costs of preparation and discovery and retaining expert witnesses, and such fees and expenses shall be payable whether or not the litigation proceeds to final judgment. “Prevailing party” shall be defined as the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified herein, the prevailing party shall be as determined by the court.

13.18 Notices. Notices or other communications required by this Agreement will be sufficiently made or given if mailed by certified First Class United States mail, postage pre-paid, or by commercial carrier (e.g., FedEx, UPS, etc.) when the carrier maintains receipt or record of delivery, addressed to the address stated below, or to the last address specified in

writing by the intended recipient.

Notice to Service Provider:

Notice to City:

With copy:

With copy:

Logistics Fine Arts Attn:

_____ 311 NW 28th Street,
Miami, Florida 33127

City of Coral Gables

405 Biltmore Way

Coral Gables, Florida 33134

Attn: Dona Spain

Phone: 305-460-5204

E-mail: piglesias@coralgables.com

City of Coral Gables

405 Biltmore Way

Coral Gables, Florida 33134 Attn: Miriam

Soler Ramos, Esq. Email:

mramos@coralgables.com

Holland & Knight, LLP

701 Brickell Avenue, Suite 3300 Miami,
Florida 33131

Attn: Vivian de las Cuevas-Diaz, Esq.

Email: Vivian.Cuevas@hklaw.com Fax

Number: (305) 789-7799

[Signature Page Follows]

[Signature Page to Artwork Installation and Preservation Agreement]

IN WITNESS WHEREOF, the parties hereto have signed, sealed and delivered this Agreement
at Miami-Dade County, Florida, as of the day and year first above written.

WITNESS:

By: _____ Name: _____
By: _____ Name: _____

CITY:

CITY OF CORAL GABLES, a municipal corporation of the State of Florida

By: _____

Name: Peter Iglesias

Title: City Manager

Approved as to form and legal sufficiency:

By: _____

Name: Miriam Soler Ramos

Title: City Attorney

ATTEST:

By: _____ Name: Billy Y. Urquia

Title: City Clerk

ATELIER: Approved as to its contents.

ATELIER CRUZ-DIEZ, a Limited Liability Company

By: _____

Name: Carlos Cruz Delgado

Title: _____

SERVICE PROVIDER:

LOGISTICS FINE ARTS, a Florida limited liability company

By: _____

Name: José Ramon Moreno

Title: _____