

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2013-36

RESOLUTION AUTHORIZING AN EXTENSION OF THE TEMPORARY DISPLAY OF "THE SPIRAL" BY CA' D'ORO LLC D/B/A CA' D'ORO ART GALLERY ON CITY PROPERTY LOCATED ON THE PLAZA OF THE CORAL GABLES MUSEUM.

WHEREAS, Pursuant to Resolution No. 2012-208 passed on November 13, 2012, Ca' d'Oro Art Gallery (the "Gallery"), installed for temporary display a sculpture entitled "The Spiral" by Italian artist Enzo Carnebianca (the "Sculpture") in the courtyard of the plaza of the Coral Gables Museum; and

WHEREAS, Mr. Carnebianca's work is in prestigious collections throughout the world such as the Vatican in Rome; and

WHEREAS, the Coral Gables Museum has requested that the sculpture remain in the plaza for a longer period of time, and the Gallery has agreed; and

WHEREAS, the Gallery has agreed to pay all costs involved with the display; and

WHEREAS, the City may at any time require removal of the exhibit either permanently or temporarily; and

WHEREAS, the installation and maintenance of the sculptures continue to be the sole responsibility of the Gallery, in accordance with the terms of the proposed Hold Harmless and Restrictive Covenant Encroachment Agreement;

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 the exhibition period for the Sculpture be extended for up to four months, and that the Amendment to Hold Harmless and Restrictive Covenant Encroachment Agreement is hereby approved (the "Amendment") in substantially the form attached hereto as Exhibit "A."

SECTION 3. That the City Commission does hereby authorize the City Manager to execute the Amendment with such modifications to the form attached hereto, as may be approved by the City Manager and City Attorney in order 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 NINETEENTH DAY OF FEBRUARY, A.D., 2013.

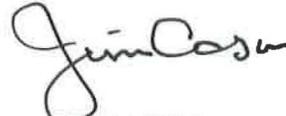
(Moved: Kerdyk / Seconded: Quesada)

(Yeas: Cabrera, Kerdyk, Quesada, Anderson, Cason)

(Unanimous: 5-0 Vote)

(Agenda Item: C-14)

APPROVED:



JIM CASON
MAYOR

ATTEST:



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



CRAIG E. LEEN
CITY ATTORNEY



COMMERCIAL

RESIDENTIAL

**HOLD HARMLESS & RESTRICTIVE COVENANT
ENCROACHMENT AGREEMENT**

THIS AGREEMENT is made and entered this 5th day of December, 2012, 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 display of the art sculpture, "The Spiral" by Enzo Carnebianca, as shown on Exhibit A, (the "Sculpture") on City property located on the outside plaza of the Coral Gables Museum, commencing as of the date hereof and running for a period not to exceed two months (the "Encroachment Area"); and

WHEREAS, the Coral Gables Museum is amenable to having the Sculpture on the museum plaza; and

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

WHEREAS, GALLERY understands that at any time the CITY may require GALLERY 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 property, 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 the Sculpture, in the Encroachment Area for up to a two month period. The GALLERY shall not use any anchoring method that can damage public property. The installation and securing of the Sculpture involves a flatbed truck in which they will be transported to and from the Encroachment Area.

3. GALLERY shall be solely responsible for installation, insurance, bonding, and maintenance of the Sculpture, as well as all costs of the exhibition related expenses.
4. GALLERY shall cleanup and restore the Encroachment Area, 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 resulting from use of the Encroachment Area by GALLERY.
5. At any time, the CITY may require either the permanent or temporary removal of the Sculpture from the 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 holds harmless, indemnifies and defends 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 encroachment. In no event shall CITY be liable for any damage or loss to the Sculpture, 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 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 encroachment exists upon the CITY's property.
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 litigation or 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 it 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 it 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 it 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:



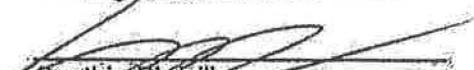
Michael Sparber
Risk Management Division

AS TO CITY:



Patrick G. Salerno
City Manager

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



Cynthia Birdsall
Economic Sustainability

ATTEST:



Walter J. Foeman
City Clerk

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:



Craig E. Leen
City Attorney

As to GALLERY

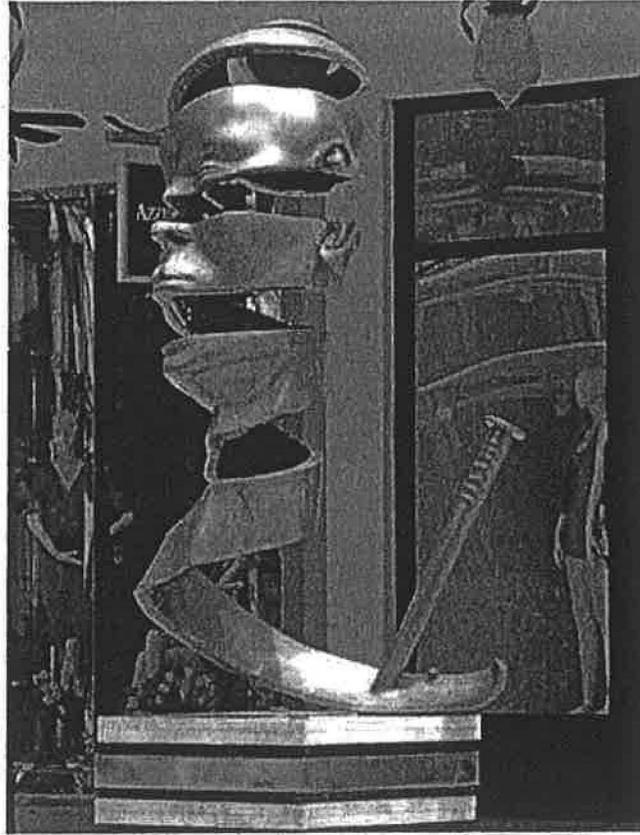
Gloria Porcella (sign)
(Print Name): Gloria Porcella
(Title): Owner, Galleria Ca' d'Oro

Two Witnesses:

Carol Switzer (sign)
(Print Name) Carol Switzer

Amalia Gasparini (sign)
(Print name) Amalia Gasparini

EXHIBIT A
THE SPIRAL BY ENZO CARNEBIANCA





COMMERCIAL

RESIDENTIAL

**AMENDMENT TO HOLD HARMLESS & RESTRICTIVE COVENANT
ENCROACHMENT AGREEMENT**

THIS AMENDMENT is made and entered this ___ day of February, 2013, 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, pursuant to Resolution No. 2012-208, passed by the Coral Gables City Commission on November 13, 2012, the Gallery and City entered into a Hold Harmless and Restrictive Covenant Encroachment Agreement dated December 5, 2012 (the "Agreement"), for the temporary display of the art sculpture, "The Spiral" by Enzo Carnebianca, as shown on Exhibit A, (the "Sculpture") on City property located on the outside plaza of the Coral Gables Museum for a 2 month period (the "Exhibition Period");

WHEREAS, the Coral Gables Museum has requested that the Exhibition Period be extended by up to four months, and the Gallery is amenable; and

WHEREAS, the CITY is willing to extend the Exhibition Period as set forth herein, subject to the terms and conditions of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and as further consideration for the CITY's approval to encroach upon its property, 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. Any capitalized term not otherwise defined herein, shall have the meaning ascribed thereto in the Agreement.
3. The Exhibition Period is hereby extended for up to four months from the date of this Amendment.
4. All other terms, covenants, and conditions of the Agreement not otherwise amended by these presents are hereby confirmed and ratified,

5. This Amendment may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the Gallery has executed this Amendment as of the date and year first above written.

ATTEST:

GALLERY:

Ca'd'Oro, LLC, d/b/a Ca' d'Oro Art Gallery, a Florida limited liability company

Name: _____

By:

Name: _____



Name: Gloria Porcella
Title: Owner

