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CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2007-_____

AN ORDINANCE OF THE CITY OF CORAL GABLES ZONING CODE CREATING A NEW DIVISION WITHIN ARTICLE 3, DEVELOPMENT REVIEW, DIVISION 20, ENTITLED “ART IN PUBLIC PLACES”; PROVIDING DEFINITIONS; ESTABLISHING POLICY, ESTABLISHING AN ART FUND TO BE USED FOR PUBLIC ART PURPOSES; PROVIDING PROCEDURES AND ADMINISTRATION CRITERIA; PROVIDING EXEMPTIONS AND WAIVERS; PROVIDING FOR OWNERSHIP & MAINTENANCE; AND PROVIDING FOR ENFORCEMENT FOR AN ART IN PUBLIC PLACES PROGRAM; PROVIDING FOR REPEAL, PROVIDING SEVERABILITY, PROVIDING FOR CODIFICATION THEREOF, AN EFFECTIVE DATE, AND REPEALING ALL ORDINANCES INCONSISTENT HEREWITH.

WHEREAS, over three hundred communities throughout the United States have implemented public art programs committing to the placement of public art; and

WHEREAS, Coral Gables has a proud history of incorporating public art in the landscape of the City to create both function and beauty including numerous fountains and plazas which have been designated as local historic landmarks; and

WHEREAS, the City of Coral Gables is responsible for the maintenance of these historic landmarks and established a policy in 1985 that took into consideration the maintenance of these landmarks as Art in Public Places; and

WHEREAS, the Miami Dade County Art in Public Places Ordinance (adopted in 1973 and amended in 1978, 1982 and 1994), the 2002 Downtown Coral Gables Charrette, and the City of Coral Gables Comprehensive Master Plan, each outlined or encouraged the establishment of a municipal Public Art Program; and

WHEREAS, the City of Coral Gables, with the support of the Miami-Dade County Art in Public Places professionals, now wishes to develop a more formal Art in Public Places program to assist in the maintenance of the historic public art through Municipal Construction Project funding and the acquisition, installation, and maintenance of new, equally significant public art for the enjoyment of citizens and visitors through the non-Municipal construction contributions; and

WHEREAS, the City’s art in public places program shall promote the City’s diversity, character and heritage through the artworks and designs by artists integrated in the architecture throughout Coral Gables on public and private property; and

WHEREAS, it is the purpose of the City of Coral Gables Art in Public Places Program to promote the health, safety, general welfare and quality of life in the City; to guide the orderly growth and development of the City; to establish rules and procedures for land development approvals; to enhance the character of the City and the preservation of neighborhoods; to make the beautification of the City a matter of the highest priority; to require that existing and future

1 uses and structures in the City are attractive and well-maintained to the maximum extent
2 permitted by law; and to enhance the quality of life of all residents and property owners of the
3 City by requiring that public art planning be integrated within all new development; and,
4

5 **WHEREAS**, after notice of a public hearing being duly published, the City Commission
6 on October 23, 2007 recommended approval on First Reading this Ordinance (5-0 vote) and
7 requested the Planning and Zoning Board consider the Ordinance prior to City Commission
8 second and Final Reading: and,
9

10 **WHEREAS**, the City Commission on October 23, 2007 as a part of First Reading
11 approval made a separate motion (3-2 approval vote) requesting the Planning and Zoning
12 Board provide specific direction as it relates to exemption language for Educational Institutions;
13 and,
14

15 **WHEREAS**, after notice of a public hearing being duly published, a public hearing was
16 held before the Planning and Zoning Board of the City of Coral Gables on November 14, 2007
17 at which hearing all interested parties were afforded the opportunity to be heard; and,
18

19 **WHEREAS**, at the November 14, 2007 meeting, the Planning and Zoning Board in
20 summary made the following motions (Please refer to the verbatim record of the Planning and
21 Zoning public hearing proceeding for the exact motions):
22

- 23 1. Recommended approval of the Ordinance as referenced and provided in the November
24 14, 2007 Planning Department Staff Report, Attachment A including various text
25 amendments to provide further clarification of the provisions. This final vote of the motion
26 resulted in no recommendation (3-3 vote).
27
- 28 2. Recommended approval of the Ordinance as referenced and provided in the November
29 14, 2007 Planning Department Staff Report, Attachment A subject to the following
30 amendments:
 - 31 a. Including various text amendments to provide further clarification of the provisions.
 - 32 b. Providing for a blanket exemption for the University of Miami in recognition of the
33 University's Arts contribution to date subject to the University maintaining an Arts
34 program.
 - 35 c. Clarification of the replacement value language for private developers.

36 This final vote of the motion resulted in no recommendation (3-3 vote).
37
- 38 3. Recommended approval of the Ordinance as referenced and provided in the November
39 14, 2007 Planning Department Staff Report, Attachment A with various text amendments
40 to provide further clarification to the provisions and providing for no exemptions and/or
41 removal of the exemption provisions for Educational Institutions. This final vote of the
42 motion resulted in no recommendation (3-3 vote).
43

44 **WHEREAS**, various text amendments were identified by both the Planning and Zoning
45 Board and City Staff since First Reading, to clarify the provisions, these changes have been
46 included:
47
48
49

- 1 1. Requested additional clarification that construction costs included maintenance, lighting,
2 signage, etc. of the art.
- 3 2. Include a consumer pricing index adjustment for the \$1,000,000.00 Non-Municipal
4 Construction Project valuation.
- 5 3. Addition of language indicating the applicability of the exaction of fees is upon City
6 Commission approval of the Public Art Master Art Plan.
- 7 4. Other changes to clarify provisions, including definitions, etc.
- 8

9 **WHEREAS**, after notice of a public hearing being duly published, the City Commission
10 on December 11, 2007 recommended approved (vote ___ - ___) on Second Reading of this
11 Ordinance.

12
13 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF**
14 **CORAL GABLES:**

15
16 **Section 1.** The recitals and findings contained in the Preamble to this Ordinance are adopted
17 by reference and incorporated as if fully set forth in this Section.

18
19 **Section 2.** The Zoning Code of the City of Coral Gables, Florida is hereby amended to create
20 a new Division 20, to be entitled "Art In Public Places," to read as follows:

21
22 **DIVISION 20. Art in Public Places**

23
24 **Section 20-101. Purpose.**

25
26 It is the purpose of this Division to establish a formal policy for the City pertaining to the funding,
27 acquisition, placement and maintenance of public art and the maintenance of historic public art.
28 The policy is outlined in *The City of Coral Gables Art in Public Places Program: Funding Goals*
29 *and Implementation Guidelines*, which may be revised and clarified from time to time upon the
30 recommendation of the Cultural Development Board and final approval by Resolution of the City
31 Commission. It is the intention of this program to preserve the City's artistic heritage, enhance
32 its character and identity, contribute to economic development and tourism, add beauty and
33 interest to public spaces and increase opportunities for the public to experience and participate
34 in the arts through the acquisition and installation of world-class art in publicly accessible areas.

35
36 **Section 20-102. Definitions.**

37
38 For the purpose of this Division, the following terms are defined:

39
40 *Aggregate project value* means the total of all construction costs associated with a particular site
41 plan project regardless of the number of permits associated with the project, or whether it is a
42 phased project.

43
44 *Arts advisory panel* means a panel composed of art experts, appointed by the Cultural
45 Development Board, who along with the City Architect shall make recommendations to the
46 Cultural Development Board on acquisitions for individual artwork projects. Arts Advisory Panel
47 members are professionals in the field of art, art history, architecture or architectural history.

1 *Art acquisition fund* means a separate, dedicated, interest bearing and revolving fund
2 established in the City Treasury into which non-City developer contributions are collected and
3 deposited for the purposes of acquiring, installing, and maintaining world-class public art.
4

5 *Art in public places or public art* is defined as works of art of exceptional quality executed on an
6 appropriate scale and for general public access, other than museums, which enrich and give
7 diversion to the public environment.
8

9 *Artist* means, for the purpose of this ordinance, an individual generally recognized by critics and
10 peers as a professional practitioner of the visual arts, as judged by the quality of that
11 professional practitioner's body of work, educational background, experience, past public
12 commissions, exhibition record, publications, receipt of honors and awards, training in the arts,
13 and production of artwork.
14

15 *City Manager* means the City Manager, Assistant City Manager, or any public officer designated
16 by the City Manager.
17

18 *The City of Coral Gables Art in Public Places Program: Funding, Goals, and Implementation*
19 *Guidelines* is the guiding document for the City of Coral Gables' Art in Public Places program.
20 The document may be revised from time to time and approved by Resolution of the City
21 Commission upon recommendation of the Cultural Development Board.
22

23 *Construction cost* means the total cost of the construction or renovation work, as determined by
24 the building official in issuing a building permit for construction or renovation. Construction
25 costs include all labor, structural materials, plumbing, electrical, mechanical, infrastructure,
26 maintenance, insurance, lighting, signage site work and other costs in order to maintain the art
27 as approved by the City. All construction and renovation costs shall be calculated as of the date
28 the building permit is issued.
29

30 *Extraordinary maintenance* means any non-routine repair or restoration to sound condition of
31 Public Art that requires specialized professional services.
32

33 *Historic public art Fund* means a separate, dedicated, interest bearing and revolving fund
34 established in the City Budget into which Municipal Project Construction contributions are
35 collected and deposited.
36

37 *Municipal construction project(s)* means any project to be paid for wholly or in part by the City,
38 regardless of the source of the monies, to construct or renovate any public buildings, decorative
39 or commemorative structures, parking facilities and parks, or any portion of any such buildings,
40 structures, facilities or parks belonging to the City or where construction occurs on City-owned
41 land where the City is a party to a public private joint venture agreement on City owned land.
42

43 *Non-municipal construction project(s)* is defined as any non-City construction or renovation in
44 Coral Gables in excess of one million dollars (\$1,000,000.00), excluding single-family homes.
45

- 46 1. Developers may petition to have the public art acquisition incorporated within their project
47 provided there is regular public access at no charge to the public.
48
- 49 2. If the developer seeks to incorporate the art within his/her project, the artwork shall be
50 reviewed by the Cultural Development Board, with the assistance of the Arts Advisory

1 Panel. The Cultural Development Board shall recommend to the City Commission whether
2 to approve, deny, or approve with conditions the selection and location of the artwork.
3

- 4 3. The art acquisition to be incorporated within the project shall have a minimum appraised
5 value of one (1.0%) percent of the construction costs. The value of the artwork shall be
6 confirmed by a certified art appraiser (or a person with professional arts credentials) as
7 determined by the City whose evaluation fee shall be paid by the developer and reviewed
8 by the City. If the appraised value of the artwork is less than one (1.0%) percent of the
9 construction costs of the project, the difference in the value of the artwork and the one
10 (1.0%) percent shall be contributed to the Art Acquisition Fund.
11
- 12 4. Instead of providing credentialed artwork on the project site, the developer may choose to
13 contribute one (1.0%) percent of the aggregate project value as the required art fee.
14
- 15 5. In Lieu of providing artwork on the project site or contributing a one (1%) percent art fee,
16 the developer may choose to donate artwork to the City. The artwork shall be valued at
17 one (1%) percent of the aggregate project value inclusive of the cost of maintenance,
18 insurance, lighting and signage. The artwork shall be reviewed by the Cultural
19 Development Board, with the assistance of the Arts Advisory Panel. The Cultural
20 Development Board shall recommend to the City Commission whether to approve, deny,
21 or approve with conditions the selection and location of the artwork.
22
- 23 6. The Non-Municipal Construction Project one million dollar (\$1,000,000.00) threshold shall
24 be adjusted annually based upon the consumer price index.
25

26 *Ordinary maintenance* means any routine maintenance necessary to maintain the public art
27 which is undertaken on a regular basis.
28

29 *Public art collection* means the works of public art owned by the City.
30

31 *Public art in-lieu fee* means a fee paid to the City pursuant to this Division equal to one (1.0%)
32 percent of construction costs as defined herein for those non-municipal projects with an
33 aggregate project value of one million dollars (\$1,000,000.00) or more.
34

35 *Public art master art plan* means a five-year plan developed to further define the City of Coral
36 Gables as a unique city of artistry and beauty while insuring open access to public art. The
37 document at a minimum will identify locational placement priorities, standards for installation,
38 detailed criteria for artist and artwork selection, and a conservation/maintenance protocol.
39

40 *Publicly accessible* means locations that are highly visible and accessible in areas where people
41 congregate at no charge to public.
42

43 *Works of art* is defined as tangible creations by artists exhibiting the highest quality of skill and
44 aesthetic principles, including but not limited to paintings, sculptures, stained glass, statues, bas
45 reliefs, engravings, carvings, frescos, mobiles, murals, collages, mosaics, tapestries,
46 photographs, drawings, monuments, and fountains or combinations thereof. Appropriate
47 expenditures may also include the repair and maintenance of works of art acquired under this
48 ordinance. For the purposes of this ordinance, Historic Public Art consists of plazas, entrances,
49 fountains, murals, sculptures, and other decorative features that have been designated as local
50 historic landmarks and represent the original civic art designed by the founders of the City. In

1 the Historic Public Art Fund, appropriate expenditures may include the acquisition of historic
2 public art or the repair, maintenance, signage, lighting or reinstallation of the art subject to the
3 City Commission's approval upon recommendation of the Historic Preservation Board.
4

5 **Section 20-103. Art funds.**
6

7 A. General. Two funds will be established for the Art in Public Places Program. The first fund
8 will be entitled Historic Public Art Fund and will be funded through Municipal Construction
9 Projects following City Commission approval of the Public Art Master Art Plan. The second
10 fund will be entitled Art Acquisition Fund and will be funded through Non-Municipal
11 Construction Projects over one million dollars (\$1,000,000.00), excluding single family
12 homes, following City Commission approval of the Public Art Master Art Plan. Each of these
13 funds will be interest bearing and revolving and may only be used for the purposes outlined
14 in *The City of Coral Gables Art In Public Places Program: Funding, Goals, and*
15 *Implementation Guidelines*.
16

- 17 1. Historic Public Art Fund. One (1.0%) percent of the aggregate project value for City of
18 Coral Gables municipal projects shall be transferred to an account entitled historic
19 Public Art Fund which will be used on the restoration, maintenance and acquisition of
20 Historic Public Art as recommended by the Historic Preservation Board and approved
21 by the City Commission.
22
- 23 2. Art Acquisition Fund. One (1.0%) percent of the aggregate project value of non-
24 Municipal projects of one million dollars (\$1,000,000.00) or more (excluding single
25 family homes) shall be contributed to an account designated as the Art in Public
26 Places Trust Fund established by the City for use only on Art in Public Places as
27 defined by the Guidelines and managed by the Cultural Development Board when the
28 developer does not petition to place the artwork within their project. This one (1.0%)
29 percent fee is in-lieu of the art being placed within the developer's project and shall be
30 used to support public art in other locations within the City.
31

32 B. Waiver of requirements. A developer may seek a reduction, adjustment or complete waiver
33 of the requirements of this ordinance. The reduction, adjustment or complete waiver shall be
34 made by Resolution of the City Commission. Before considering any request for waiver of
35 the art allocation, the City Commission will seek a recommendation of the appropriate Board
36 and City Manager. The following waivers may be considered by the City Commission:
37

- 38 1. Projects that cause the purchase, designation, restoration, or perpetual maintenance
39 of historically significant buildings equal to or greater than the calculated dollar
40 contribution otherwise required for the Art in Public Places Fund.
41
- 42 2. Projects that cause the purchase of parcels identified in the City's Parks and Open
43 Space Inventory Analysis that are equal to or greater than one (1.0%) percent of the
44 construction costs of the project and donated to the City. The value of the donation
45 shall be confirmed by MIA appraisals, which will be paid by the developer, reviewed,
46 and approved by the City.
47

48 C. Exemptions. The following are exempt from the requirements of this Division:
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- 50 1. Single-family homes.

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2. Construction projects, which are required to pay a public art fee under other applicable Miami-Dade County regulations, provided payment has been documented and approved to the City's satisfaction.
3. Non-municipal projects whose aggregate project value is less than one million dollars (\$1,000,000.00).
4. 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, all of the following criteria will be satisfied:
 - a. A Campus Art Master Plan describing the selection criteria, placement, and maintenance of the permanent collection and future sculptures and other public art, and describing plans for the evolution and growth of such public art collection over time, shall initially be submitted for review 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 art on the campus during the previous three year interval, shall be made to the City Commission during the anniversary month of the effective date of this ordinance.

Section 20-104. Policy.

It is the intent of this policy to capture municipal and non-municipal construction related contributions through existing building permit processes so as to be implemented and monitored without adding significant time or expense, beyond the required contribution, to the pertinent selection and contract procedures.

Section 20-105. Administration.

- A. Annual priorities and Inventories. The Historic Preservation Board or their designee as determined by the City Manager shall submit to the City Commission an annual inventory and recommended priority for the disbursement of Historic Public Art Fund as they become available.
- B. Master art plan and written guidelines. The Cultural Development Board shall develop a Public Art Master Art Plan, which shall be reviewed by the Board of Architects for the placement of artwork. The recommendation of each Board shall be subject to final review and approval by the City Commission. If approved, the Plan will govern location and selection criteria for art work. The Master Art Plan and written guidelines shall govern the manner and method of submission of proposed works of art to the Arts Advisory Panel, 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.

1 C. Accounting. The Historic Preservation Board and the Cultural Development Board shall
2 submit an annual report, detailed accounting of monies spent or earmarked for future
3 expenditures to the City Manager.
4

5 D. Selection of works of art. The selection of works of art, under the Art Acquisition Fund, shall
6 be by Resolution of the Coral Gables City Commission upon recommendation by the
7 Cultural Development Board with the assistance of the Arts Advisory Panel. In the selection
8 process, all of the following principles shall be observed:
9

- 10 1. Works of art shall be publicly accessible.
- 11
- 12 2. The Cultural Development Board shall consider the inherently intrusive nature of Public
13 Art on the lives of those frequenting public places. Artworks reflecting enduring artistic
14 concepts, not transitory ones should be sought.
15
- 16 3. The Cultural Development Board's recommendations should reflect the cultural and
17 ethnic diversity of the City without deviation from a standard of excellence.
18
- 19 4. Final selection shall also take into account appropriateness to the site, permanence of
20 the work in light of environmental conditions at the site, maintenance requirements,
21 quality of the work, likelihood the artist can successfully complete the work within the
22 available funding, and diversity of the artist.
23
- 24 5. Ownership and maintenance.
25
- 26 a. The City shall be deemed the owner of and shall retain title to each work of Public Art
27 acquired under the provisions of this Division. The City is charged with the custody,
28 supervision, and preservation of such works of art.
29
- 30 b. Ownership of all works of art incorporated into private construction projects shall be
31 vested in the property owner who shall retain title to each work of art. If the property
32 is sold, the seller may either include restrictions in the deed that require maintenance
33 of the artwork and prevent its removal from the property, transfer ownership of the
34 artwork to the City of Coral Gables to be maintained as a public artwork, or remove
35 the artwork and make a contribution to the Art Acquisition Fund equal to one (1.0%)
36 percent of the initial Aggregate Project Value. If the title is passed to a subsequent
37 owner and, as a result, a deed restriction exists as to the artwork, the subsequent
38 owner shall maintain the artwork in accordance with established guidelines. Property
39 owners will be required to maintain the work of art in good condition in the approved
40 location, as required by law or other applicable guidelines including but not limited to
41 code enforcement rules, to ensure that proper maintenance is provided.
42
- 43 c. All contracts for artwork that will be acquired or accepted for ownership by the City
44 must be reviewed and approved by the City Attorney's Office.
45
- 46 d. Artists, as part of any contractual agreement with the City for the provision of a work
47 of art, shall be required to submit to the Cultural Development Board a "Maintenance
48 and Inventory Sheet", including the annual cost projections, which details the
49 maintenance and ongoing care of the work and signage/credit recommendations.
50

1 E. Enforcement. The City shall not issue a building permit for a qualified Municipal or Non-
2 Municipal Construction project (where the developer has chosen to pay the in-lieu fee) until
3 the required contribution has been deposited in the appropriate fund as described in *The*
4 *City of Coral Gables Art in Public Places Program: Funding, Goals, and Implementation*
5 *Guidelines*.
6
7

8 **Section 3.** Applicability of the Ordinance. The provisions of this ordinance are not effective
9 until the City of Coral Gables Public Art Master Art Plan, as referenced herein, is reviewed and
10 approved by the City Commission. Applicants who have secured preliminary Board of
11 Architects approval prior to City Commission approval of the Public Art Master Art Plan shall not
12 be subject to provisions of this Ordinance.
13

14 **Section 4.** Severability.

15
16 If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or
17 unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect
18 the validity of the remaining portions of this Ordinance.
19

20 **Section 5.** Repealer.

21
22 All ordinances or parts of ordinances in conflict herewith, be and the same, are hereby
23 repealed.
24

25 **Section 6.** Codification.

26
27 It is the intention of the Commission of the City of Coral Gables, Florida, that the provisions of
28 this Ordinance shall become and be made a part of the City of Coral Gables Code of
29 Ordinances; and that the sections of this ordinance may be renumbered or relettered to
30 accomplish such intention, and the word "ordinance" may be changed to "section", "article", or
31 such other appropriate word or phrase in order to accomplish such intentions.
32

33 **Section 7.** Effective Date.

34
35 This ordinance shall become effective immediately upon the date of its adoption by the City
36 Commission.
37

38 **PASSED AND ADOPTED** this _____ day of _____ 2007.
39
40

41 _____
42 DONALD D. SLESNICK II, MAYOR
43

44
45 ATTEST:

46 _____
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48 WALTER FOEMAN
49 CITY CLERK
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APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

ELIZABETH M. HERNANDEZ
CITY ATTORNEY

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