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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 11(A)(3)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: December 4, 2007

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Resolution authorizing execution of an Art Loan Agreement with City of Hialeah

R-1337-07

The accompanying resolution was prepared and placed on the agenda at the request of Commissioner Natacha Seijas.

R. A. Cuevas, Jr.
County Attorney

RAC/bw

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: December 4, 2007

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 11(A)(3)

Please note any items checked.

_____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Bid waiver requiring County Manager's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

✓ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(3)
12-4-07

RESOLUTION NO. R-1337-07

RESOLUTION AUTHORIZING THE EXECUTION OF AN ART LOAN AGREEMENT WITH THE CITY OF HIALEAH FOR THE EXHIBITION OF A SCULPTURE; AND AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN

WHEREAS, on June 26, 2007, the County purchased a ceramic sculpture for the price of $5,000.00; and

WHEREAS, the sculpture is titled "Cuba-Cachita-Cuba" and was created by the artist named Laura Luna; and

WHEREAS, the County desires to loan such sculpture for a period of five (5) years to the City of Hialeah to be exhibited in an appropriate exhibit space in a public facility owned by the City of Hialeah for the enjoyment of the residents of District 13 and of the City of Hialeah,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board authorizes the execution of an art loan agreement, in substantially the form attached hereto and incorporated herein by reference, with the City of Hialeah for the exhibition of a sculpture and authorizes the County Mayor or his designee to exercise any and all other rights conferred therein.

The foregoing resolution was sponsored by Commissioner Natacha Seijas and offered by Commissioner Jose "Pepe" Diaz, who moved its adoption. The motion was seconded by Commissioner Joe A. Martinez and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	aye		
Barbara J. Jordan, Vice-Chairwoman	aye		
Jose "Pepe" Diaz	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	absent
Joe A. Martinez	aye	Dennis C. Moss	aye
Dorrin D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	absent	Rebeca Sosa	aye
Sen. Javier D. Souto	absent		

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of December, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Kay Sullivan**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Monica Rizo

ART LOAN AGREEMENT

THIS ART LOAN AGREEMENT (the "Agreement") is made and entered into this 1st day of January, 2008 (the "Commencement Date") by and between THE CITY OF HIALEAH, as "EXHIBITOR" and MIAMI-DADE COUNTY, a political subdivision of the State of Florida, as the "COUNTY".

W I T N E S S E T H:

WHEREAS, on June 26, 2007, the COUNTY purchased a ceramic sculpture, hereinafter referred to as the "Sculpture", for the price of $5,000.00 with the use of the office funds of Commissioner Natacha Seijas;

WHEREAS, the Sculpture is titled "Cuba-Cachita-Cuba" and was created by the artist named Laura Luna;

WHEREAS, the COUNTY desires to loan the Sculpture to EXHIBITOR to be exhibited at the JFK Library for the enjoyment of the residents of District 13 and of the City of Hialeah.

NOW, THEREFORE, the parties hereto hereby covenant and agree as follows:

1. **DESCRIPTION OF SCULPTURE**

The COUNTY, for and in consideration of the restrictions and covenants herein contained, hereby loans to EXHIBITOR, and EXHIBITOR hereby agrees to accept as a loan, the Sculpture described as follows:

> A ceramic installation piece of an approximate size of 3 feet by 6 feet that is mounted on wood. The Sculpture is titled "Cuba-Cachita-Cuba" and was created by Laura Luna. The Sculpture was created in 2007. The value of the Sculpture at the time of the execution of this Agreement is $5,000.00.

2. **OWNERSHIP OF SCULPTURE**

The EXHIBITOR understands, agrees, and accepts that the COUNTY is the true and rightful owner of the Sculpture and that this Agreement only purports to loan the Sculpture to EXHIBITOR and not grant EXHIBITOR legal title to the Sculpture. The EXHIBITIOR understands, agrees, and accepts that this Agreement does not convey any copyright or reproduction rights of the Sculpture to the EXHIBITOR. The EXHIBITOR further agrees to adhere to all the provisions of the Visual Artists Rights Act of 1990 with respect to the Sculpture and the artist.

3. **TERM OF AGREEMENT**

The COUNTY and the EXHIBITOR agree that the term of loan for the Sculpture is to be for five (5) years from the period beginning on the Commencement Date and ending five (5) years thereafter on the 1st day of January, 2013.

4. **EXHIBITION OF SCULPTURE**

The EXHIBITOR agrees to display the Sculpture in an appropriate exhibit space in an EXHIBITOR-owned public facility to be determined at the sole discretion of the EXHIBITOR. However, notwithstanding the previous statement, the EXHIBITOR agrees to display the Sculpture in a location within the JFK Library where it can be viewed and enjoyed by the residents of District 13 and the City of Hialeah.

5. **LOAN PAYMENT AMOUNT**

EXHIBITOR agrees to pay the COUNTY the sum of $1.00 per year, receipt of which the COUNTY hereby acknowledges, as consideration the loan of the Sculpture to the EXHIBITOR.

6. **SHIPMENT OF SCULPTURE**

6.1. The EXHIBITOR shall be responsible for coordinating and effectuating the shipment of the Sculpture from its current location to the temporary or permanent exhibit space selected by EXHIBITOR. EXHIBITOR agrees that it will be solely responsible for the transport of the Sculpture to such location. The EXHIBITOR shall make arrangements, at its discretion, to safely transport the Sculpture at EXHIBITOR's expense.

6.2. At the termination or expiration of this Agreement, the EXHIBITOR shall be responsible for coordinating and effectuating the shipment of the Sculpture from the exhibit space selected by EXHIBITOR to the COUNTY at the Stephen P. Clark Center, 111 N.W. 1st Street, 29th Floor, Miami, Florida 33128. EXHIBITOR agrees that it will be solely responsible for the transport of the Sculpture to the COUNTY at the EXHIBITOR'S expense.

7. **RISK OF LOSS**

7.1. Risk of loss or damage incurred in the delivery of the Sculpture from the COUNTY to the EXHIBITOR, and in its return to the COUNTY, shall be the responsibility of the EXHIBITOR.

7.2. The EXHIBITOR shall be responsible for the safekeeping of the Sculpture while it is in its custody. The EXHIBITOR shall be liable to the COUNTY for the loss or damage to the Sculpture (except for damage resulting from flaws inherent in the Sculpture), in the amount of $5,000.00, the full value of the Sculpture at the time of the execution of this Agreement.

8. **TERMINATION OF AGREEMENT**

Notwithstanding any other provision of this Agreement, this Agreement may be terminated at any time by the COUNTY or the EXHIBITOR after thirty (30) days written notification of termination, to be sent by certified or registered mail to the other party. Within ten (10) days of termination, the EXHIBITOR shall return the Sculpture to the COUNTY, at the COUNTY's expense, if this Agreement is terminated by the COUNTY without cause.

9. **EXHIBITOR'S DEFAULT**

It shall constitute a default of this Agreement by EXHIBITOR if EXHIBITOR fails to observe or perform any of the covenants, conditions, or provisions of this Agreement to be observed or performed by EXHIBITOR where such failure shall continue for a period of thirty (30) days after written notice thereof from the COUNTY to EXHIBITOR. In the event of any such default by EXHIBITOR, the COUNTY may at any time terminate this Agreement, effective immediately. No remedy of the COUNTY provided for in this Agreement shall be considered to exclude or suspend any other remedy provided for herein, but the same shall be cumulative and in addition to the COUNTY's remedies at law or in equity.

10. **INDEMNIFICATION**

EXHIBITOR does hereby agree to indemnify and hold harmless the COUNTY to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of that Statute whereby the EXHIBITOR shall not be held liable to pay a person injury or property damage claim or judgment by any one person which exceeds the sum of $100,000, or any claim or judgments of portions thereof, which, when totaled with all other occurrences, exceeds the sum of $200,000, form any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise as a result of the negligence of the EXHIBITOR.

11. **ASSIGNMENT OF AGREEMENT**

EXHIBITOR shall not make any assignments of this Agreement without prior written consent of the COUNTY.

12. **NOTICES**

It is understood and agreed between the parties hereto that written notices addressed and sent by certified or registered mail, return receipt requested, first class, postage prepaid and addressed as follows:

EXHIBITOR:

Mayor Julio Robaina
Raul L. Martinez Government Center
501 Palm Avenue
Hialeah, Florida 33010
COUNTY:

County Manager
Miami-Dade County, Florida
111 NW 1st Street, 29th Floor
Miami, Florida 33128

shall constitute sufficient notice to EXHIBITOR, and written notice addressed to COUNTY, and mailed or delivered to the address as stated above, shall constitute sufficient notice to COUNTY to comply with the terms of this Agreement.

13. **GOVERNING LAW**

This Agreement, including any exhibits or amendments, if any, and all matters relating thereto (whether in contract, statute, tort or otherwise) shall be governed by and construed in accordance with the laws of the State of Florida.

14. **WRITTEN AGREEMENT**

This Agreement contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by an amendment to this Agreement. Amendments to this Agreement must be signed by both the EXHIBITOR and the COUNTY and attached to this Agreement.

IN WITNESS WHEREOF, the COUNTY and EXHIBITOR have caused this Agreement to be executed by their respective and duly authorized officer the day and year first above written.

CITY OF HIALEAH, FLORIDA

Attest:

BY: _____
Mayor Julio Robaina
(EXHIBITOR)

_____

Rafael E. Granado, CITY CLERK

Approved as to form and legal sufficiency:

_____
William M. Grodnick
City Attorney

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

BY: _____
Carlos Alvarez
County Mayor
(COUNTY)

By: _____
Deputy Clerk

Approved as to form and legal sufficiency:

_____
Assistant County Attorney

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