

## **EXHIBITION & LOAN AGREEMENT**

AGREEMENT, dated as February 22, 2022, between **MANOLO VALDES STUDIO LLC** of 37 18th Street, New York, NY 10003 (the "Studio") and the **CITY OF DORAL** (the "City").

**WHEREAS**, the Studio operates as the studio of the artist Manolo Valdés (the "Artist") and is authorized by the Artist to lend and exhibit original works of art created and owned by the Artist and to license the Artist's intellectual property rights;

**WHEREAS**, the City wishes to organize and present the exhibition of the Artist's work described below (the "Loaned Work or Exhibition");

NOW, THEREFORE, for good and valuable consideration received, the parties hereby agree as follows:

### 1. Nature of Exhibition

- (a) *Loaned Work*. The Loaned Work shall consist of the work created and owned by the Artist specified in the attached Exhibit A (the "Loaned Work"). The Loaned Work shall be loaned by the Studio to the City upon the terms set forth herein.
- (b) *Exhibition Site*. The City shall install the Loaned Works at suitable public outdoor sites ("Site") located within the limits of the City of Doral.
- (c) *Term*. The term of the loan agreement shall be five years and may be extended by a mutual agreement of the parties.

### 2. Loan Fee

The Studio has waived the payment of any loan fee in connection with the Loaned Work, and therefore no loan fee or similar compensation shall be due to the Studio hereunder.

### 3. Delivery, Installation/Deinstallation & Return

- (a) *Shipper & Installer*. The City shall engage Art and Sculpture Unlimited, Inc. of 7301 NW 41st Street, Miami, FL 33166 (the "Contractor"), at the expense of the City, to handle the packing, crating, and shipment of the Loaned Work to the Site, installation of the Loaned Work at the

Site, and, following the close of the Exhibition, deinstallation, packing, crating and return shipment.

- (b) *Delivery.* It is understood that the Loaned Work is presently stored on in Miami. The Loaned Work shall be deemed delivered by the Studio to the City hereunder ("Delivery") when it is released by the Studio to the Contractor for packing and shipment to the Site.
- (c) *Installation.* The final plan for installation of the Loaned Work at the applicable Site (including, without limitation, any support structure or base, the exact positioning and orientation of the Loaned Work, any lighting of the installed Loaned Work, and any immediately adjacent structures, objects or landscaping) shall be subject to the Studio's approval.
- (d) *Maintenance & Care.* The City shall also contract with the Contractor or other qualified personnel to handle the cleaning of the Loaned Work and any other applicable on-going maintenance measures in accordance with the instructions and specifications reasonably provided by the Studio (collectively, "Maintenance"). The City shall fully comply with such instructions and specifications and shall only permit Maintenance to be carried out by, and the Loaned Work to be installed, deinstalled, or otherwise handled by, the Contractor and/or trained professional art handlers and other qualified personnel. In no event shall members of the public be permitted to climb on, sit on, or touch the Loaned Work.
- (e) *Return.* Upon conclusion of the Agreement , the City shall arrange to deinstall, pack and transport the Loaned Work back to the Studio (or such alternate delivery location as may be reasonably designated in writing by the Studio); and the return of the Loaned Work to the Studio shall be deemed complete when the Loaned Work arrives at the Studio and the Studio takes custody of the Loaned Work(or, if the Loaned Work is returned to a designated alternate return location, when the Loaned Work is released to the Studio or its agent at such location, if applicable) ("Return").

#### 4. Insurance

- (a) *Fine-Art Insurance.* Upon the terms set forth below, the City shall insure each Loaned Work on a "wall-to-wall" basis during the Term against "All Risks" of physical loss of or physical damage to the Loaned Work ("Loss or Damage") for the Loaned Work's full value, as stated in Exhibit A (the "Insurance Value"). The insurance to be so obtained (the "Fine-Art Insurance") must be reasonably acceptable to

the Studio in form and content, and shall comply with the following requirements:

1. The Studio shall be named as an additional insureds and loss payee in the event of any Loss or Damage.
2. Coverage shall be primary and noncontributory, and shall be provided independent from, and regardless of, any defenses the insurer may have against the City.
3. All rights of subrogation shall be waived as against the Studio and its insurers.
4. The City shall pay all premiums and deductibles applicable to the Fine-Art Insurance on a timely basis and shall ensure that any deductible paid does not limit or reduce the insurance proceeds due to the Studio hereunder.
5. If the Loaned Work is damaged but restorable, the applicable amount of Loss or Damage shall be calculated as the cost of restoration plus the diminution in fair-market value. Such diminution shall be determined by subtracting the fair-market value of the Loaned Work after restoration from the Insurance Value.
6. If the Studio elects to maintain its own insurance coverage, such coverage shall in all events be secondary and noncontributory to the coverage provided by the City and shall not be deemed to release the City from, or to waive or diminish, their respective obligations under this Agreement. Further, if the Studio elects to maintain its own insurance coverage, the Studio shall do so at its sole cost and expense.
7. The Studio shall receive at least 30 days prior written notice of cancellation, intent not to renew, or any substantive change in the terms or rate of each applicable policy.
8. The coverage may contain the customary exclusions for wear and tear, gradual deterioration, inherent vice, war or warlike action (but not for acts of terrorism, riot, civil commotion, piracy or hijacking), nuclear reaction or radiation, and radioactive contamination, but shall not include any other exclusions unless the Studio expressly consents in writing to each additional exclusion.

- (b) *Insurance Proceeds.* Any Fine-Art Insurance proceeds received by the City with respect to any Loss or Damage shall be deemed held by the City in trust for the Studio and shall promptly be remitted to the Studio.
- (c) *Disposition of Damaged Artwork.* If damage to the Loaned Work constitutes a total loss and the City's insurer pays the Studio in full for the loss, the City shall use best efforts to cause the insurer to either (i) destroy the Loaned Work or (ii) to return the Loaned Work to the Studio with the Studio retaining title thereto, even if the Loaned Work is deemed worthless.
- (d) *Insurance Endorsements & Certificates.* The City shall obtain and provide the Studio with a certificate of insurance evidencing that the Fine-Art Insurance has been obtained as provided herein, together with a complete copy of the insurance policy constituting the Fine-Art Insurance.

#### 5. Inspection & Restoration

- (a) *Condition Reports.* Immediately prior to the packing of the Loaned Work for shipment to the City, the Studio or its designee shall inspect such item and prepare a customary report specifying any pre-existing damage (the "Condition Report") which shall be provided to the City, with a copy provided to the City. A new inspection shall thereafter be conducted by the City immediately after the Loaned Work is received and unpacked (and by the Studio or its designee after the Loaned Work is returned to the Studio), and the Condition Report shall be updated to reflect the condition of the Loaned Work at the time of each such inspection.
- (b) *Damage.* A report shall promptly be made to both parties as to any new damage discovered at each such inspection. In the event of such damage, the Studio shall determine, in its reasonable opinion, whether immediate restoration is required. If not, such restoration shall be carried out by the Studio after the return of the Loaned Work in question. All such restoration shall be carried out pursuant to a detailed written conservation plan that has been approved in writing by both parties.

#### 6. Approvals

All handling, packing, crating, transportation, insurance, installation, deinstallation, maintenance, storage and similar arrangements relating to the Loaned Work shall be subject to the Studio's prior written approval.

## 7. Costs

All handling, packing, crating, shipping, installation, deinstallation, insurance, maintenance, and security expenses and costs relating to the Loaned Work hereunder shall be the sole responsibility of the City, except as otherwise expressly stated herein.

## 8. Press Rights

The City shall have the right to authorize the local and national press (including all print, online, film and television media) to reproduce the Loaned Work in connection with news articles about or critical reviews of the Exhibition (i.e., the type of press uses for which license fees are not customarily charged). The press shall be advised that the reproduction of a Loaned Work must include the required copyright notice in the Studio's name, as set forth below, but the City shall not be responsible for any failure by the press to comply with this requirement. The City shall not be entitled to grant hereunder, and shall promptly refer to the Studio, any request for the reproduction rights of the type for which license fees are customarily charged.

## 9. Advertising & Promotional Rights

- (a) *Advertising & Promotion.* The City shall have the right to reproduce the Work in a reasonable and customary manner in advertisements, social media and other promotional materials placed or disseminated for the purpose of publicizing and promoting Loaned Work.
- (b) *Other Exhibition Materials.* The City shall also have the right to reproduce the Loaned Work in customary invitations, flyers, brochures, admission tickets, and similar promotional or informational materials intended to promote, publicize and/or provide information about the Loaned Work.
- (c) *Exclusions.* The Studio's prior express written consent shall be required in each instance with respect to any three-dimensional reproduction or replica of the Loaned Work, or the use of any depiction of a Work (i) for merchandising (i.e., goods offered for sale or given away as premiums), (ii) to advertise or promote any commercial product, product line, service or brand, (iii) as a logo or trademark, or (iv) to promote any political or other cause.
- (d) *Credit & Copyright Notice.* The name of the Artist and the Studio's copyright notice shall be included in all customary circumstances when

the Loaned Work is reproduced, on the basis set forth in Section 11 below.

- (e) *Website*. The City shall have the right to reproduce the Loaned Work on its website along with other information about the Loaned Work.

#### 10. Exhibition Book & Merchandise Items

- (a) *Publication of a Book and or Promotional Material*. The City shall have the right, if desired, to publish a book and promotional material regarding the Loaned Work. If the City elects to publish a catalogue, the design, content, layout, illustrations, texts, and all other material creative aspects of the catalogue shall be subject to the Studio's prior written approval. No royalty shall be due to the Studio or the Artist in connection with sales of the catalogue, but the Studio shall be provided with 10 complimentary copies of any book or catalogue upon first publication, which copies shall be shipped at the City's expense to the location designated by the Studio.
- (b) *Merchandise*. If the City wishes to produce and sell retail merchandise that reproduces the Loaned Work and/or using the Artist's name or likeness, the parties shall negotiate in good faith to establish the applicable terms, which shall be memorialized in a separate written publishing and/or license agreement.

#### 11. Copyrights & Third-Party Materials

It is understood that the Artist exclusively owns the copyrights and all allied rights in the Loaned Work. In all customary and appropriate circumstances, the materials created in connection with the Exhibition that reproduce any Loaned Work shall bear a copyright notice in the Artist's name, in a form supplied or approved by the Studio.

#### 12. Use of Artist's Name & Likeness

Nothing associated with the Loaned Work, nor any use of the Artist's name, likeness, or identifying personal indicia, or the Studio's name, shall create the impression that the Artist or the Studio endorses or is affiliated with any product, brand, service, company, or political cause.

#### 13. Photography

- (a) *Photographic Documentation*. The City shall have the right to create installation photography (still and/or video) depicting the Loaned Work (collectively, "Photographic Documentation") for use in exercise of the

reproduction rights granted herein, to document the Exhibition, and/or for condition reports, damage documentation and archival purposes. If the City creates any Photographic Documentation, they shall provide the Studio with a copy of the master digital source files, in the highest available resolution, and the Studio shall have a perpetual, royalty-free license to use all such Photographic Documentation for reasonable non-commercial informational purposes relating to the Artist's work and the Studio's business. The Studio shall also have the right, if desired, to create its own Photographic Documentation, at its own expense, the City shall grant the Studio or its designee all reasonably required access in this regard, in accordance with and subject to the City's standard policies.

- (b) *Visitor Photography.* The City will post at the Site in the customary manner a notice that states that visitors are permitted to photograph the Loaned Work solely for personal noncommercial use (e.g., posting on personal social media, etc.) using non-professional camera equipment (e.g., mobile phones, personal cameras, etc.) without flash, but no third party shall be permitted to photograph the Loaned Work using professional photography equipment (e.g., tripods, lighting umbrellas, etc.) or to make use of any photography of the Loaned Work for commercial or other non-personal purposes. The parties acknowledge that the Loaned Work will be displayed in a public space and the City will not have the authority to fully enforce the above prohibitions at the Site.

#### 14. Warranties & Indemnification

- (a) *By Studio.* The Studio represents, warrants and covenants to the City that (i) the Studio has the full power and authority to enter into and perform this Agreement, (ii) the Studio owns the Loaned Work free and clear of any liens, encumbrances or claims of third parties, and (iii) the exercise of the reproduction granted herein with respect to the Loaned Work will not infringe the copyright or any other intellectual property right of any third party.
- (b) *By the City.* The City represents, warrants and covenants to the Studio that (i) the City has full power and authority to enter into and perform this Agreement, and (ii) subject to the foregoing representations and warranties by the Studio, nothing associated with the Exhibition (including, without limitation, any applicable Third-Party Materials), and no action or omission by the City or its agents (including, without limitation, the Contractor) will violate any right of any third party or cause any injury or harm to any person or property.
- (c) *Indemnification.* With respect to the breach by the Studio or the City or its respective representations and warranties hereunder, the breaching party indemnifies, defends and holds harmless the other parties (and

the Artist) against any loss, cost, damage or expense (including reasonable attorneys' fees and expenses) incurred by reason of said breach. With respect to the City, this section shall be interpreted and construed in a manner to comply with any applicable Florida Statutes, including, without limitation, Section 768.25 and 768.28, Fla. Stat. if applicable.

#### 15. Notices

All notices, statements and communications required or permitted to be given hereunder shall be sent to the parties, at their respective addresses, as first set forth above, by an established overnight courier service (such as FedEx or DHL), with an advance copy by email. Notices shall be deemed effective upon receipt, as evidenced by customary proof of delivery (such as the delivery confirmation customarily provided by such courier service).

#### 16. Force Majeure

Neither party shall be responsible for any delay or failure of performance hereunder if such failure or delay is caused by an event of force majeure beyond the control of the applicable party, such as, without limitation, epidemic (including the current COVID-19 pandemic), hurricane, fire, earthquake, accident, civil disturbance, war, rationing, allocation of embargoes, strikes or labor problems or delays in transportation, inability to secure necessary materials, parts or components, and governmental action.

#### 17. Miscellaneous

This Agreement: (i) is personal to the parties and not capable of assignment by any party without the other's prior written consent; (ii) cannot be amended or waived except in a written document signed by the party against whom enforcement is sought, with no waiver of any instance of breach to be construed as a waiver of any other instance; (iii) shall not be interpreted against any party on the ground that it was drafted by that party; (iv) is binding upon and shall inure to the benefit of the parties' respective successors and authorized assigns; (v) shall not be deemed to create a partnership, joint-venture, agency, employee/employer, or similar relationship; (vi) is governed by the laws of the State of Florida (excluding conflict-of-laws rules); (vii) may be executed by facsimile or electronic signature (e.g., a signature digitally transmitted by email or otherwise, in a PDF or similar format); (viii) may be executed in one or more counterparts; (ix) sets forth the parties' entire agreement regarding the subject matter hereof, superseding all previous agreements, understandings and arrangements in this regard; and (x) in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable

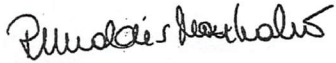


attorney's fees and costs (at the pre-trial, trial, and appellate levels) from the non-prevailing party.

***(signature page follows)***


IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above

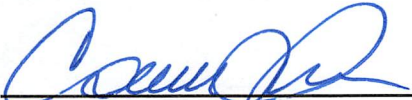
**MANOLO VALDES STUDIO, LLC**




By: \_\_\_\_\_  
Name: Regina Valdés Montalva  
Title: Manager

**CITY OF DORAL**

By:   
Name: Hernan M. Organvidez  
Title: Acting City Manager

  
\_\_\_\_\_  
Connie Diaz, City Clerk

*Approved as to form and legality  
for the sole use and reliance of the  
City of Doral:*

  
\_\_\_\_\_  
Luis Figueredo  
City of Doral  
City Attorney

**EXHIBIT A**  
**LOANED WORKS**



Butterflies  
Aluminum  
503 x 1524 x 356 cm  
16 x 50 x 12 feet  
2012  
1 of 4

Retail Price: \$2,100,00.00

**RESOLUTION No. 22-31**

**A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING AND AUTHORIZING THE EXHIBITION, LOAN AGREEMENT, INSURANCE OF ARTWORK AND EXPENDITURE OF FUNDS FOR THE EXHIBITION OF THE ARTWORK OF ARTIST MANOLO VALDES AT DOWNTOWN DORAL PARK; AUTHORIZING THE CITY MANAGER TO EXPEND BUDGETED FUNDS NOT TO EXCEED \$50,000.00; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Manolo Vales is a World-Renowned Spanish Artist who works in painting, sculpture and mixed media; and

**WHEREAS**, His work is forceful and decorated with historical art symbols and he has received various awards; and

**WHEREAS**, Manolo Valdés has agreed to lend an original work to be exhibited at Downtown Doral Park; and

**WHEREAS**, the City wishes to exhibit the sculpture entitled “Butterflies” at Downtown Doral Park.

**WHEREAS**, this project was considered at a special meeting of the Public Arts Program Advisory Board on March 4<sup>th</sup>,2022.

**WHEREAS**, Funds for the exhibition and insurance of artwork will be allocated from Public Art Program Fund account number 110.40005.500450 (Insurance) and 110.40005.500466 (Installation & Maintenance – Art Exhibits), provided by a budget transfer from account number 110.40005.500652 (Capital Outlay-Other) in an amount not to exceed \$50,000 in Fiscal Year 2021-2022.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are confirmed, adopted, and incorporated herein and made part hereof by this reference.

**Section 2. Approval.** The Mayor and City Council hereby authorize the City Manager to execute the Exhibition and Loan Agreement and to expend funds not to exceed \$50,000.00

**Section 3. Effective Date.** This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Councilmember Mariaca who moved its adoption. The motion was seconded by Vice Mayor Cabral and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Digna Cabral	Yes
Councilman Pete Cabrera	Yes
Councilwoman Claudia Mariaca	Yes
Councilman Oscar Puig-Corve	Yes

PASSED AND ADOPTED this 9 day of March, 2022.

  
\_\_\_\_\_  
JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:

  
\_\_\_\_\_  
CONNIE DIAZ, MMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:

  
\_\_\_\_\_  
LUIS FIGUEREDO, ESQ.  
CITY ATTORNEY