THE VOICE OF AIRPORTS®



LEGAL AFFAIRS SPRING CONFERENCE

May 2 - 5, 2018 // San Francisco, CA

PRACTICAL AND LEGAL ASPECTS OF DISPLAYING ART IN AIRPORT TERMINAL BUILDINGS

Implementation of Public Art Programs in Airports

By: Cynji A. Lee, Assistant County Attorney

Miami-Dade County Attorney's Office

Miami International Airport



What is the Airport's Authority to Spend Airport Revenue on Artwork?

The FAA's Revenue Use Policy and Procedures are set forth in 64 Fed. Reg. 7696, issued February 16, 1999, and are supplemented by FAA Airport Compliance Manual - Order 5190.6B, Chapters 15 and 25, issued September 30, 2009.

Each federally assisted airport owner/operator is required by statute and grant assurance to have an airport fee and rental structure that will make the airport as self-sustaining as possible under the circumstances at that airport in order to minimize the airport's reliance on Federal funds and local tax revenues. See 49 U.S.C. § 47107(a)(13) and Grant Assurance 24, Fee and Rental Structure.

Unlawful revenue diversion is the use of airport revenue for purposes other than the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property, when the use is not "grandfathered" under 49 U.S.C. § 47107(b)(2). When a use would be diversion of revenue but is grandfathered, the use is lawful revenue diversion.

Revenue may be used for capital and operating expenses, promoting the airport and its services, reimbursement for owner/operator contribution to capital and operating costs, lobbying and attorney fees, and for general government services (ex. fire/police) or officials, in promotion they serve the airport. Additionally, expenditure of airport funds may be done for support of community activities, participation in community events, or support of community-purpose uses of airport property if such expenditures are directly and substantially related to the operation of the airport.

Revenue <u>may not be</u> used for direct or indirect payments that exceed the fair and reasonable value of those services and facilities provided to the airport, use of airport revenues for general, marketing and promotional activities unrelated to airports or airport systems economic development, loans to or investment of airport funds in state or local agency at less than the prevailing rate of interest, land rental or use of land by, the sponsor for non-aeronautical purposes at less than fair rental/market value (with limited exceptions), use of land by the sponsor for aeronautical purposes rent-free or for community events, or support of communitypurpose uses of airport property with some exceptions, and for the direct subsidy of air carrier operations.

What are Best Practices for Implementing an Art Program Required by Local Ordinance at an Airport?

Miami-Dade County Code § 2-11.15 - "Works of art in public places"

The Ordinance requires the allocation of 1.5% of the construction costs of new buildings on public land be dedicated to the provision of public art.

All new building, including those funded through grants, bond and/or private development are subject to the Ordinance.

The 1.5% calculation is based on the total costs allocated for construction services including but not limited to:

architectural and engineering fees, specialty consulting fees, construction costs, site work and contingency allowances.

Excludes acquisition of the land and subsequent changes to the construction contract.

When Construction Occurs on Airport Property Controlled by the Airport

Controlling the Funds Utilized for Projects on Airport Property

If you are funding artwork through the airport's capital improvement program, you have to determine what the art project will be to determine if it is bond fund eligible.

Look to your trust agreement and bond covenants to determine eligible expenses.

It is imperative that the airport controls the allocation and distribution of airport funds utilized in projects because of the limitations and obligations that may be imposed by virtue of the funding source.

Considerations When Integrating Art into the Airport Structure

Appropriate terms and conditions should be included in all capital project contracts with architects, engineers, consultants, outside project management services, construction and development agreements.

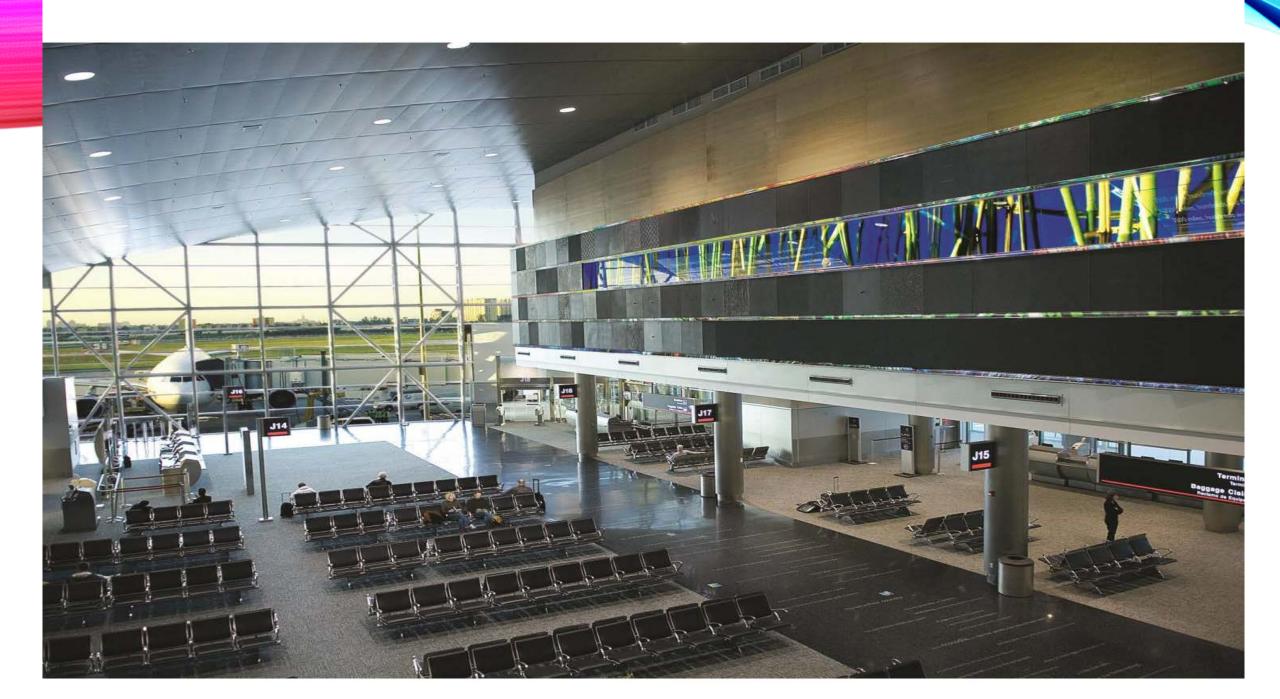
Plan for early involvement in coordinating the artists into the design process with the construction and design professionals when integrating art into the structure. Planning, design and construction of the building should be coordinated closely with the development and installation of the artwork.

Integrating art into the structure can cause construction headaches. Once the artwork is part of the construction process, the work to be conducted by the artist may cause construction delays. In order to avoid or mitigate delay claims by either construction professionals or the artists, it may be wise to require planning meetings for construction of the structure to include the artist, if identified, or art program staff. Also, using a dispute board to review delay claims may be advisable.

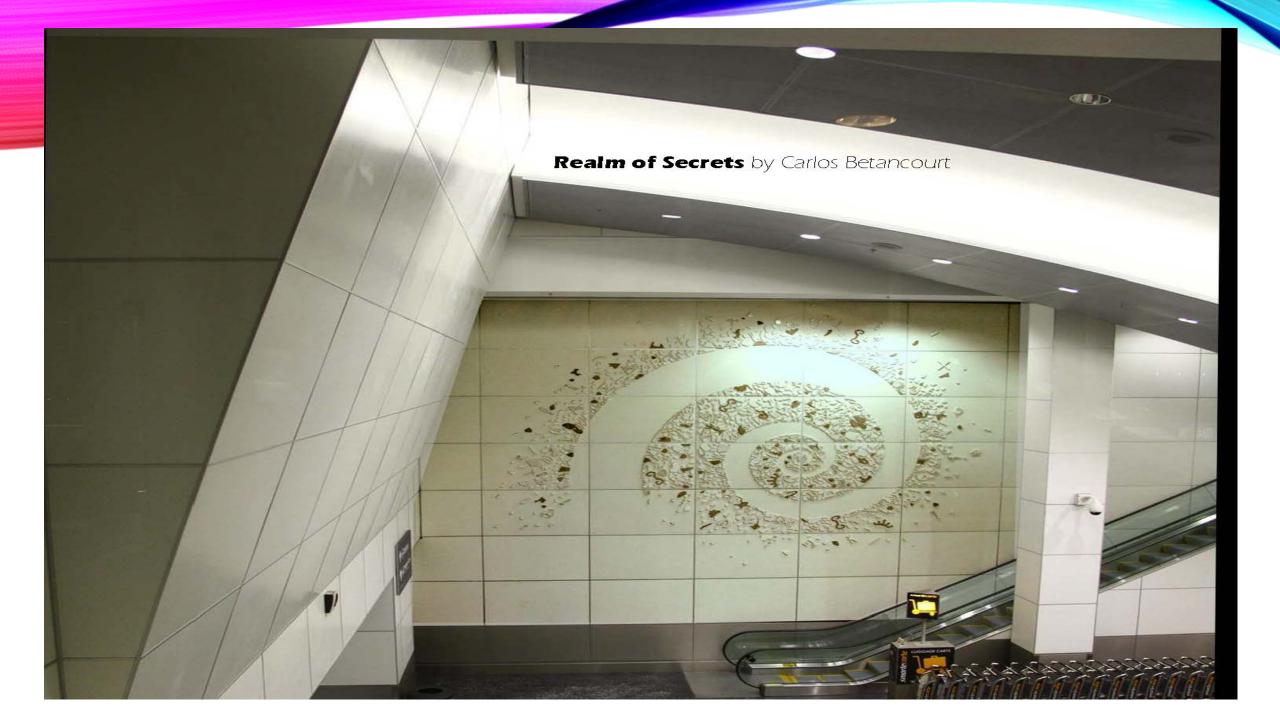
Forevergladesby
Barbara Neijna

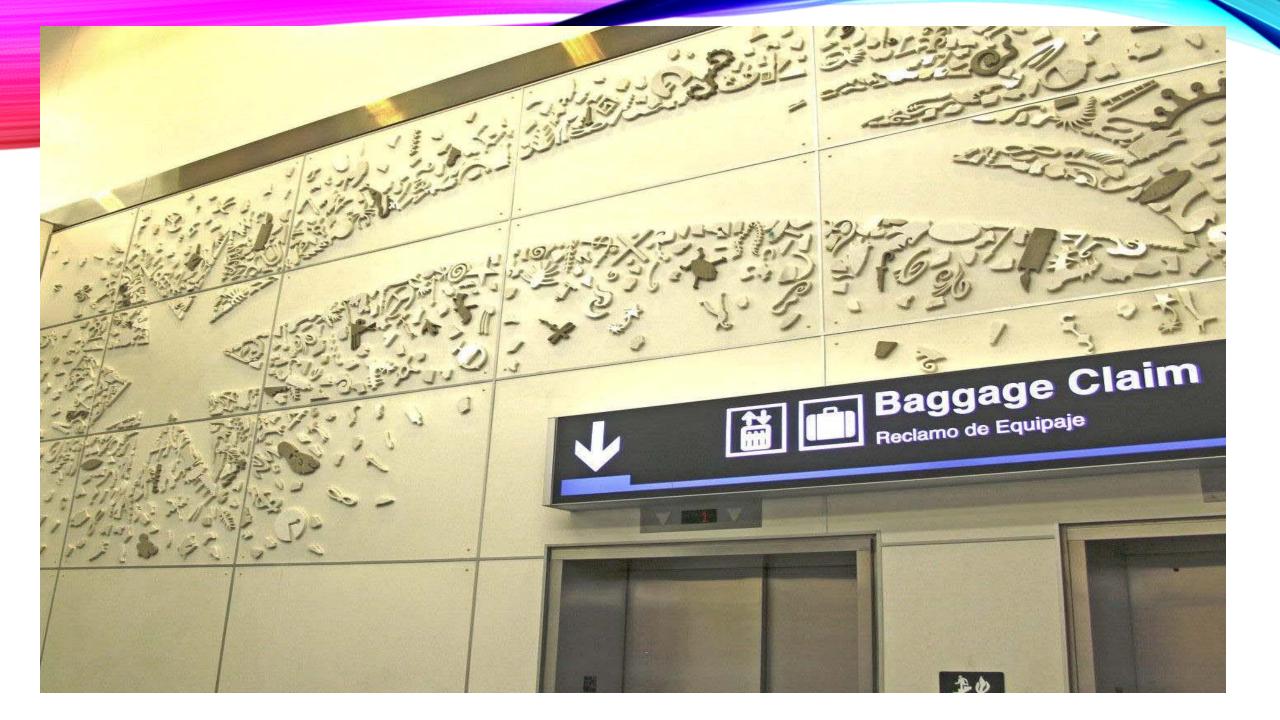
Miami International Airport Concourse J











Ghosts Palms by Norie Sato





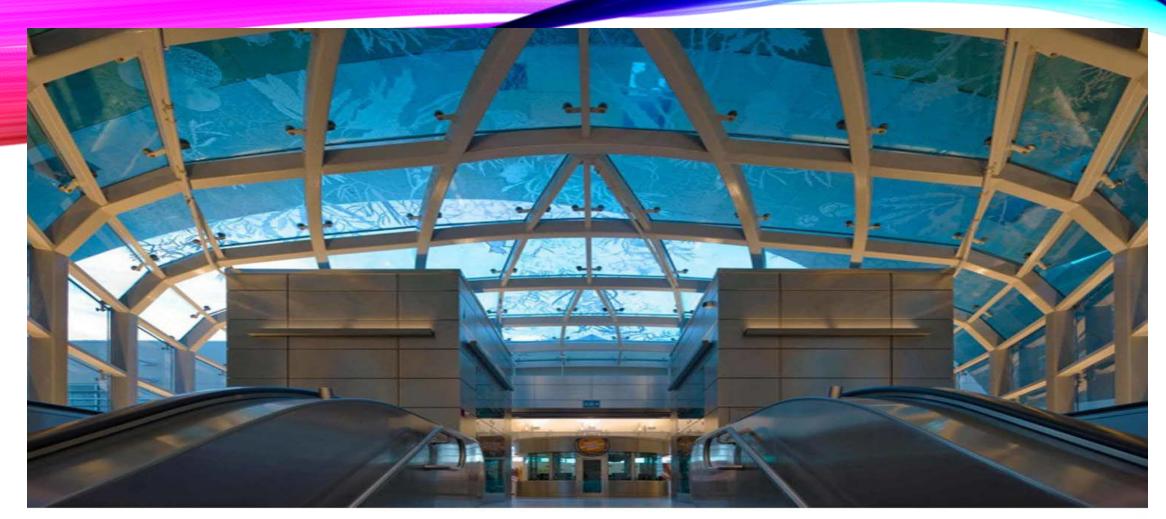




Coral Eden by Brad Goldberg



Miami International Airport South Terminal



Sargassum by Michele Oka Doner

Miami Intermodal Center Concourse Level Vestibule



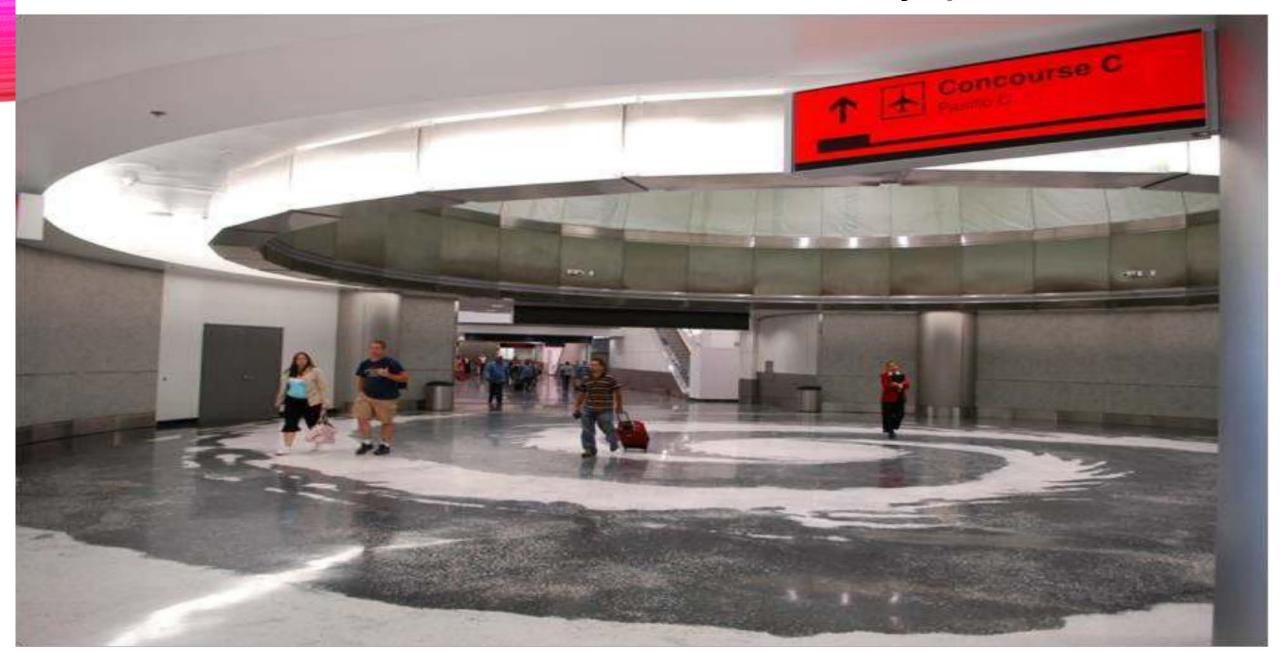
Considerations When Placing the Artwork

There are many challenges associated with an airport's decision to build public art into the terminal floors or in areas where the public can physically touch the art.

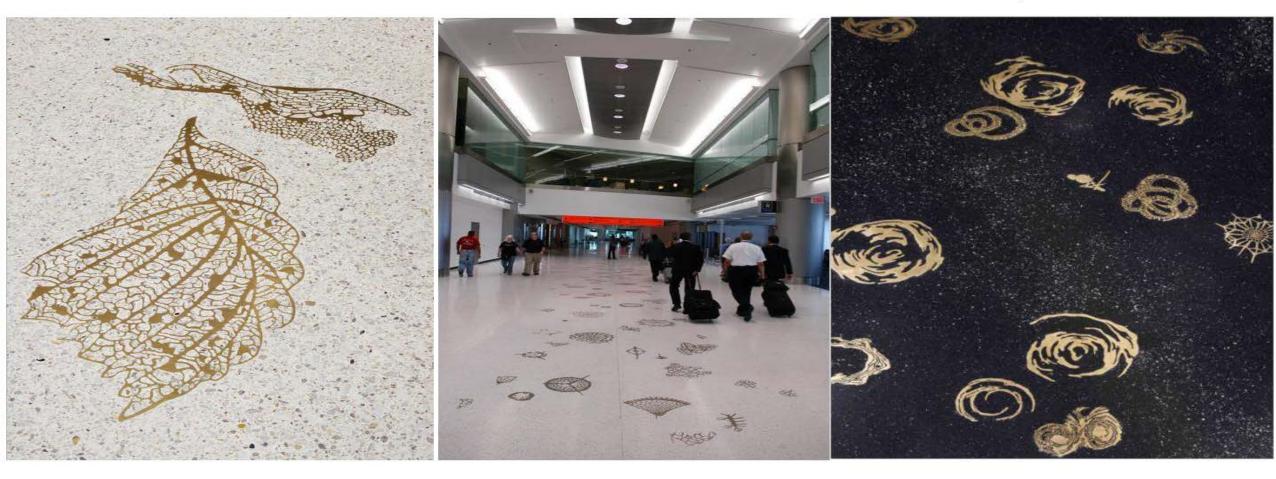
The extreme wear and tear to these types of projects due to passenger traffic significantly drive the costs of maintenance and impact the artistic appreciation of the design.

It is important for the airport to have a plan and procedure for considering the appropriateness of the site, the environmental conditions at the site, and the maintenance/preservation requirements involved.

Galaxy - by Michele Oka Doner



A Walk on the Beach by Michele Oka Doner



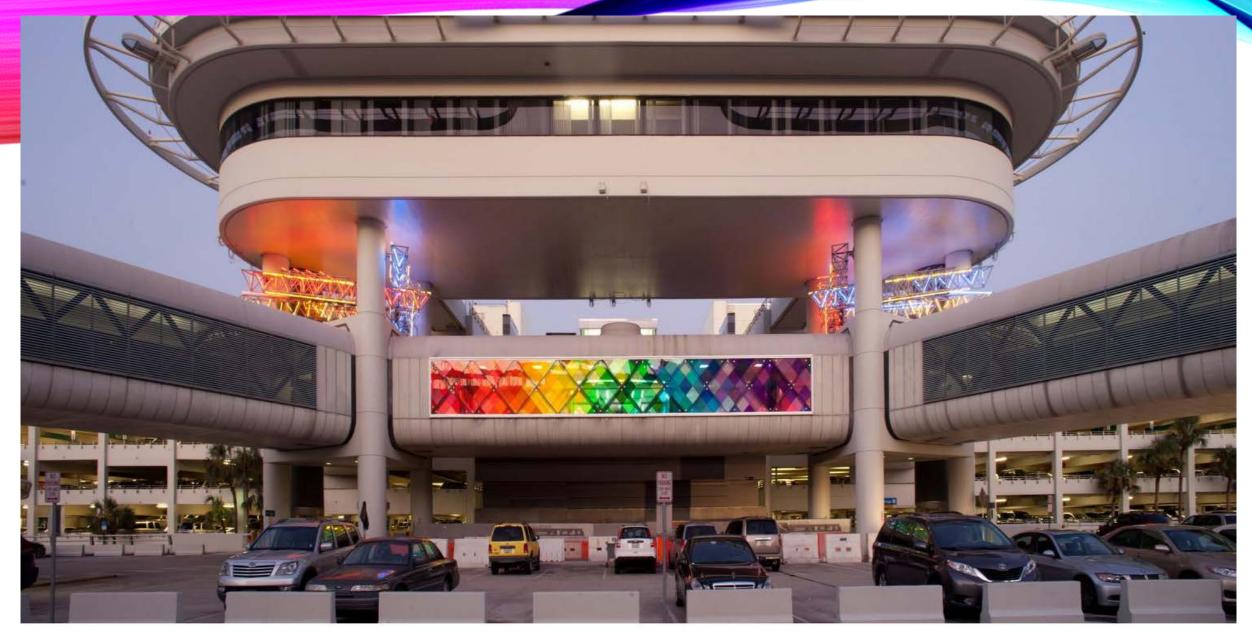
Miami International Airport Concourse D

Considerations when the airport plans to remove or relocate art projects

In deciding to relocate artwork, you may first need to determine whether or not the artwork can be moved, and who must assist in making those determinations.

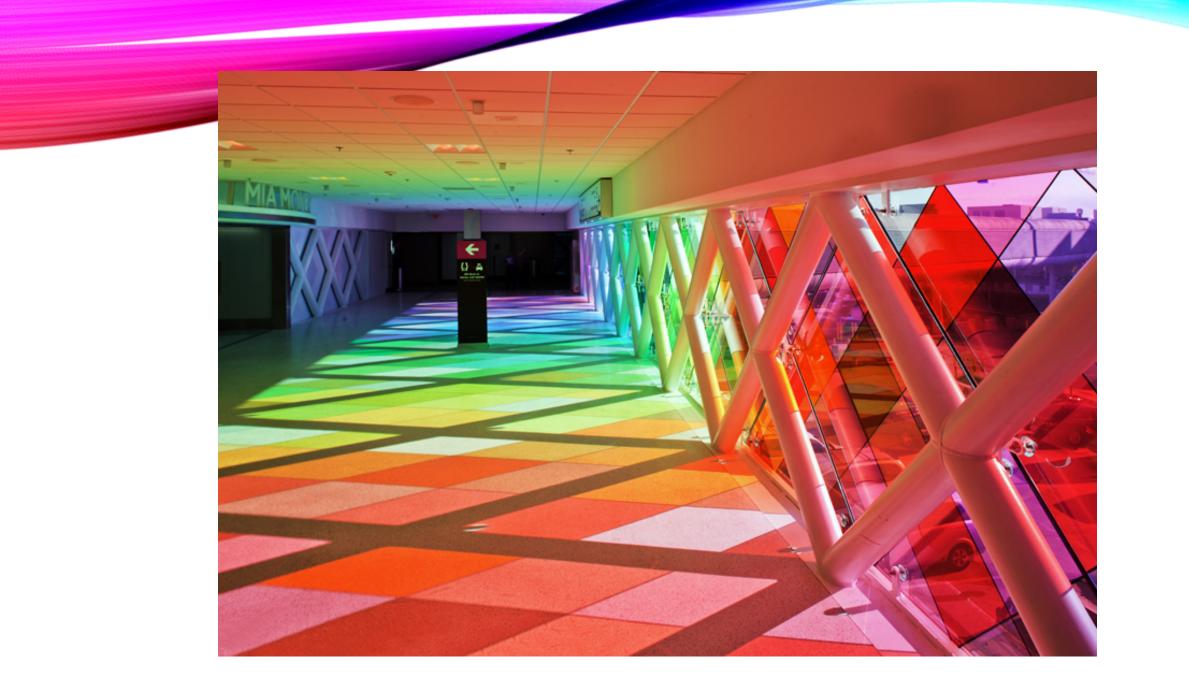
If the artwork commissioned was site-specific, the artist may have the right to assist in making the determination of whether a new site is consistent with the artist's intention for the piece.

Also consider the estimated current fair market value of the work, the costs of relocation or removal, or giving the artist first option of purchase, if a sale of the art is contemplated. If the artwork is sought to be relocated off airport, a sale or an exchange of artwork of equivalent value may be necessary. It is imperative that the proceeds or exchanged pieces come back to airport property.



MIA Mover APM Vestibule

Harmonic Convergence by Christopher Janney



When Construction Occurs on Airport Property by Private Development

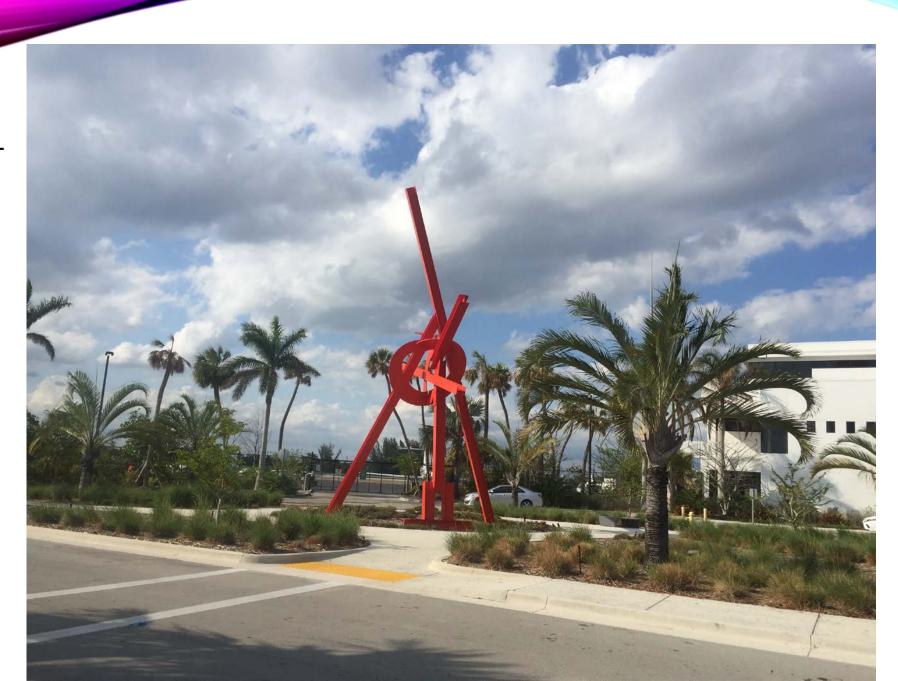
Include language in your development lease agreements incorporating the requirements of the Ordinance, including any contributions to be made by the developer.

Language should be included providing that funds collected from the developer will be set aside and used solely to provide public art on the leased property or on the airport where the development will be located.

In planning the stages for artwork to be placed on a private developer's leasehold, it may also be wise to include the developer in the artist selection process so that they can have a voice and hopefully become invested in the process.

Many of the issues the airport has encountered with private development have occurred when the developer has a true interest in art.

ART PROJECT ON PRIVATE DEVELOPMENT AT MIAMI-OPA LOCKA AIRPORT



Other Sources of Funding for Artwork on Airport Property

In choosing to engage in a public art program and using airport revenue, airports must still be conscious that the airlines may consider this use of airport revenues as an undue burden on an airport's overhead costs.

Airports should always be looking for other sources of funding to meet its local art program obligations other than airport revenue. Many airports' art programs are funded through foundations or accept donations of artwork.

15 Airports With Awesome Art Collections

May 07, 2013

By<u>Justin Ray</u> @jray05 / <u>Linkedin</u>

Miami International Airport Location: Miami



Miami International Airport is currently the largest U.S. gateway for Latin America and the Caribbean. Above is art by Brazilian artist Carybé, meant to reflect Miami's diverse culture.

