MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (the "**Agreement**"), is made and entered into as of the 15 day of Dec, ~~2006~~ 2008 (the "**Effective Date**"), by and between THE CITY OF NORTH MIAMI, FLORIDA (hereinafter called the "**CITY**"), a body corporate and a political subdivision of the State of Florida, duly organized and existing under the laws of said State, and the BOARD OF TRUSTEES OF THE MUSEUM OF CONTEMPORARY ART, (hereinafter referred to as "BOARD") on behalf of the Museum of Contemporary Art located in the City of North Miami, Florida, a Florida not-for-profit corporation (hereinafter "**MOCA**").

WHEREAS, the CITY desires to contract with BOARD for BOARD to manage MOCA in North Miami physical plant and facilities and all activities thereon, pursuant to City of North Miami Ordinance No. 925 as adopted on Oct 25, 1994 (the "**Ordinance**"), and BOARD is willing to manage the Museum, all on terms and conditions as hereinafter set forth.

NOW, THEREFORE, in consideration of the obligations and the performance of the provisions herein contained the sufficiency of which being hereby acknowledged, the parties hereto agree as follows:

I. PURPOSE

This Agreement shall provide for management of CITY's MOCA Facilities by the BOARD, while preserving the MOCA Facilities' exemption from ad valorem taxation and shall assure accomplishment of the cultural and educational mission of MOCA in compliance with all applicable grants to which the facility is subject, pursuant to the Ordinance.

II. OBLIGATION OF MOCA BOARD OF TRUSTEES

A. BOARD shall sponsor and promote exhibits, special events, functions and activities for the benefit of the public and shall further the development of the MOCA. The

BOARD shall serve as liaison between the public and the City Manager. The Chairman of the BOARD shall make all records, reports, financial statements and other necessary information available to the City Manager.

B. The BOARD shall operate and manage the Museum programs, physical plant and facilities (the "**Premises**") and all activities conducted thereon on behalf of the City, pursuant to this Agreement entered into by and between the City, as owner of the premises, and BOARD, as operator of such Premises.

C. The BOARD shall conduct fund-raising projects to assist in the funding of, the operational and development costs of the existing museum.

D. The BOARD shall be subject to the Provisions of City of North Miami City Code Sec. 2-61, etc., *seq*. (the "**Code**"), a copy of which is attached hereto and incorporated herein. The City shall pass no amendments to the Code or the Ordinance which would limit or impair BOARD's performance or the CITY's obligation under this Agreement, so long as BOARD is not in default hereof.

E. The BOARD shall file any reports and take all action necessary to preserve MOCA's non-profit and tax-exempt status.

F. The BOARD shall assume all responsibility for the daily maintenance of the premises capable of being performed by their maintenance mechanic.

G. Although monies are set forth in the City's Budget, the BOARD shall be responsible for administering the payment of all utilities provided to the premises.

III. OBLIGATIONS OF THE CITY OF NORTH MIAMI

A. CITY shall cooperate with BOARD in assuring the development of MOCA's programs and activities.

B. CITY shall provide additional maintenance and repair to the MOCA Facilities not provided by the BOARD. Additionally, CITY agrees to use its best efforts to respond to maintenance and repair requests from MOCA. BOARD shall be authorized to utilize emergency repair service providers from a list authorized by CITY, in the event that repairs are necessary for events at MOCA and there is not time available for normal CITY repair procedures to be used.

C. CITY shall not be obligated, bound, or indebted for any transaction, function or activity of the BOARD, except as approved by the City of North Miami budget ordinance.

D. CITY shall provide staff resources to MOCA pursuant to Sec. 2-66 of the City Code.

E. CITY shall maintain the personal liability protection provided by Sec. 2-1 of the City Code, a copy of which is attached hereto and incorporated herein.

F. CITY shall continue to provide liability insurance or self insurance for operations or conditions at the Premises.

G. CITY shall employ certain members of the MOCA staff as employees of the CITY, paying them salaries as well as benefits in the same manner as other classified employees of CITY The staff positions which will be funded by CITY pursuant to this Agreement are: (i) MOCA Director; (ii) Assistant Director; (iii) Development Director;(iv) Administrative Coordinator (Finance Manager); (v) Administrative Specialist; (vi) Curator; and (vii) Maintenance Mechanic

IV. FEES

A. CITY shall pay BOARD a management fee of One Dollar ($1.00) per year, in advance, the first day each year of the term hereof.

B. All revenues generated by BOARD shall be promptly deposited in bank accounts maintained by BOARD. All such funds shall only be expended for accomplishment of the mission and program of MOCA and in strict accord with all applicable grant agreements.

C. Expenditures made by BOARD from funds allocated the annual City of North Miami budget (the "**Budget**") shall be in accordance with procedures established by the CITY's Finance Department.

D. BOARD shall maintain books and records in accordance with prior policies, or other methods reasonably acceptable to CITY. All books and records of BOARD revenues and expenses shall be made available to CITY for inspection upon request.

V. TERM OF AGREEMENT

A. CITY and BOARD hereby agree that BOARD shall be the exclusive operator of the MOCA Facilities for and during the term of this Agreement in furtherance of the public purpose of providing a museum and cultural exhibition center.

B. The term of this Agreement shall commence on the date hereof and shall continue for a period of ten (10) years thereafter. So long as BOARD is not in default, said term may be extended at the option of the parties for five (5) successive terms of ten (10) years each (each an "**Extension**"), upon the same terms and conditions and consideration provided herein, provided that BOARD gives written notice to the CITY of such Extension no later than ninety (90) days prior to expiration of the then current term. BOARD's right to extend the term of this Agreement shall be effective so long as BOARD is in good standing with regard to its obligations under this Agreement at the time any such Extension is requested.

VI. PREMISES

A. The Premises governed by this Agreement shall include the presently existing MOCA buildings (the "**Existing Facilities**") and the new MOCA facility (the "**New MOCA Facility,**" presently under consideration, once completed, as well as any additions or modifications thereto.

B. This Agreement shall cease to be applicable to the currently Existing Facility, once the New MOCA Facility is occupied, unless still used for MOCA purposes.

VII. OPERATING POLICY AND INTENT

A. CITY and BOARD hereby agree that the MOCA Facilities shall be managed so as to furnish educational, recreational and cultural benefits to the community, in accordance with all applicable laws and ordinances and applicable federal, state and local grants, and tax exempt status.

B. BOARD shall duly observe, conform to, and comply with, all valid requirements of any governmental authority relative to the facility and shall require all persons using the same or attending events therein to conform to and comply with all such requirements.

C. BOARD shall not enter into any contract in CITY's name, unless approved by CITY.

D. BOARD shall own, protect and manage the permanent MOCA collection of art, and all additions and modifications of same.

VIII. LIENS; WASTE; ASSIGNMENT

A. BOARD shall have no right to, and will not permit any liens or encumbrances whatsoever of any nature or kind to stand against the Premises for any labor or material furnished in connection with any work performed by or at the direction of BOARD.

This provision shall not preclude BOARD from providing surety bonds commonly required for exhibits.

B. BOARD shall not keep, use, sell or offer for sale at the Premises any article which may be prohibited by the standard form of fire insurance policies or other applicable provisions of law. BOARD shall not commit or suffer to be committed any waste upon the Premises.

C. BOARD may transfer or assign this Agreement or any interest therein held by BOARD to another person or entity only with the consent in writing of CITY, which consent shall not be unreasonably withheld.

IX. RIGHT OF INSPECTION

CITY shall have the right to enter upon the Premises for the purposes of inspection, serving or posting notices, making any necessary repairs to the Premises, complying with laws, ordinances or regulations, including, but not limited to, protecting the Premises or any other lawful purpose.

X. CITY'S RIGHT OF CANCELLATION

A. CITY may cancel this Agreement by giving BOARD thirty (30) days' advance written notice, to be served as hereinafter provided, but only upon and within thirty (30) days of the happening of any one of the following events:

1. The filing by BOARD of a voluntary petition for bankruptcy.

2. The institution of proceedings in bankruptcy against BOARD and the adjudication of BOARD as a bankrupt.

3. The taking by a court of jurisdiction over BOARD and its assets pursuant to proceedings brought under the provision of any federal reorganizational act.

4. The appointment of a receiver of BOARD's assets.

5. The abandonment by BOARD of its conduct of business upon the Premises.

6. Default in the performance of any of the covenants and conditions required herein to be kept and performed by BOARD, if such default continues uncured for a period of thirty (30) days after receipt of written notice from the CITY of said default. Provided, however, that (i) if the nature of the default is such that it cannot be cured in a period of thirty (30) days from the date the default, and (ii) BOARD shall commence good faith efforts cure such default no later than thirty (30) days after such notice, and (iii) such efforts are diligently prosecuted to completion, to CITY's reasonable satisfaction, then it shall be deemed that no default shall have occurred under the provisions this subsection.

XI. BOARD'S RIGHT OF CANCELLATION

A. BOARD may cancel this Agreement by giving CITY thirty (30) days' advance written notice, to be served as hereinafter provided, upon the happening of either of the following events:

1. Default the performance of any the covenants and conditions required herein to be kept and performed by CITY, if such default continues for a period of thirty (30) days after receipt of written notice from BOARD of said default. Provided, however, that (i) if the nature of the default is such that it cannot be cured in a period of thirty (30) days from

the date the default, and (ii) CITY shall commence good faith efforts to cure such default, no later than thirty (30) days after such notice, and (iii) such efforts are diligently prosecuted to completion to BOARD's reasonable satisfaction, then it shall be deemed that no default shall have occurred under the provisions of this subsection.

2. In the event that the New MOCA Facility is not under active and continuous construction (or construction completed) on or before three (3) years from the Effective Date of this agreement; provided, however that BOARD's right of cancellation pursuant to this section may only be exercised, if at all, for a period of two (2) years; i.e., during the fourth (4th) and fifth (5th) years after the Effective Date. Further, BOARD shall not have the right to cancel pursuant to this Section if the New MOCA Facility is under active and continuous construction (or construction completed) prior to BOARD sending CITY written notice canceling this Agreement,.

XII. NO DISCRIMINATION

BOARD, for itself, its successors-in-interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that no person on the grounds of race, color, age, religion, sex or national origin shall be subjected to discrimination, concerning the provision of services by MOCA.

XIII. RIGHTS RESERVED TO THE CITY

Rights not specifically granted to BOARD by this Agreement are reserved to the CITY.

XIV. INVALIDITY OF CLAUSES

The invalidity of any portion, article, paragraph, provision or clause of this Agreement shall have no affect upon the validity of any other part or portion thereof.

XV. BINDING EFFECT

The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions against assignment.

XVI. MODIFICATION

This Agreement constitutes the entire agreement and shall be modified or amended only by written agreement of the parties hereto.

XVII. NOTICE

Notices to CITY provided for herein shall be sufficient if sent (i) by certified mail, return receipt requested, postage prepaid, or (ii) by hand delivery, or (iii) via recognized overnight delivery service, in any case addressed to:

City Manager
City of North Miami
776 N.E. 125th Street
North Miami, Florida 33161

With copy to:

City Attorney
City of North Miami
776 N.E. 125th Street
North Miami, Florida 33161

and notices to BOARD, shall be sufficient if sent (i) by certified mail, return receipt requested, postage prepaid, or (ii) by hand delivery, or (iii) via recognized overnight delivery service, in any case addressed to:

Board of Trustees
MOCA
North Miami, Florida 33161

or such other respective address as the parties may designate to each other in writing from time to time.

XVIII. INDEPENDENT CONTRACTOR

Nothing herein contained shall be deemed for any purpose as creating any relation between the parties hereto other than the relationship of independent contracting parties. A landlord-tenant relationship is not hereby created.

IN WITNESS WHEREOF, this Agreement is executed as of the 15 day of Dec, 2008.

WITNESSES:

ATTEST:

FRANK WOLLAND
CITY CLERK

Deputy for

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

V. LYNN WHITFIELD
CITY ATTORNEY

CITY OF NORTH MIAMI

By
Name: CLARANCE PATTERSON
Title: CITY MANAGER

BOARD OF TRUSTEES OF THE NORTH MIAMI CENTER OF CONTEMPORARY ART

By:
Name:
Title Chairman