



Reply to:
ALAN J. KLUGER
akluger@klugerkaplan.com

March 17, 2014

VIA FEDERAL EXPRESS

Original will follow by Certified Mail, Return Receipt Requested.

Stephen E. Johnson
City Manager
776 N.E. 125th Street, 4th Floor
North Miami, Florida 33161

Regine M. Monestime, Esq.
Office of the City Attorney
776 N.E. 125th Street, 1st Floor
North Miami, Florida 33161

Re: Board of Trustees of the Contemporary Museum of Art v. City of North Miami, Florida; Notice of Breach of Management Agreement

Dear Mr. Johnson and Ms. Monestime:

This law firm represents the Board of Trustees (the “**Board**”) of the Contemporary Museum of Art (“**MOCA**”). Please direct all further correspondence regarding this matter to my attention.

As you know, on December 15, 2008, the Board and the City of North Miami (the “**City**”) entered into the Management Agreement (the “**Agreement**”). As you were advised during our February 28, 2014 meeting, the City has committed numerous breaches of the Agreement. At the time of our meeting, the Board already had prepared a default letter directed to the City; however, at the time the Board felt it made more sense to seek to negotiate an amicable resolution with the City providing for, among other things, the Board’s collection to move to another location outside of the City’s boundaries. As you are aware, although no formal agreement has yet been reached, since the very beginning the Board has been open, transparent, and upfront with the City regarding the Board’s ongoing discussions and negotiations with the Bass Museum of Art.

At our meeting, Mayor Tondreau promised the Board a series of discussions aimed towards amicably resolving the dispute between the Board and the City. In furtherance of this promise, I personally attempted to call Mr. Johnson three times in the two-week period subsequent to our meeting. Suffice to say, it was disappointing that Mr. Johnson had not timely returned any of my calls.

More disappointing, of course, is the public spectacle that was orchestrated and engaged in by Mayor Tondreau at the City Council meeting held on March 11, 2014. The Mayor's comments were shameful, politically motivated, and constitute a repudiation of the City's obligations under the Agreement. Mayor Tondreau's statements, in no uncertain terms, exercised unlawful dominion and control over the Board's collection. The Mayor's statements contravene the plain language of the Agreement, which clearly and unambiguously provides in Section VII(D) that the Board – not the City – owns the permanent MOCA collection of art, along with all additions and modifications to the collection. Because the City's leaders now have escalated this dispute in a public forum (including calling for future public spectacles threatening the Board's rights and interests, along with diminishing the reputation and value of the collection), the Board reserves all rights, remedies, and protections under the Agreement and Florida law generally.

As of the date hereof, the City continues to be in default of its contractual obligations to the Board. The nature of the City's breaches of its obligations is such that the violations cannot be cured pursuant to Section XI(A)(1) of the Agreement. By way of example, the City has breached the Agreement as follows:

- a. By failing and/or refusing to pay the salary of MOCA's interim Director, following the departure of Bonnie Clearwater, MOCA's former director;
- b. By improperly and inappropriately attempting to secure the appointment of the City Manager's friend as "Deputy Director," to be paid a salary without defining or setting the parameters of the individual's job description or responsibilities;
- c. By failing and/or refusing to take corrective action, following the Board's numerous requests, to repair the roof, air conditioning, and other critical structural components of the MOCA facility;
- d. By failing and/or refusing to provide minimal security for the MOCA facility, the surrounding area, patrons, visitors, and staff, including failing to repair the parking lot closed-circuit surveillance system or provide adequate police patrols;
- e. By failing and/or refusing to expand MOCA's facilities, including failing to apply funds for MOCA's expansion, as promised, derived from the community redevelopment agency associated with the Biscayne Landing project;
- f. By failing and/or refusing to make good faith efforts to promote MOCA or improve its infrastructure, including failing to make any investment to create opportunities for MOCA in the local community;

- g. By improperly and inappropriately causing MOCA to incur and cover from its budget significant expenses for certain City and non-City events (including events and fundraisers that diminished the reputation, integrity, and brand of the museum) that were wholly unrelated to MOCA's purposes, agenda, or directive; and
- h. Failing and/or refusing to maintain the grounds, greenery, and parking lot serving the MOCA facility.

As a direct and proximate result of the City's aforementioned breaches of the Agreement, along with the City's other recent wrongful acts, the Board is suffering and will continue to suffer damages and irreparable harm, including but not limited to damage to, diminishment and jeopardy of the reputation, integrity, and value of the Board's permanent collection of art. Accordingly, the City is hereby notified that the Board reserves all rights, remedies, and protections under the Agreement and Florida law generally.

To be clear, although the Board is desirous of amicably resolving this situation, the Board is prepared to initiate the appropriate litigation without further delay if necessary to protect its rights and interests.

GOVERN YOURSELF ACCORDINGLY.

Very truly yours,

**KLUGER, KAPLAN, SILVERMAN,
KATZEN & LEVINE, P.L.**

By: _____

Alan J. Kluger, Esq.
Casey H. Cusick, Esq.

cc: Andrew Smulian, Esq.
Ray Ellen Yarkin, Esq.
Alex Gartenfeld