



OFFICE OF THE CITY ATTORNEY

March 20, 2014

Alan Klugler
Klugler, Kaplan, Silverman, Katzen & Levine, P.L.
The Miami Center
201 South Biscayne Blvd., 17th Floor
Miami, FL 33131

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

Dear Mr. Klugler:

Please allow this letter to serve as a formal response to your letter dated March 17, 2014. I was disappointed to receive your correspondence following what I believed was a productive conversation between us; wherein we agreed to schedule a meeting following a review of relevant documents in the hopes of resolving an impending dispute between our clients.

Rather than descend into superfluous commentary, I will address the specific allegations you make regarding the Management Agreement ("Agreement") entered into between the City of North Miami and the Board of Trustees of the Museum of Contemporary Art ("Board"), on December 15, 2008, for the purpose of managing the Museum of Contemporary Art ("MOCA").

The Management Agreement is an agreement which provides for the service to the City by the Board for the management of MOCA. In exchange for a nominal fee, the Board agreed to provide a number of management and operational services for an exclusive ten (10) year term or until 2018. Furthermore, the Agreement provides for the cancellation of the Agreement upon the happening of certain continuous defaults by the City. You have alleged that the City is in and continues to be in default for the following reasons. Please find the City's response to your allegations citing both the governing documents and relevant issue:

- 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;

Response: Section III G. provides that the City will employ, among members of the MOCA staff, the MOCA director. There has not been any employment, temporary, interim or otherwise by the City of a MOCA director. The City will continue to work with the Board to secure an individual for the vacant position.

- b. By improperly and inappropriately attempting to secure the appointment of the City Manager's friend as "Deputy Director," to paid a salary without defining or setting the parameters of the individual's job description or responsibilities;

Response: This allegation is inaccurate, irrelevant and even if true, cannot be a basis for default under the Agreement.

- c. By failing and/or refusing to take corrective action, following the Board's numerous request, to repair the roof, air conditioning, and other critical structural components of the MOCA facility;

Response: In accordance with Paragraph II F., the Board is vested with "all responsibility for the daily maintenance of the premises capable of being performed by their maintenance mechanic." In addition to being inaccurate, under paragraph III B., the City has used its "best efforts to respond to maintenance and repair to the MOCA facilities."

- 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;

Response: This allegation is inaccurate. The Board is responsible for the management and day to day affairs of MOCA. The City is not responsible for security, patrols, and surveillance systems under the Agreement. Furthermore, MOCA is situated between the security of the City of North Miami Police Department and City Hall.

- 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;

Response: There is no affirmative obligation by the City to expand MOCA's facilities. Nonetheless, the City placed a general obligation bond before the voters of the City at its expense and effort, unfortunately, the voters rejected same. Furthermore, the Board's right to cancel the Agreement on this basis has expired pursuant to paragraph XI 2.

- 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;

Response: In accordance with III A., the City cooperated with the Board to develop MOCA's programs and activities. There is no further obligation in this regard under the Agreement.

- g. By improperly and inappropriately causing MOCA to incur and cover from its budget significant expenses for certain City and non-City event (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

Response: This allegation is factually inaccurate. And even if true is not a basis for default under the Agreement.

- h. Failing and/or refusing to maintain the grounds, greenery and parking lot serving the MOCA facility.

Response: The Board is responsible for the maintenance for MOCA. In addition to being inaccurate, there is no affirmative obligation to maintain the grounds, greenery and parking lot under the Agreement.

It is my earnest expectation that in the coming weeks, you and I will be able to work together collaboratively to rise above distractions and ineffectualness to help our clients, the residents, the Board and City in general, advance the mission articulated in the 1981 articles of incorporation of the North Miami Museum and Art Center, Inc., which is to “further the development of the North Miami Museum”.

Finally, as you are well aware, Chapter 119, Florida Statutes, the City of North Miami Ordinances that created the Board, as well as the Management Agreement requires that all documents, books, records and financials, etc., be open and accessible to the City. Consequently, please ensure that all public records request are expediently satisfied.

Thank you.

Sincerely,



Regine M. Monestime
City Attorney

c: Stephen E. Johnson, City Manager