

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 14008991CA01 (30)

MUSEUM OF CONTEMPORARY ART,
INC.

Plaintiff,

v.

THE CITY OF NORTH MIAMI,
FLORIDA; LUCIE TONDREAU;
STEPHEN E. JOHNSON;
SCOTT GALVIN; CAROL KEYS;
PHILIPPE BIEN-AIME; and
MARIE STERIL;

Defendants. _____ /

**PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTIVE RELIEF**

Plaintiff, Museum of Contemporary Art, Inc. (“MOCA”), through undersigned counsel, and pursuant to Fla. R. Civ. P. 1.610(a), hereby files its Motion for Preliminary Injunctive Relief, and states:

I. INTRODUCTION

1. MOCA hereby seeks the entry of preliminary injunctive relief against Defendants, City of North Miami, Florida (the “City”), Lucie Tondreau (the “Mayor”), Stephen E. Johnson (the “City Manager”), and Scott Galvin, Carol Keys, Philippe Bien-Aime, and Marie Steril (collectively, the “City Council”), to prevent Defendants from terminating some or all of the members of the Board of Trustees of the Museum of Contemporary Art (the “Board”).¹

¹ On April 8, 2014, this Court entered its Order on Plaintiff’s Verified Emergency Motion for Temporary Injunctive Relief Without Notice (the “Motion”), denying Plaintiff’s

2. The Board is responsible for managing and operating the Museum of Contemporary Art, North Miami (the “**Museum**”) pursuant to both the City’s own ordinances and a written management agreement to which the City and the Board are parties.

3. Because the City has violated its obligations to the Board under the written management agreement, on March 17, 2014 the Board’s counsel sent a default letter to the City Attorney addressing the City’s breaches of its obligations under the Agreement. In response to the Board’s default letter, the Mayor, the City Manager, and the City Council are now arbitrarily and capriciously attempting to terminate some or all of the Board’s members.

4. **MOCA, which is a beneficiary of the Board’s actions, has now been apprised of the language of the proposed Ordinance to be discussed and/or voted upon at the City Council’s upcoming Tuesday, April 8, 2014 meeting, which purports to give the City Counsel the authority to terminate the existing Board members, without cause at any time. A copy of the proposed Ordinance is attached hereto as Exhibit “A”.**

5. Because the City’s apparent intended firing and replacement of the Board’s membership is entirely arbitrary, highly inappropriate, and in direct contravention of the express terms of the written management agreement between the Board and the City governing the Museum’s operation and the development of MOCA (which is a Florida non-profit entity), MOCA hereby requests preliminary injunctive relief against Defendants to preserve the status quo and to prevent immediate and irreparable injury to MOCA (i.e., the termination of some or

Motion. Thereafter, the City made publicly available the proposed Ordinance to be discussed and/or voted upon at the April 8, 2014 City Council meeting. The language of the proposed Ordinance purports to confer upon the City Council authority to terminate any Board member, without cause. Thus, it is now absolutely clear that the City intends to terminate the Board’s current members, without cause, as part of the City’s arbitrary and capricious exercise of its lawful powers.

all of the Board's current members) until this Court can determine the merits of the underlying claims in the Complaint.

II. BACKGROUND

A. **The Museum**

5. The Museum is a collecting museum located in downtown North Miami, Florida. The Museum offers visitors temporary exhibitions, along with exhibitions from a prestigious, extensive permanent collection of contemporary art owned by MOCA. The Museum's mission statement is to make contemporary art accessible to diverse audiences – especially underserved populations – through the collection, preservation, and exhibition of the best of contemporary art and its art historical influences.

6. The Museum facility is a 23,000 square foot structure designed by internationally acclaimed architect Charles Gwathmey which includes over 12,000 square feet of exhibition space consisting of, *inter alia*, a large main gallery with movable walls, a separate art pavilion, a gift shop, an art storage and preparation area, and administrative offices.

7. The Museum was constructed and opened in 1996. The construction of the Museum was made possible by a \$2.5 million federal allocation for urban revitalization, a \$1 million capital development grant from the State of Florida Fine Arts Council, and an \$82,500.00 grant from the Dade County Cultural Affairs Council. The City did not contribute financially to the Museum's construction.

8. Even though the Museum's construction was funded by outside sources, the City now owns the Museum's physical plant/facility. The City does not, however, own any portion of the permanent art collection.

B. The Board of Trustees/MOCA

9. As a political subdivision of the State of Florida engaged in the day-to-day operations of running a municipality, the City is not equipped to operate, manage, and run a world-class contemporary art museum. Since the Museum first opened, the City has relied heavily on assistance from prominent members of the South Florida community who have developed strong ties with and connections to the national and international art communities and, in particular, the contemporary art world. Over the years, these individuals have been the driving force of the Museum's success, including the Museum's exhibitions, events, and educational programming. Without the extensive time, energy, and resources provided by these philanthropists, the Museum would not have achieved the prominence in the art and cultural communities that defined the Museum for years.

10. To facilitate the development of the Museum's exhibitions, events, and educational programming, when the Museum first opened MOCA was formed as a Florida non-profit corporation. To this day, this group of philanthropists conducts the Museum's operations and management.

11. At some point, in order to formalize the relationship between the City and MOCA, and to codify MOCA's authority to act on the City's behalf, the City established the Board by ordinance. The Board is comprised primarily of the same principals of MOCA and is simply a codification of MOCA's authority to run, operate, and manage the Museum on the City's behalf.

12. MOCA's unpaid volunteers have close ties and connections with the contemporary art community and national and international art world. MOCA oversees the operation and management of the Museum's physical plant/facility; however, more importantly

the Board draws upon its collective resources to shape the exhibitions, programming, and events which made the Museum a first-class contemporary art museum drawing extensive interest, accolades, and attention from the South Florida community, along with artists, collectors, and art enthusiasts nationally and internationally.

13. As a result of the MOCA's involvement, oversight, and management, the Museum has been recognized nationally and internationally as a world-class contemporary art destination. The Museum has exhibited an exclusive collection of contemporary art and has drawn widespread attention among contemporary art enthusiasts from around the globe. In recent years, the Museum hosted kickoff events for Art Basel, an internationally renowned art festival held annually in Miami Beach, Florida. As a result of the MOCA's oversight and management of the Museum's educational programming, the Museum has been awarded the National Medal for Museum Service by the Institute of Museum and Library Services in recognition of the Museum's community outreach, which includes programs focusing on literacy, dropout prevention, and outreach to girls in juvenile-detention centers. This award is widely-considered to be the country's highest service honor for museums and libraries.

14. As publicly acknowledged by the City's leaders, the successful operation of the Museum, along with the Museum's national and international reputation, played a significant role in North Miami's receipt of the prestigious "All-America City Award" from the National Civic League in 2010. This honor is awarded annually to only ten (10) communities in the United States.

C. The Management Agreement

15. On December 15, 2008, the Board and the City entered into a Management Agreement (the “Agreement”), a copy of which is attached as Exhibit “B” and incorporated herein by reference. The term of the Agreement expires in December 2018.

16. The Agreement states, in relevant part:

This [Agreement] . . . is made and entered into as of the 15 day of Dec 2008 . . . 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”).

Agreement at p. 1.

17. By the terms of the Agreement, “MOCA” includes not only the physical Museum located in North Miami, but also MOCA, the non-profit entity. The Agreement states: “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.” *Id.* at Section II(A). Accordingly, by the specific terms of the Agreement the Board is obligated to further not only the development of the physical Museum located in North Miami, but also to further the development of MOCA.

18. The purposes of the Agreement, *inter alia*, are to (a) further codify MOCA’s authority to run the Museum on the City’s behalf; (b) define the respective obligations of the City and the Board as to the Museum; and (c) provide for the Board’s management of the Museum, while preserving the Museum’s exemption from *ad valorem* taxation and assuring the accomplishment of the Museum’s cultural and educational mission. Pursuant to the Agreement,

the Board conducts, oversees, and administers the Museum's day-to-day operations while receiving limited financial support from the City's budget.

19. By the terms of the Agreement, the Board, *inter alia*, operates and manages the Museum's programs, physical plant/facility, and all activities conducted thereon. The Board also manages the Museum's finances and conducts fundraising activities to assist in the Museum's funding and operational and development costs. The City provides the physical plant/facility for the Museum. No rent is collected from the Board or MOCA.

20. Under the Agreement, the City is obligated to, among other things, (a) cooperate with the Board in assuring the development of MOCA's programs and activities; (b) use best efforts to respond to maintenance and repair requests from MOCA; and (c) provide and certain staff resources to MOCA.

21. Consequently, as a party to the written Agreement, and consistent with the Board's obligations under the City's own ordinances, the Board has the right and the obligation to put the City on notice in the event of the City's breaches of its obligations under the Agreement.

D. The City Breaches the Agreement

22. Notwithstanding MOCA's successful management of the Museum and outstanding contributions to North Miami, in recent years the City has failed and/or refused to carry out its obligations under the Agreement. In particular, the City has breached its obligations under the Agreement as follows:

- a. By failing and/or refusing to pay the salary of MOCA's interim Director, following the departure of MOCA's former director;
- b. By failing and/or refusing to take corrective action, following MOCA's numerous requests, to repair the roof, air conditioning, and other critical structural components of the Museum;

- c. By failing and/or refusing to provide minimal security for the Museum, the surrounding area, patrons, visitors, and staff, including failing to repair the parking lot closed-circuit surveillance system or provide adequate police patrols;
- d. By failing and/or refusing to expand the Museum, including failing to apply funds for the Museum's expansion, as promised, derived from the community redevelopment agency associated with the Biscayne Landing project;
- e. By failing and/or refusing to make good faith efforts to promote the Museum or improve its infrastructure, including failing to make any investment to create opportunities for the Museum in the local community;
- f. By improperly and inappropriately causing the Museum 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 the Museum's purposes, agenda, or directive; and
- g. Failing and/or refusing to maintain the grounds, greenery, and parking lot serving the Museum.

23. As a result of the City's breaches, MOCA's ability to carry out the Museum's mission statement has been significantly hindered, diminished, and inhibited. Moreover, the reputations of the Museum, MOCA, and MOCA's permanent art collection have been damaged by the City's breaches.

24. Accordingly, on March 17, 2014, the Board's counsel sent Regine Monestime ("Monestime"), the City Attorney, a default letter addressing the City's breaches of its obligations under the Agreement (the "**Default Letter**"). A copy of the Default Letter is attached as Exhibit "C."

E. The City's Arbitrary and Capricious Attempts to Fire and Replace the Board's Members

25. After the Board transmitted the Default Letter to the City Attorney, the Board and MOCA became aware of the City's agenda for the upcoming April 8, 2014 City Council

Meeting. A copy of the Agenda is attached hereto as Exhibit “D”. Tab “K” of the Agenda states:

PROPOSED ORDINANCE (SECOND READING) OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF CITY ORDINANCES OF THE CITY OF NORTH MIAMI, ENTITLED “ADMINISTRATION”, ARTICLE III, ENTITLED “NOARDS, COMMITTEES, COMMISSIONS”, DIVISIONS 2 THROUGH 10, SPECIFICALLY AT SECTIONS 2-61,2-82, 2-158, 2-201, 2-217, 2-231, 2-238 AND 2-249, BY AMENDING THE BOARD COMPOSITION FOR THE BOARD OF TRUSTEES OF THE NORTH MIAMI MUSEUM OF CONTEMPORARY ART (MOCA) AND BY REVISING THE TERMS OF OFFICE TO ALLOW FOR THE TERMS OF BOARD AND COMMISSION MEMBERS TO BE COTERMINOUS WITH THE TERM OF THE APPOINTING COUNCILMEMBER; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE. *Sponsored By: Mayor Lucie M. Tondreau*

26. Thereafter, the City Council made publicly available the language of the proposed Ordinance to be discussed and/or voted upon at the City Council’s upcoming Tuesday, April 8, 2014 meeting, which purports to give the City Counsel the authority to terminate the existing Board members, without cause at any time.

27. In addition to adding language to the existing Ordinance giving each City Council member to appoint two (2) members to the Board, the relevant language of the proposed Ordinance (including changes to the existing Ordinance) are as follows: “Any member may be removed by a majority of the city council ~~for cause~~. The board of trustees shall be given the opportunity to express their agreement or disagreement, before such removal vote occurs. ~~Any member may be removed by a majority vote of trustees without cause.~~”

28. Thus, Defendants have been putting in place the framework to oust the Board’s membership and gain control over the Board by appointing its own, self-serving membership.

Defendants' attempt to terminate and replace the Board's membership is, *inter alia*, in direct response to the Default Letter putting the City on notice of its breaches of its obligations under the Agreement.

29. Defendants' actions are arbitrary and capricious exercises of the City's lawful powers which are properly the subject of preliminary injunctive relief. In particular, in response to the Default Letter Defendants are improperly attempting to terminate the Board's members even though the Board has the right and/or the obligation to declare the City in breach of its obligations under the Agreement.

III. ARGUMENT

A. Standard

A party seeking a preliminary injunction must prove (a) it will suffer irreparable harm unless the status quo is maintained; (b) there is no adequate remedy at law; (c) the party has a substantial likelihood of success on the merits; (d) the threatened injury to the petitioner outweighs any possible harm to the respondent; and (e) a preliminary injunction will not disserve the public interest. *See Plaza v. Plaza*, 78 So. 3d 4, 6 (Fla. 3d DCA 2011); *Department of Business Regulation, Division of Alcoholic Beverages and Tobacco v. Provende, Inc.*, 399 So. 2d 1038, 1041 (Fla. 3d DCA 1981). On a proper showing, a municipality may be restrained from the arbitrary exercise of its lawful powers. *City of Jacksonville v. C.J. Ventures, Inc.*, 558 So. 2d 133, 135-36 (Fla. 1st DCA 1990).

Here, a preliminary injunction should be entered because the aforementioned elements are satisfied and it is imperative to maintain the status quo during the pendency of this action.

B. MOCA Will Suffer Irreparable Harm Unless the Status Quo is Maintained

In the absence of this Court's entry of a preliminary injunction against the City, MOCA will suffer ongoing, irreparable harm. "A temporary, or preliminary, injunction is one entered on

a nonfinal basis, to preserve the status quo or prevent an ongoing harm before a full hearing in the case can be held.” *Hasley v. Harrell*, 971 So. 2d 149, 152 (Fla. 2d DCA 2007) (citing *Ladner v. Plaza Del Prado Condo. Ass’n*, 423 So. 2d 927, 929 (Fla. 3d DCA 1982)). An injury is considered to be "irreparable" if no legal remedy is available, in which case an injunction is the only mode of enforcement against the alleged wrong. *Corporate Management Advisors, Inc. v. Boghos*, 756 So. 2d 246, 247 (Fla. 5th DCA 2000).

The City is arbitrarily, capriciously, and improperly taking action through a proposed ordinance, which is scheduled to be discussed and/or voted upon at the City Council Meeting scheduled for Tuesday, April 8, 2014, which is designed to facilitate the removal of the Board’s members and replacing those members with individuals whose interests are aligned with the City’s positions.

To be sure, the City’s improper actions are entirely arbitrary and, in fact, are politically motivated manifestations of the City’s elected officials pandering to their respective constituencies. Yet, by the clear terms of the Agreement, the Board is not only empowered – but, in fact, has the affirmative obligation – to put the City in default based upon the City’s breaches of its obligations under the Agreement. Simply put, the Board and MOCA are clearly within their legal rights, yet the City is attempting to prevent the Board’s entirely legal, proper, and appropriate activities by arbitrarily seeking to gain control over the Board and its voting membership. **The City’s wrongful actions have accelerated in recent weeks and days, and they will continue until this Court forces the City to stop.** *See City of Jacksonville*, 558 So. 2d at 135-36 (noting that on a proper showing, a municipality may be restrained from the arbitrary exercise of its lawful powers).

In the event that some or all of the Board's members are improperly terminated by the City, MOCA will be irreparably harmed. As alleged in the Complaint filed contemporaneously herewith, since the Museum first opened, MOCA relies heavily upon support from the Board's members, who are prominent individuals in the South Florida community having strong ties to the national and international art communities and, in particular, the contemporary art world. Over the years, these individuals have been the driving force of MOCA's success, including the Museum's exhibitions, events, and educational programming. Without the extensive time, energy, and resources provided by this fine group of philanthropists, the Museum and MOCA would not have achieved the prominence in the art and cultural communities that defined the Museum for years. Defendants' arbitrary termination of some or all of these individuals from the Board's membership will most certainly cause irreparable harm to MOCA's reputation and ability to operate successfully.

These circumstances clearly establish ongoing, irreparable harm to MOCA sufficient to support the existence of a preliminary injunction against the City. Accordingly, the first element is satisfied.

C. There is No Adequate Remedy at Law.

This Court's entry of a preliminary injunction against the City is clearly warranted because MOCA has no adequate remedy at law. Through the City's wrongful actions, the Board's proper attempts to further the development of MOCA (i.e., by protecting MOCA's best interests by putting the City on notice of its breaches of its obligations under the Agreement and addressing the breaches in court) is clearly threatened. Under Florida law, there is no adequate remedy at law to address this situation.

The City's actions in attempting to remove the Board's members are manifestations of

political positions taken by the Mayor and the City Council to pander to their constituencies. Under Florida law, there is simply no adequate remedy at law to address the apparent imminent removal of the Board's members, which will have an immediate, irreparable, and deleterious affect on MOCA's ability to function successfully and continue to operate.

Clearly, the City subscribes to a starkly different view. The City and its elected leaders either do not understand (or do not care) that the removal from the Board of individuals having strong connections with and ties to the contemporary art world immediately places at risk the continued relevance of MOCA and the value of the permanent collection in a part of Florida which in recent years has been flooded with competition from rival arts and cultural institutions and events. **To be sure, the improper and ill-conceived actions of the City and its elected leadership now threatens to permanently injure MOCA and inflict reputational and financial damage against MOCA in a manner which, if the City is successful in its actions, may be unrecoverable.** There is, simply put, no adequate remedy at law under Florida law to address this situation.

D. Likelihood of Success on the Merits

MOCA has a clear legal right to the relief herein and, accordingly, a likelihood of success on the merits. Pursuant to the terms of the Agreement, the Board acts on behalf of the Museum and MOCA, the non-profit entity. *See* Agreement at p. 1. The Board is obligated to further not only the Museum's interests, but also the development of MOCA, the non-profit entity. *Id.* at Section II(A). The Board owns, protects, and manages the permanent collection of art, including all additions and modifications to the collection. *Id.* at Section VII(D).

As a party to the Agreement, the Board has the right and the obligation to notify the City of its breaches under the Agreement and, if necessary, to seek the appropriate redress and engage

in responsive actions to further the development of MOCA, the non-profit entity. Even a cursory reading of the Agreement demonstrates that the Board acted appropriately in issuing the Default Letter to the City. It is obvious that Defendants' attempts to now removal the Board's members is nothing more than retaliatory in nature, and highly improper. There is, simply put, nothing whatsoever demonstrating that the Board has not acted within its rights and consistent with its obligations under the Agreement.

E. The Threatened Injury to MOCA Outweighs Any Possible Harm to the City

Clearly, in the event that this Court does not grant preliminary injunctive relief, the threatened injury to MOCA will severely outweigh any possible harm to the City. As explained above, in the absence of preliminary injunctive relief the City's actions threaten to immediately damage MOCA's reputation, the value of the Board's permanent collection, and MOCA's ability to operate successfully. Without the critical, unique, and rare connections to the contemporary art world that the Board's current members utilize on MOCA's behalf, permanent damage will be done to the reputation, prominence, or relevance that has been MOCA's hallmark until very recently.

By contrast, in the event that preliminary injunctive relief is entered, the City will not suffer any significant harm. The City will continue to own the Museum facility, which of course will remain right where it is located in the heart of downtown North Miami. Since the City is clearly seeking to replace the Board's membership with a new set of individuals who are aligned with the City's positions, the City must be confident that it can operate the Museum successfully without the Board's current membership. Stated differently, the City's own actions in seeking to run the Museum through a new Board demonstrate unequivocally that the City itself does not

perceive any harm through the issuance of preliminary injunctive relief. Accordingly, this factor in the analysis clearly supports the entry of injunctive relief against the City.

F. The Public Interest Weighs in MOCA's Favor

The final requirement for obtaining a preliminary injunction is that granting the injunction would not be adverse to the public interest. In the present case, rather than being adverse to the public interest, the granting of an injunction advances the public interest by ensuring that the Board is able to act in accordance with the City's existing ordinances and the Agreement by furthering the development of MOCA, the non-profit entity. *See, e.g., East v. Aqua Gaming, Inc.*, 805 So. 2d 932, 934 (stating that protecting legitimate business interests does not disserve public interest). Additionally, granting this Motion would promote fairness by preserving the status quo by preventing the City from pursuing an end-run around this Court's jurisdiction to determine of the underlying dispute.

IV. CONCLUSION

Based on the foregoing, Plaintiff, Museum of Contemporary Art, Inc. respectfully requests that this Court (a) grant this Motion in all respects; (b) enjoin all Defendants from taking unilateral action to remove the Board's members until this Court first determines whether the Board has the right and/or obligation to put the City on notice of the City's breaches of its obligations under the Agreement, and whether the City has, in fact, breached its obligations to the Board under the Agreement; and (c) enter such other and further relief this Court deems just and proper.

Dated: April 8, 2014.

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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this 8th day of April 2014 via U.S. Mail to the parties on the attached service list and via e-mail to Regine Monestime, Esq., The City Attorney for the City of North Miami, Florida, on behalf of all Defendants.



CASEY H. CUSICK, ESQ.

SERVICE LIST

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ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI ENTITLED "ADMINISTRATION", ARTICLE III, ENTITLED "BOARDS, COMMITTEES, COMMISSIONS", DIVISIONS 2 THROUGH 10, SPECIFICALLY AT SECTIONS 2-61, 2-82, 2-158, 2-187, 2-201, 2-217, 2-227, 2-231, 2-238 AND 2-249, BY AMENDING THE BOARD COMPOSITION FOR THE BOARD OF TRUSTEES OF THE NORTH MIAMI MUSEUM OF CONTEMPORARY ART (MOCA) AND BY REVISING TERMS OF OFFICE TO ALLOW FOR THE TERMS OF BOARD AND COMMISSION MEMBERS TO BE COTERMINOUS WITH THE TERM OF THE APPOINTING COUNCILMEMBER; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, Chapter 2 of the Code of Ordinances ("Code") of the City of North Miami ("City"), establishes various board and commissions of the City with specified term dates for board and commission members; and

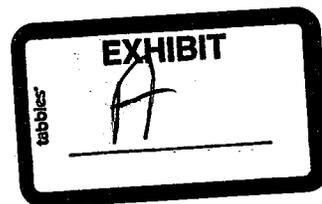
WHEREAS, the City desires to place all terms of office for members of boards and commissions on the same schedule to provide for consistency and simplification of the election process; and

WHEREAS, the Code currently provides for appointed members to serve a fixed term, even after the term of the appointing councilmember has expired; and

WHEREAS, it is recommended that the terms of appointed board and commission members be coterminous with the appointing elected official's term of office to streamline the term schedule and to allow newly elected city council members to make appointments to the various boards and commissions.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:

Section 1. Amendment to City of North Miami Code. The Mayor and City Council of the City of North Miami, Florida, hereby amend Chapter 2 of the Code of Ordinances of the City of North Miami entitled "Administration", Article III, entitled "Boards, Committees,



Commissions”, Divisions 2 through 10, specifically at sections 2-61, 2-82, 2-158, 2-187, 2-201, 2-217, 2-227, 2-231, 2-238 and 2-249, by amending the board composition for the Board of Trustees of the North Miami Museum of Contemporary Art (MOCA) and by revising the terms of office to allow for the terms of board and commission members to be coterminous with the term of the appointing councilmember, as follows:

CHAPTER 2. ADMINISTRATION

* * * * *

ARTICLE III. BOARDS, COMMITTEES, COMMISSIONS

* * * * *

DIVISION 2. BOARD OF TRUSTEES OF THE NORTH MIAMI MUSEUM OF CONTEMPORARY ART (MOCA)

* * * * *

Sec. 2-61. Organization; term of office.

- (a) There is established a board of trustees of the North Miami Museum of Contemporary Art (MOCA) which shall consist of a minimum of eleven (11) members and a maximum of ~~thirty-one (31) number of members as determined by the board of trustees~~ and one (1) ex officio (non-voting) member from the staff of the city. The city staff member shall be designated by the city council. Each member of the city council shall appoint two (2) members to the Board, one of which must be a city resident. The remaining members shall be appointed by the Board of Trustees. The city staff member shall be designated by the city council.
- (b) ~~The board of trustees' nominating committee may present one (1) name as a nominee for each available seat on the board to the board for selection, to fill vacancies from time to time.~~ Individuals shall be appointed based on the following criteria:
- (1) Knowledge of and demonstrable service to the North Miami Museum of Contemporary Art (MOCA);
 - (2) Knowledge of and service to museums;
 - (3) Representation of the diverse populations of the North Miami community;
 - (4) Ability to expand involvement in MOCA to communities that have historically not utilized and supported MOCA;
 - (5) Special expertise in areas of museum collections, architectural preservation, environmental science, history, museum interpretation, landscaping or historic preservation.
- (c) ~~The term of office for the board of trustees shall be as follows:~~

- (1) All members serving on the board as of the effective date hereof (~~October 25, 1994~~) (April 8, 2014) shall continue to serve until their term expires. ~~Appointments shall be made to fill any expired term for a term of four (4) years~~ The term of those board members appointed by the Board of Trustees shall be for a term of three (3) years. The term of those board members appointed by the city council shall be coterminous with the appointing elected official's term of office.
- (2) ~~In the event of the removal or resignation of a member of the board of trustees, the nominating committee of the board shall recommend one (1) name for the position to the board of trustees for selection by majority vote for the remainder of the unexpired term. Vacancies shall be filled in the same manner as appointed.~~
- (3) Any member may be removed by a majority of the city council ~~for cause~~. The board of trustees shall be given the opportunity to express their agreement or disagreement, before such removal vote occurs. ~~Any member may be removed by a majority vote of the board of trustees without cause.~~

* * * * *

DIVISION 3. CHARTER BOARD

* * * * *

Sec. 2-82. Members; appointment, term; compensation; procedure at meetings.

Each member of the city council shall nominate one (1) member of the charter board, which nomination shall be subject to approval of a majority of the city council. Two (2) additional members of the charter board shall be appointed by the city council as a whole. The seven (7) members thus appointed by the city council shall be residents of the city. ~~Each member of the charter board shall hold office for a term of two (2) years, unless sooner removed by the city council. Such term to begin on the second Tuesday in June of each odd-numbered year. The~~ term of those board members appointed by the individual city council members shall be coterminous with the appointing elected official's term of office. The terms of those board members appointed by the city council as a whole shall be coterminous with the Mayor's term of office. The city council may at any time remove a member from office and appoint a qualified person to serve out the unexpired term of any member so removed. Such action shall require three (3) positive votes. If any member fails to attend two (2) out of three (3) successive meetings without cause and without prior notice and approval of the chairman, the board shall declare the member's office vacant and the city council shall promptly fill such vacancy for the remainder of the term. The city council may reappoint the person removed provided there is at least a majority vote of the city council to do so. The board members shall serve without compensation. All meetings of the board shall be taped. The tapes shall be preserved and minutes recorded. The city attorney and/or his designee and a designee of the city manager shall attend all meetings of the board.

* * * * *

DIVISION 4. COMMUNITY RELATIONS BOARD

* * * * *

Sec. 2-158. Membership, qualifications; terms.

The CRB shall consist of seven (7) members, with the mayor and city council to each appoint one (1) member and with two (2) members to be appointed by the entire mayor and city council. The membership of the board shall be representative of the various social, racial, religious, linguistic, cultural, and economic groups comprising the population of the city. Each member shall be a resident of North Miami, with an outstanding reputation for community pride, interest, integrity, responsibility, and business or professional ability. ~~Members shall be appointed for terms of two (2) years.~~ The term of those board members appointed by the individual city council members shall be coterminous with the appointing elected official's term of office. The terms of those board members appointed by the city council as a whole shall be coterminous with the Mayor's term of office. Any member who for any reason misses either two (2) consecutive meetings or a total of three (3) meetings shall automatically cease being a member of the board. Any member may also be removed by a three-fifths (3/5) vote of the city council.

* * * * *

DIVISION 5. PARKS AND RECREATION COMMISSION

* * * * *

Sec. 2-187. Appointment of members; terms of office; officers; removal; organization.

- (a) Each member of the city council shall appoint two (2) members of the parks and recreation commission.
- (b) ~~Each member of the parks and recreation commission shall hold office, unless sooner removed by the council, for a term ending on the second Tuesday in June of each odd-numbered year.~~ The term of commission members shall be coterminous with the appointing elected official's term of office.
- (c) The parks and recreation commission shall elect from within the commission a chairperson, who shall be the presiding member; a vice chairperson, who shall preside in the absence or disqualification of the chairperson; a parliamentarian; and a secretary who may be an officer or employee of the city. ~~Terms of all officers shall end on the second Tuesday in June of each odd-numbered year, with eligibility for reelection.~~
- (d) A vote by the majority of the city council shall be required to remove a commission member.

* * * * *

DIVISION 6. SENIOR CITIZENS' ADVISORY BOARD

* * * * *

Sec. 2-201. Establishment of board; composition; appointment; term; quorum; officers; removal.

- (a) There is established a senior citizens' advisory board consisting of a minimum of five (5) members, each of whom shall be a resident of the city or associated with a social service agency that benefits elders in the city.
- (b) Each member of the city council shall nominate one (1) member of the senior citizens' advisory board, all of whom shall be subject to appointment by approval of a majority of the city council. ~~Each member so appointed shall hold office until the second Tuesday in June of the odd-numbered year next following appointment. Members shall hold office until a successor is duly appointed. All terms shall begin and end at noon on the date indicated.~~ Each appointed board member's term shall be coterminous with the appointing city council member's term of office. The city council shall appoint a qualified person to serve out the unexpired term of any member vacating office by resignation or otherwise.
- (c) Three (3) members shall constitute a quorum for the transaction of business by the board. During the first meeting of the board in September of each year, the members shall elect one (1) of their members to act as chairman, one (1) of their members to act as vice chairman.
- (d) Any board member absent from three (3) consecutive or a total of four (4) regular board meetings within a 12-month period shall be removed from office.

* * * * *

DIVISION 7. YOUTH OPPORTUNITY BOARD

* * * * *

Sec. 2-217. Members; appointment, term, quorum, officers; role of city manager's office.

- (a) Each member of the city council shall nominate two (2) members of the youth opportunity board, with one (1) nomination to be at-large and appointed by a majority vote of the council. Four (4) of the members shall be in middle school or high school. Two (2) of these four (4) members shall be the president or vice president of the student government at a North Miami high school. Each nominee shall be subject to the approval of a majority of the city council. ~~Each member shall hold office until the second Tuesday in June of the odd-numbered year next following appointment; members to serve at the pleasure of the council. All terms shall begin and end at noon on the date indicated. The term of those board members appointed by the individual city council members shall be coterminous with the appointing elected official's term of office. The term of the board member appointed by the city council as a whole shall be coterminous with the Mayor's term of office.~~ The council member who originally nominated a board member vacating office by resignation or otherwise shall nominate a successor to serve out the unexpired term. The successor nominee shall be subject to approval by a majority of the city council.
- (b) Six (6) members of the board shall constitute a quorum for the transaction of business. During the first September meeting of each year, the board shall elect one (1) of their members to act as chair, one (1) as co-chair and one (1) as corresponding secretary.
- (c) The city manager shall assist the board.

* * * * *

DIVISION 8. ADVISORY COMMITTEE FOR PERSONS WITH SPECIAL NEEDS

* * * * *

Sec. 2-227. Appointment, terms.

The advisory committee shall have eight (8) members, ~~appointed by the city council, with the mayor and city council to each appoint one (1) member and with two (2) three (3) members to be appointed by the entire mayor and city council.~~ Each member shall hold office for a term of two (2) years, unless sooner removed by the city council. Such term to begin on the second Tuesday in June of each off-numbered year. The term of those board members appointed by the individual city council members shall be coterminous with the appointing elected official's term of office. The term of those board members appointed by the city council as a whole shall be coterminous with the Mayor's term of office.

* * * * *

DIVISION 9. NORTH MIAMI AFFORDABLE HOUSING ADVISORY COMMITTEE

* * * * *

The CRB shall consist of seven (7) members, with the mayor and city council to each appoint one (1) member and with two (2) members to be appointed by the entire mayor and city council.

Sec. 2-237. Composition.

- (a) The affordable housing advisory committee shall consist of eleven members, with the mayor to appoint three (3) members and city council members to each be appointed by a majority of the city council and shall consist of eleven (11) two (2) members with the following qualifications:
- (1) One (1) citizen who is actively engaged in the residential home building industry in connection with affordable housing;
 - (2) One (1) citizen who is actively engaged in the banking or mortgage banking industry in connection with affordable housing;
 - (3) One (1) citizen who is a representative of those areas of labor actively engaged in home building in connection with affordable housing;
 - (4) One (1) citizen who is actively engaged as an advocate for low-income persons in connection with affordable housing;
 - (5) One (1) citizen who is actively engaged as a for-profit provider of affordable housing;
 - (6) One (1) citizen who is actively engaged as a not-for-profit provider of affordable housing;
 - (7) One (1) citizen who is actively engaged as a real estate professional in connection with affordable housing;
 - (8) One (1) citizen who actively serves on the local planning agency pursuant to F.S. § 163.3174;

- (9) One (1) citizen who resides within the jurisdiction of the city;
 - (10) One (1) citizen who represents employers within the jurisdiction; and
 - (11) One (1) person who represents essential services personnel, as defined in the local housing assistance plan adopted by the city.
- (b) In the event there is no eligible candidate actively engaged in activities in connection with affordable housing, a citizen engaged in the activity without regard to affordable housing may be appointed.

Sec. 2-238. Term.

~~Each member shall hold office for a term of two (2) years, unless removed by the city council. The term shall end on the second Tuesday in June each even-numbered year. Each appointed member's term shall be coterminous with the appointing city council member's term of office.~~

* * * * *

DIVISION 10. CHARTER SCHOOL AUTHORITY

* * * * *

Sec. 2-249. Charter school authority established; board of directors.

- (a) There is established a charter school authority in the city which shall be governed by a board of nine (9) directors, five (5) of whom shall be chosen by the mayor and council, three (3) directors who will be chosen by the city manager, and one (1) director who will be a parent or guardian of a current charter high school student and elected by the other parents/guardians. The three (3) directors to be chosen by the city manager shall have the following educational and/or professional backgrounds and experiences:
 - (1) One (1) director—education;
 - (2) One (1) director—business/finance; and
 - (3) One (1) director—city of North Miami administrator.
- (b) Prior to the opening of the charter high school, the council shall appoint a director designated by the board of directors of an officially sanctioned parent teacher association recognized by the city, to serve as the parent/guardian director until an election by the charter high school parent/guardians is held.
- (c) All directors shall hold office for an initial term of two (2) years from the first day following appointment. Directors appointed by the mayor and council shall have a term coterminous with the appointing city council member's term of office. Each director shall hold office until a successor has been duly appointed, except when removed by the council. Any director may be removed at any time by a four-fifths (4/5) vote of the council. Additionally, a director may be removed by a majority vote of the council for failure to comply with the charter contract between the city and the School Board of Miami-Dade County, Florida or any applicable law regulating charter school boards of directors; upon termination of employment as a city administrator where required for the director appointment, and at such time as the parent/guardian director no longer has a child enrolled in the charter high school.

In cases of vacancies by resignation, removal, or otherwise, the designating entity who originally appointed the director holding that seat may fill such vacancy for the unexpired term, except however that upon the opening of the charter high school, any vacancies for the parent/guardian director shall be filled by a parent/guardian of a current charter high school student elected by the parents/guardians.

- (d) The designating entities shall evidence their decisions regarding appointments to the board of the charter school authority, as well, as any actions regarding removal of any of designated board members, by means of a written resolution.
- (e) As soon as practical after the council's appointment of its designated directors all duly designated directors shall meet and organize by electing a chairperson, secretary, and treasurer and such other officers as they may deem necessary. All decisions by the board of directors of the charter school authority shall be by majority vote of the entire board.

* * * * *

Section 2. **Conflicts.** All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this Ordinance are hereby repealed.

Section 3. **Severability.** The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. **Codification.** The provisions of this Ordinance may become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article" or any other appropriate word.

Section 5. **Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED by a 4-0 vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this 25 day of March, 2014.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this _____ day of _____, 2014.

LUCIE M. TONDREAU
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: LUCIE M. TONDREAU

Moved by: _____

Seconded by: _____

Vote:

Mayor Lucie M. Tondreau	_____ (Yes)	_____ (No)
Vice Mayor Philippe Bien-Aime	_____ (Yes)	_____ (No)
Councilperson Scott Galvin	_____ (Yes)	_____ (No)
Councilperson Carol Keys, Esq.	_____ (Yes)	_____ (No)
Councilperson Marie Erlande Steril	_____ (Yes)	_____ (No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.

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.

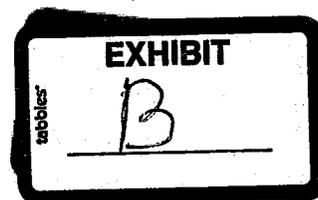
NOW, THEREFORE, in consideration of the obligations and the performance of the provisions herein contained the sufficiency of which being hereby acknowledged, the parties hereto agree as follows:

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 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 of default, and (ii) BOARD shall commence good faith efforts to cure such default 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 of 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 in the performance of any of 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 ~~2006~~ ²⁰⁰⁵

WITNESSES:

Grady Field
Michael Duffy

ATTEST:

Frank Wolland

FRANK WOLLAND
CITY CLERK

Deputy for

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

V. Lynn Whitfield

V. LYNN WHITFIELD
CITY ATTORNEY

CITY OF NORTH MIAMI

By Clarence Patterson

Name: CLARANCE PATTERSON
Title: CITY MANAGER

BOARD OF TRUSTEES OF THE
NORTH MIAMI CENTER
OF CONTEMPORARY ART

By James Brannan

Name:
Title Chairman



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

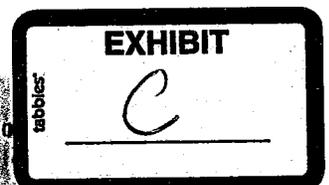
Re: *Board of Trustees of the Contemporary Museum of Art v. City of North Miami, Florida; Notice of Breach of Management Agreement*

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. Casjick, Esq.

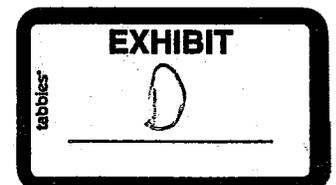
cc: Andrew Smulian, Esq.
Ray Ellen Yarkin, Esq.
Alex Gartenfeld

AGENDA
North Miami City Council
776 N.E. 125th Street, 2nd Floor, Council Chambers
North Miami, FL 33161

REGULAR MEETING

TUESDAY, APRIL 8, 2014
7:00 P.M.

- 1. PLEDGE OF ALLEGIANCE**
(Leimys Ramirez, Student, Miami-Dade College-North Campus)
- 2. INVOCATION**
(Minister Harold Jean, SBNA Ministry)
- 3. CALL TO ORDER / ROLL CALL OF MEMBERS**
- 4. ORDER OF BUSINESS** (Additions/Deletions/Amendments/Deferrals)
- 5. SPECIAL PRESENTATION(s)**
 - ◆ Certificate of Recognition to *David Lawrence, Jr. K-8 students* for placing 3rd in the district for competing in the *Odyssey of the Mind*, an International Education program
 - ◆ Recognition to North Miami's Citizen Mobile Patrol Graduates
 - ◆ Certificate of Recognition to *HOPE, Inc.* in honor of *Fair Housing Month Celebration*
 - ◆ Certificate of Recognition to finalists in the *American Water Works Association Drop Savers Poster Contest* in honor of *Water Conservation Month*
 - ◆ Certificate of Recognition in honor of *Water Conservation Month*
 - ◆ Certificate of Recognition in honor of *Jazz Appreciation Month*
 - ◆ Certificate of Recognition in honor of *Autism Awareness Month*
 - ◆ Certificate of Recognition in honor of *National Financial Literacy Month*
- 6. CITY EVENTS – ANNOUNCEMENT**
- 7. CITY PROJECTS 2014 UPDATE**
- 8. CITIZENS' FORUM**



9. CONSENT AGENDA

UNLESS A MEMBER OF THE CITY COUNCIL WISHES TO REMOVE A SPECIFIC ITEM FROM THIS PORTION OF THE AGENDA, TABS A THROUGH C CONSTITUTE THE CONSENT AGENDA. THESE RESOLUTIONS AND ITEMS ARE SELF-EXPLANATORY AND ARE NOT EXPECTED TO REQUIRE ADDITIONAL REVIEW OR DISCUSSION. EACH ITEM WILL BE RECORDED AS INDIVIDUALLY NUMBERED RESOLUTIONS, ADOPTED UNANIMOUSLY BY THE FOLLOWING MOTION:

"...THAT THE CONSENT AGENDA COMPRISED OF TABS A THROUGH C BE ADOPTED..."

[TAB A]

APPROVAL OF MINUTES – Regular Council Meeting – March 25, 2014

Sponsored by: Michael A. Etienne, City Clerk

[TAB B]

PROPOSED RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, RATIFYING THE SUBMISSION OF A GRANT APPLICATION AND AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE AND EXECUTE AN AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND THE NATIONAL RECREATION AND PARKS ASSOCIATION (NRPA) FOR A GRANT FROM THE OUT OF SCHOOL TIME PROGRAM; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

Sponsored by: City Administration

Responsible Staff Person: Natasha Colebrook-Williams, Governmental Affairs Manager

[TAB C]

PROPOSED RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, APPROVING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND THE SCHOOL BOARD OF MIAMI-DADE COUNTY TO PROVIDE FOR THE PLACEMENT OF SCHOOL BASED LAW ENFORCEMENT OFFICERS IN MIAMI-DADE COUNTY PUBLIC SCHOOL SITES; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

Sponsored by: City Administration

Responsible Staff Person: Leonard Burgess, Interim Chief of Police

10. PUBLIC HEARINGS – RESOLUTIONS, ORDINANCES, ZONING, LAND USE ITEMS, ETC.

10.A. RESOLUTIONS

[TAB D]

PROPOSED RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY ADMINISTRATION TO PROCEED WITH ANNEXATION ANALYSIS TO DETERMINE THE FEASIBILITY OF A PROPOSED BOUNDARY CHANGE TO INCORPORATE INTO THE CITY OF NORTH MIAMI THE AREA GENERALLY BORDERED ON THE WEST-SIDE BY SPUR CANAL NUMBER 4, ON THE EAST-SIDE BY NORTHEAST 6TH AVENUE, GENERALLY SOUTH TO NORTHEAST 2ND COURT, ON THE SOUTH-SIDE, BY NORTHEAST 135TH STREET, AND ON THE NORTH-SIDE BY SOUTH SPUR DRIVE,

IDENTIFIED AS THE "SOUTH SPUR DRIVE ANNEXATION AREA"; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

Sponsored by: City Administration

Responsible Staff Person: Tanya Wilson-Sejour, CP & D / Zoning Manager

[TAB E]

PROPOSED RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO ISSUE A PURCHASE ORDER FOR ONE (1) NEW 'VAC-CON SEWER CLEANING/VACUUMING COMBINATION CLEANER - MODEL V311HN/100' WITH SPECIFIED OPTIONAL EQUIPMENT TO BE PLACED IN SERVICE BY THE PUBLIC WORKS DEPARTMENT, AT A COST NOT TO EXCEED TWO HUNDRED FORTY-TWO THOUSAND NINE HUNDRED SEVENTY-FIVE DOLLARS AND EIGHTY-ONE CENTS (\$242,975.81) FROM SOUTHERN SEWER EQUIPMENT SALES, TO PIGGYBACK A COMPETITIVE BID AWARD ISSUED BY THE FLORIDA SHERIFFS ASSOCIATION & FLORIDA ASSOCIATION OF COUNTIES, UNDER THE OFF-ROAD UTILITIES, MEDIUM/HEAVY TRUCKS, & OTHER FLEET EQUIPMENT - BID NUMBER 13-11-0904; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

Sponsored by: City Administration

Responsible Staff Person: Aleem Ghany, Public Works Director

[TAB F]

PROPOSED RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA APPROVING THE CITY ADMINISTRATION'S RANKING RESULTS AND SELECTION OF PAC COMM INC., AS THE HIGHEST RANKED FIRM FOR THE PROVISION OF DESIGN-BUILD SERVICES FOR THE NORTH BAYSHORE PARK FISHING AND VIEWING PIER, IN ACCORDANCE WITH THE TERMS, CONDITIONS AND SPECIFICATIONS OF REQUEST FOR PROPOSALS NO. 11-13-14, AND FURTHER AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE AND EXECUTE AN AGREEMENT FOR THE PROVISION OF DESIGN-BUILD SERVICES (DESIGN DEVELOPMENT, PERMITTING AND CONSTRUCTION SERVICES) FOR THE NORTH BAYSHORE PARK FISHING AND VIEWING PIER, IN THE AMOUNT NOT TO EXCEED FIVE HUNDRED NINETY-SIX THOUSAND FIVE HUNDRED DOLLARS (\$596,500.00).

Sponsored by: City Administration

Responsible Staff Person: Aleem Ghany, Public Works Director

[TAB G]

PROPOSED RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, APPROVING THE PREQUALIFICATION OF A GROUP OF LICENSED, INSURED AND BONDED GENERAL CONTRACTORS WHICH MEET OR EXCEED THE QUALIFICATIONS ESTABLISHED BY CITY ADMINISTRATION, IN ACCORDANCE WITH THE TERMS, CONDITIONS AND SPECIFICATIONS CONTAINED IN THE REQUEST FOR QUALIFICATION NO. 14-13-14 SIDEWALK REPLACEMENT & INSTALLATION SERVICES - SPECIAL PROGRAM; AND FURTHER AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE AND EXECUTE INDIVIDUAL AGREEMENTS WITH SELECTED

CONTRACTORS ON AN AS-NEEDED, WHEN-NEEDED BASIS, IN ORDER TO EFFECTUATE THE SIDEWALK REPLACEMENT AND INSTALLATION PROJECT AT LOCATIONS THROUGHOUT THE CITY OF NORTH MIAMI, IN THE AGGREGATE AMOUNT NOT TO EXCEED ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00); PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

Sponsored by: City Administration

Responsible Staff Person: Marc Anthony Tulloch, Purchasing Manager

[TAB H]

PROPOSED RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, APPROVING THE CITY ADMINISTRATION'S RANKING AND SELECTION OF HIDALGO CONSTRUCTION GROUP, LLC, AS THE HIGHEST RANKED CONTRACTOR TO REMOVE, FURNISH AND INSTALL APPROXIMATELY ONE THOUSAND FIVE HUNDRED (1,500') LINEAR FEET OF NEW FENCING, IN ACCORDANCE WITH THE TERMS, CONDITIONS, AND SPECIFICATIONS CONTAINED IN THE INVITATION FOR BID NO. 22-13-14 SAN SOUCI ALLEY FENCE REPLACEMENT PROJECT; AND FURTHER AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE AND EXECUTE AN AGREEMENT FOR THE PROVISION OF THE FENCE REPLACEMENT PROJECT WITH THE SELECTED CONTRACTOR, AT A COST NOT TO EXCEED ONE HUNDRED NINETY-SEVEN THOUSAND FIFTY-EIGHT DOLLARS AND NINETY-FIVE CENTS (\$197,058.95); PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

Sponsored by: City Administration

Responsible Staff Person: Aleem Ghany, Public Works Director

[TAB I]

PROPOSED RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF NORTH MIAMI AND THE DADE COUNTY POLICE BENEVOLENT ASSOCIATION, INC., TO IMPLEMENT A VOLUNTARY RETIREMENT INCENTIVE FOR ELIGIBLE BARGAINING UNIT EMPLOYEES AND AUTHORIZING THE CITY MANAGER TO TAKE ALL NECESSARY STEPS TO EFFECTUATE THE PLAN; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

(CONTINUED FROM THE MARCH 25, 2014 COUNCIL MEETING)

Sponsored by: City Administration

Responsible Staff Person: Guithete Ruiz-Nicolas, Personnel Director

10.B. LEGISLATIVE MATTERS – [NONE]

10.B.1. ORDINANCES – SECOND READING AND PUBLIC HEARING

[TAB J]

PROPOSED ORDINANCE (*SECOND READING*) OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 29 OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES, ENTITLED "LAND DEVELOPMENT REGULATIONS", SPECIFICALLY AT ARTICLE 5, ENTITLED

“DEVELOPMENT STANDARDS”, TO INCLUDE A NEW DIVISION 22, ENTITLED “DISTANCE REQUIREMENT FOR CERTAIN RETAIL USES”, TO MITIGATE THE PROLIFERATION OF SPECIFIC RETAIL USES, SPECIFICALLY AS IT APPLIES TO THE DOWNTOWN COMMERCIAL CORRIDOR, AND TO ENCOURAGE A MORE DIVERSE AND PRODUCTIVE BUSINESS ENVIRONMENT AS ENVISIONED IN THE CITY OF NORTH MIAMI DOWNTOWN MASTER DEVELOPMENT AND MAJOR CORRIDOR PLAN; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

Sponsored by: Mayor Lucie M. Toudreau

[TAB K]

PROPOSED ORDINANCE (*SECOND READING*) OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI, ENTITLED “ADMINISTRATION”, ARTICLE III, ENTITLED “BOARDS, COMMITTEES, COMMISSIONS”, DIVISIONS 2 THROUGH 10, SPECIFICALLY AT SECTIONS 2-61, 2-82, 2-158, 2-187, 2-201, 2-217, 2-227, 2-231, 2-238 AND 2-249, BY AMENDING THE BOARD COMPOSITION FOR THE BOARD OF TRUSTEES OF THE NORTH MIAMI MUSEUM OF CONTEMPORARY ART (MOCA) AND BY REVISING TERMS OF OFFICE TO ALLOW FOR THE TERMS OF BOARD AND COMMISSION MEMBERS TO BE COTERMINOUS WITH THE TERM OF THE APPOINTING COUNCILMEMBER; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

Sponsored by: Mayor Lucie M. Toudreau

10.B.2. ORDINANCES – FIRST READING

[TAB L]

PROPOSED ORDINANCE (*FIRST READING*) OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 15 OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES, BY CREATING SECTION 15-138, ENTITLED “RETIREMENT INCENTIVE PROGRAM” IN ARTICLE IV “NORTH MIAMI POLICE PENSION PLAN”, TO ESTABLISH A RETIREMENT INCENTIVE PROGRAM FOR CERTAIN ELIGIBLE MEMBERS OF THE POLICE PENSION PLAN; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

(CONTINUED FROM THE MARCH 25, 2014 COUNCIL MEETING)

Sponsored by: City Administration

Responsible Staff Person: Guithere Ruiz-Nicolas, Personnel Manager

[TAB M]

PROPOSED ORDINANCE (*FIRST READING*) OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA AMENDING CHAPTER 29 OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES, ENTITLED “LAND DEVELOPMENT REGULATIONS”, ARTICLE 2, ENTITLED “DECISION-MAKING AND ADMINISTRATIVE BODIES”, DIVISIONS 2 THROUGH 4, SPECIFICALLY AT SECTIONS 2-202, 2-302, AND 2-402, BY AMENDING TERMS OF OFFICE TO ALLOW FOR THE TERMS OF PLANNING COMMISSION, BOARD OF ADJUSTMENT, AND BUSINESS DEVELOPMENT BOARD MEMBERS TO BE COTERMINOUS WITH THE

TERM OF THE APPOINTING COUNCILMEMBER; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

Sponsored by: Mayor Lucie M. Tondreau

[TAB N]

PROPOSED ORDINANCE (*FIRST READING*) OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA AMENDING CHAPTER 16 OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES, ENTITLED "PUBLIC PLACES", ARTICLE II, ENTITLED "PUBLIC LIBRARY", SPECIFICALLY AT SECTION 16-17, BY AMENDING TERMS OF OFFICE TO ALLOW FOR THE TERMS OF LIBRARY BOARD MEMBERS TO BE COTERMINOUS WITH THE TERM OF THE APPOINTING COUNCILMEMBER; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

Sponsored by: Mayor Lucie M. Tondreau

[TAB O]

PROPOSED ORDINANCE (*FIRST READING*) OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA AMENDING CHAPTER 15 OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES, ENTITLED "PERSONNEL, PENSIONS AND RETIREMENT", ARTICLE I, ENTITLED "DEPARTMENT OF PERSONNEL", SPECIFICALLY AT SECTION 15-4, BY AMENDING THE TERMS OF OFFICE FOR PERSONNEL BOARD MEMBERS APPOINTED BY CITY COUNCILMEMBERS TO BE COTERMINOUS WITH THE TERM OF THE APPOINTING COUNCILMEMBER; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

Sponsored by: Mayor Lucie M. Tondreau

10.C. QUASI-JUDICIAL ITEM(S) – [NONE]

(NOTE: Quasi-Judicial items will usually be Approve/Deny/Approve with Conditions.)

QUASI-JUDICIAL PUBLIC HEARINGS: PLEASE BE ADVISED THAT THE ABOVE ITEM(S) ON THE AGENDA ARE QUASI-JUDICIAL IN NATURE. IF YOU WISH TO COMMENT UPON ANY OF THESE ITEM(S), PLEASE INDICATE THE TAB NUMBER YOU WOULD LIKE TO ADDRESS WHEN THE ANNOUNCEMENT REGARDING THE QUASI-JUDICIAL ITEM IS MADE. AN OPPORTUNITY FOR PERSON(S) TO SPEAK ON EACH ITEM WILL BE MADE AVAILABLE AFTER THE APPLICANT AND STAFF HAS MADE THEIR PRESENTATIONS ON EACH ITEM.

SWEARING IN: ALL TESTIMONY, INCLUDING PUBLIC TESTIMONY AND EVIDENCE, WILL BE MADE UNDER OATH OR AFFIRMATION. ADDITIONALLY, EACH PERSON WHO GIVES TESTIMONY MAY BE SUBJECT TO CROSS-EXAMINATION. IF YOU DO NOT WISH TO BE EITHER CROSS-EXAMINED OR SIVORN, YOUR TESTIMONY WILL BE GIVEN ITS DUE WEIGHT. THE GENERAL PUBLIC WILL NOT BE PERMITTED TO CROSS-EXAMINE WITNESSES, BUT THE PUBLIC MAY REQUEST THE COUNCIL TO ASK QUESTIONS OF STAFF OR WITNESSES ON THEIR BEHALF. THE FULL AGENDA PACKET ON EACH ITEM IS HEREBY ENTERED INTO THE RECORD. PERSONS REPRESENTING ORGANIZATIONS MUST PRESENT EVIDENCE OF THEIR AUTHORITY TO SPEAK FOR THE ORGANIZATION. FURTHER DETAILS OF THE QUASI-JUDICIAL PROCEDURES MAY BE OBTAINED FROM THE CLERK. (IN ACCORDANCE WITH CODE SECTIONS 2-291 AND 2-305, ANY LOBBYISTS MUST REGISTER BEFORE ADDRESSING THE COUNCIL ON ANY OF THE FOLLOWING ITEMS). AT THIS TIME, COUNCILMEMBERS MUST DISCLOSE ANY EX-PARTE COMMUNICATIONS CONCERNING ANY ITEMS ON THE AGENDA. AT THIS TIME, THE CLERK WILL SWEAR IN ANY PERSON WHO WISHES TO TESTIFY ON ANY QUASI-JUDICIAL ITEM.

11. REQUESTS – PETITIONS – COMMUNICATIONS

[TAB P]

DISCUSSION AND APPROVAL TO INITIATE THE SALE OF THE PROPERTY KNOWN AS "BISCAYNE LANDING" OF APPROXIMATELY 175 ACRES AND AUTHORIZING THE CITY MANAGER TO BEGIN THE DUE DILIGENCE PROCESS BY SECURING TWO INDEPENDENT APPRAISALS (PAID BY DEVELOPER) AND TO BEGIN NEGOTIATIONS WITH OLETA PARTNERS FOR A PRICE MOST FAVORABLE TO THE CITY.

Sponsored by: City Administration

[TAB Q]

DISCUSSION AND APPROVAL FOR THE PURCHASE OF A TABLE FOR THE ANCIENT SPANISH MONASTERY FOUNDATION FOR ITS ANNUAL LEGACY GALA, APRIL 12, 2014.

Sponsored by: Councilman Scott Galvin

12. COUNCIL REPORTS

Councilwoman Carol Keys, Esq.
Councilman Scott Galvin
Councilwoman Marie Erlande Steril
Vice-Mayor Philippe Bien-Aime
Mayor Lucie M. Tondreau

13. CITY CLERK'S REPORT

14. CITY ATTORNEY'S REPORT

15. CITY MANAGER'S REPORT

16. ADJOURNMENT

• THIS MEETING IS OPEN TO THE PUBLIC. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, ALL PERSONS WHO ARE DISABLED AND WHO NEED SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS MEETING BECAUSE OF THAT DISABILITY SHOULD CONTACT THE OFFICE OF THE CITY CLERK, (305) 893-6511, Ext. 12142.

• IN ACCORDANCE WITH THE PROVISIONS OF SECTION 286.0105, FLORIDA STATUTES, ANYONE WISHING TO APPEAL N FOUR DAYS PRIOR TO SUCH PROCEEDING. HEARING IMPAIRED MAY CONTACT THE TDD LINE AT (305) 893-7936. ANY DECISION MADE BY THE CITY OF NORTH MIAMI CITY COUNCIL, WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, WILL NEED A RECORD OF THE PROCEEDINGS AND, FOR SUCH PURPOSE, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, INCLUDING THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

• AGENDA ITEMS MAY BE VIEWED AT THE OFFICE OF THE CITY CLERK, CITY OF NORTH MIAMI, 776 N.E. 125TH STREET, NORTH MIAMI, FL 33161. ANYONE WISHING TO OBTAIN A COPY OF ANY AGENDA ITEM SHOULD CONTACT THE CITY CLERK AT (305)893-6511.

• IN ACCORDANCE WITH CODE SECTIONS 2-291 AND 3-305, ANY LOBBYISTS MUST REGISTER WITH THE CITY CLERK'S OFFICE BEFORE ADDRESSING THE COUNCIL ON ANY OF THE ABOVE ITEMS.

- TWO OR MORE MEMBERS OF THE CITY COUNCIL AND OTHER CITY BOARDS MAY BE IN ATTENDANCE AT THIS MEETING
- THESE MEETINGS MAY BE CONDUCTED BY MEANS OF OR IN CONJUNCTION WITH COMMUNICATIONS MEDIA TECHNOLOGY, SPECIFICALLY A TELEPHONE CONFERENCE CALL. THE LOCATION, 776 N.E. 125TH STREET, NORTH MIAMI, FL 33161-0850, WHICH IS OPEN TO THE PUBLIC, SHALL SERVE AS AN ACCESS POINT

ALCOHOLIC BEVERAGE SYMBOLS

- 1-COP Beer only, Consumption on Premises
- 2-COP Beer and Wine, Consumption on Premises
- 4-COP Beer, Wine and Alcohol, Consumption on Premises
- 1-APS Beer, Package Sales Only
- 2-APS Beer and Wine, Package Sales Only
- 3-APS Beer, Wine and Alcohol, Package Sales Only

ZONING SYMBOLS

- R-1 Residential Estate District
- R-2 Single-Family District
- R-4 Multi-Family District
- R-5 Multi-Family District
- R-6 Multi-Family District
- RO Residential Office District

ZONING SYMBOLS (continue)

- C-1 Commercial District
- C-3 Commercial District
- C-2BE Commercial District
- C-2BW Commercial District
- M-1 Industrial District
- PU Public Use District
- PD Planned Development District
- AOD Arts, Culture and Design Overlay District
- NRO Neighborhood Redevelopment District