

IN THE CIRCUIT COURT OF THE 11<sup>th</sup> JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

MUSEUM OF CONTEMPORARY ART,  
INC.,

Plaintiff,

V.

Case No.: 2014-008991 CA 01 (30)

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

Defendants.

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**DEFENDANT, CITY OF NORTH MIAMI'S, EMERGENCY *EX-PARTE* MOTION FOR  
TEMPORARY INJUNCTIVE RELIEF; DEMAND FOR IMMEDIATE EQUITABLE  
ACCOUNTING; AND INCORPORATED MEMORANDUM OF LAW**

The **CITY OF NORTH MIAMI, FLORIDA**, (the “**CITY**”), through undersigned counsel, pursuant to Fla. R. Civ. P. 1.610, files this Emergency *Ex-Parte* Motion for Temporary Injunctive Relief; Demand for Immediate Equitable Accounting; and Incorporated Memorandum of Law. In support thereof the **CITY** states as follows:

1. The **CITY** specially appears to file this Emergency *Ex-Parte* Motion without:
  - a. Waiving municipal sovereign immunity;
  - b. Admitting to the correctness or legal sufficiency of the Complaint (the “**Complaint**”) the Board of Trustees of the North Miami Museum and Art Center (the “**Board**”) filed on April 8, 2014, against the **CITY** or any other Defendant;

- c. Waiving its right to respond to the Complaint; and
  - d. Waiving any other rights it may have in equity and law.
2. Unless restrained, the Board will immediately and irreparably damage the **CITY**, as described below.

**Introduction and General Facts**

3. The Board has been acting under the misguided illusion they are a separate and distinct entity from the Museum of Contemporary Art (“**MOCA**”) located at 770 NE 125<sup>th</sup> Street in the City of North Miami, Florida.

4. The Board continually, intentionally, knowingly, and repeatedly violates and ignores **CITY** Ordinances and the Management Agreement between the **CITY** and the Board for the purpose of operating **MOCA** on the **CITY**’s behalf.

5. On April 8, 2014, the Board calling itself **MOCA** and confusingly stating it is acting on **MOCA**’s behalf, filed suit against the **CITY**.

6. The **CITY**’s Mayor and Council, along with **CITY** administration are deeply troubled by the Board’s past, present, and future actions, which continually jeopardize **MOCA**’s assets (the “**Assets**”).

7. Those Assets include, but are not limited to, numerous art pieces displayed at **MOCA** and stored at the Museo Vault located at 346 NW 29<sup>th</sup> Street, Miami, Florida, and **MOCA**’s bank and investment accounts.

8. The Board has breached and continues to breach its duty of care, duty of loyalty, fiduciary duty and duty of good faith towards **MOCA** and the **CITY**.

9. Without consultation or authorization from the **CITY**, the Board, upon information and belief, may have moved Assets from **MOCA**.

10. Upon information and belief, the Board is planning to move MOCA's art from the CITY's facilities at MOCA.

11. Upon information and belief, the Board took it upon itself without CITY approval to negotiate with the Bass Museum of Art in Miami Beach ("Bass") to move MOCA's art to Bass in the upcoming months.

12. Upon information and belief, without CITY approval, the Board plans to attempt to close on an agreement between the Board and Bass, improperly claiming to be acting on MOCA's behalf, to move the CITY's patrimony to Bass.

13. The CITY has a legal right to the unique art displayed and kept at MOCA and the Museo Vault.

14. On December 15, 2008, the CITY entered into a Management Agreement (the "Agreement") with the Board on MOCA's behalf.<sup>1</sup>

15. As recently as April 24, 2014, the Board removed MOCA's Assistant Director, who is a CITY employee, from MOCA's bank accounts without notice to, or CITY approval.

16. The Board has blatantly ignored the City's termination of MOCA's improperly named, Interim Director from the position, to allow for the appointment of a Director hired by the City and assigned by the City Manager.

17. Pursuant to the Agreement and the CITY Ordinance, the positions of Museum Director, Assistant Director, and Curator are to be filled with a City employee.

18. The CITY does not have a clear accounting or inventory of the status and location of all the art pieces and of the moneys in MOCA's bank accounts.

19. The CITY seeks a temporary injunction to compel the Board to stop engaging in,

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<sup>1</sup> See ¶30 below for additional details about the Agreement.

and not to continue engaging in activities that will further injure MOCA and the CITY.

20. The CITY seeks an immediate equitable accounting of all art pieces to preserve the *status quo ante*.

21. The Board has disturbed, has been disturbing the *status quo*, before and during the pendency of litigation by its illegal actions and defiant refusals to follow CITY instructions, as they are required to pursuant to Ordinances and the Agreement.

22. The CITY has been, is being, and will be irreparably harmed by the Board's illegal actions, unless the Board is enjoined from continuing and engaging in future illegal actions.

23. The Board has been acting above the law.

24. The CITY does not have any other remedies other than equitable ones to preserve the *status quo*.

25. Accordingly, the CITY seeks *ex-parte* temporary injunctive relief and an equitable accounting.

**Background and Summarized Additional Relevant Facts**

26. On October 14, 1980, on a second unanimous reading the CITY's Council passed and adopted Ordinance No. 768 wherein it created the Board of Trustees of the North Miami Museum. This ordinance was titled (a true and correct copy of this ordinance is incorporated herein by reference as Exhibit — 1):

THE CITY OF NORTH MIAMI, FLORIDA, CREATING THE BOARD OF TRUSTEES OF THE NORTH MIAMI MUSEUM; ORGANIZATION; TERM OF OFFICE; DUTIES; MEETINGS; FINANCING; HIRING OF A DIRECTOR; PROVIDING FOR REPEAL AND SEVERABILITY.

27. On June 9, 1981, on a second unanimous reading the City's Council amended Ordinance No. 768, and passed and adopted Ordinance No. 768.1 wherein, in pertinent part, it

changed the name of the “Board of Trustees of the North Miami Museum” to “Board of Trustees of the North Miami Museum and Art Center.” A true and correct copy of this ordinance is incorporated herein by reference as Exhibit — 2.

28. On August 19, 1981, the Articles of Incorporation (the “**Articles**”) of the “North Miami Museum and Art Center, Inc.” were filed with Florida’s Secretary of State. A true and correct copy of the Articles is incorporated herein by reference as Exhibit — 3.

29. On October 25, 1994, on a second unanimous reading the **CITY**’s Council passed and adopted Ordinance No. 925 amending Chapter 2 “Administration” of the **CITY** Code, which is titled, as follows (a true and correct copy of this ordinance is incorporated herein by reference as Exhibit — 4):

AN ORDINANCE AMENDING CHAPTER 2 "ADMINISTRATION" OF THE CITY CODE OF THE CITY OF NORTH MIAMI, FLORIDA BY AMENDING DIVISION 3 "BOARD OF TRUSTEES OF THE NORTH MIAMI CENTER OF CONTEMPORARY ART (COCA)", AMENDING SECTION 2-61 THROUGH 2-67 THEREOF TO REVISE CITY CODE PROVISIONS GOVERNING THE BOARD OF TRUSTEES INCLUDING PROVISIONS ENABLING THE BOARD TO HEREAFTER APPOINT PERSONS TO FILL VACANCIES ON THE BOARD, PROVIDING FOR THE MANAGEMENT OF THE CENTER OF CONTEMPORARY ART PHYSICAL PLANT AND FACILITIES BY THE BOARD OF TRUSTEES PURSUANT TO MANAGEMENT AGREEMENT, PROVIDING FOR STAFFING BY CITY PERSONNEL AND PROVIDING FOR OTHER PURPOSES; PROVIDING FOR SEVERABILITY AND EFFECTIVE DATE.

30. On December 15, 2008, the **CITY** entered into an Agreement *between the City and the Board of Trustees* of the Museum of Contemporary Art (the “**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**”).” A true and correct copy of the Agreement is

incorporated herein by reference as Exhibit — 5).<sup>2</sup> (*Emphasis added.*)

31. The Agreement specifically states “... the City desires to contract with [the Board] *to manage* ... [the Museum of Contemporary Art] in North Miami physical plant and facilities and all activities thereon, pursuant to ... [City] ... Ordinance No. 925... (the “**Ordinance**”), and [the Board] *is willing to manage the Museum*, all on terms and conditions hereinafter set forth.” (*Emphasis added.*)

32. Further, the Agreement’s purpose is stated, as follows (Agreement page 1., section 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.* (*Emphasis added.*)

33. Further, the “Obligations of MOCA Board of Trustees” are set out in section II of the Agreement, and among these in “B.,” the Agreement states, as follows (Agreement page 2., section II, 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.  
(*Emphasis added.*)

34. Further, the Agreement’s operating policy and intent are stated as follows (Agreement page 5., section VII):

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<sup>2</sup> Refer to Exhibit — 4 for Ordinance No. 925.

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,<sup>3</sup> protect and manage the permanent MOCA collection of art, and all additions and modifications of same.

35. On July 13, 2013, MOCA's Articles of Incorporation were amended to vest MOCA's management in a "... Chairman, Vice Chairman, President, Secretary and Treasurer." See Exhibit — 5.

36. MOCA's Director left in September 2013. Since then, the Board named the Chief Curator to concurrently serve as Interim Director without CITY approval or ratification, contrary to the CITY's Ordinance and the Agreement.

37. The Board has taken actions that have endangered, are endangering and damaging MOCA's ability to obtain and/or maintain funding to support its cultural and educational mission.

38. The Board has and will continue to systematically erode community programs held at MOCA.

39. If left unchecked, the Board will engage in future activities that will irreparably

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<sup>3</sup> This is the only place in the Agreement where the word "own" and Board are connected. The apparent misuse of the word "own," in addition to other problems and misinterpretations, seems to have been at the center of the controversy between the City and the Board.

harm MOCA and the CITY's patrimony, and the CITY's future ability to attract world class art and programs to MOCA.

40. The Board has been engaging in and conducting activities not authorized by the CITY, and detrimental to MOCA.

41. The Board's failure to follow the requirements of the Agreement with regards to the staffing of MOCA endangers the art and MOCA's operations.

42. The Board's unauthorized removal and/or attempt to convert MOCA's art collection is a real and immediate danger to MOCA's and the CITY's patrimony.

43. The Board has misused and is misappropriating MOCA's funds and resources, by, including, but not limited to, utilizing the CITY's and MOCA's resources to engage in unauthorized activities and in negotiations contrary to and against the CITY's and MOCA's interest.

44. The Board is demonstrating clear and obvious bad faith towards the CITY by maliciously and surreptitiously negotiating to "transfer" MOCA's art collection without the CITY's knowledge or approval, while under contract with the CITY to manage and operate MOCA.

45. The Board is breaching its fiduciary obligation to the CITY by maliciously and surreptitiously negotiating to "transfer" MOCA's art collection without the CITY's knowledge or approval, while under contract with the CITY to manage MOCA.

46. On April 8, 2014, the Board calling itself MOCA, filed suit against the CITY and sought an emergency *ex-parte* motion for injunctive relief in an effort to stop the CITY Council from terminating members of the Board, referring to an ordinance amendment on that evening's Council agenda. The Court denied the Board's motion.

47. On April 14, 2014, pursuant to the Agreement and Ordinances, the **CITY** hired and appointed a MOCA Director to replace the *Interim* Director.

48. The Board has refused to approve the new Director.

49. On April 18, 2014, the Board's leadership sent an e-mail to MOCA staff telling them to disregard the City's new Museum Director and affirming the *Interim* Director's continued leadership of MOCA. See Exhibit — 6, incorporated herein by reference.

50. The Board has rejected the **CITY**'s authority by, among other things, illegally removing the Assistant Director from MOCA's bank and investment accounts.<sup>4</sup>

51. Given the Board's recent actions, especially removing the Assistant Director from MOCA's Bank and investment accounts, it is reasonable to expect the Board is preparing to take other actions that will injure the **CITY** and MOCA's patrimony.

52. Organization and activities related to exhibitions for Art Basel should have started several months ago.

53. The Board's actions against MOCA and the **CITY** may have already damaged MOCA's ability to attract, art, artists, and exhibits for the upcoming Art Basel at MOCA.

54. If left unchecked, the Board's illegal activities will damage the **CITY**'s ability to attract world-class art to MOCA.

55. The Board's actions sabotage and will continue to sabotage MOCA and the **CITY**'s ability to attract important art exhibitions.

56. Unless the Board is stopped, MOCA and the **CITY**'s ability to attract important art exhibitions will be further damaged.

57. Upon information and belief the Board is improperly and will continue to

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<sup>4</sup> Alan Waufle is MOCA's Assistant Director and Interim Deputy Director.

improperly use MOCA's Assets to pay for attorneys' fees and costs associated with the lawsuit it filed against the CITY.

58. The Board's continued actions breach the public and the CITY's trust.

***Argument and Incorporated Memorandum of Law  
The Ex Parte Temporary Injunction is Necessary and Proper***

**A - The Court Has Jurisdiction Over the Board, MOCA, and the CITY for purposes of this Motion.**

59. The Board has filed suit against the CITY and CITY Council.

60. The City of North Miami is a Florida municipality created and with authority under Art. VIII, §2, Fla. Const.

61. The CITY is a municipality governed by the common law doctrine of sovereign immunity and its Constitutional and Statutory provisions.

62. The Court has jurisdiction pursuant to Art. V, §5, Fla. Const. and may issue injunctions according to §26.012 Fla. Stat. (2013).

63. MOCA is a Florida not for Profit Corporation.

64. Therefore, this Court has jurisdiction to issue the prayed for equitable remedies.

**B - The Board of Trustees of the North Miami Museum and Art Center Continue to: Defy the City's Authority by Ignoring the Ordinances that Created It; Act Contrary to Florida Law; and Endanger MOCA's Patrimony**

**The CITY Ordinances**

65. Section 2 of Ordinance No. 768 describes the Board's duties, specifically:

The Board of Trustees of the North Miami Museum shall sponsor and promote exhibits, special events, functions and activities for the benefit of the public and shall further the development of the North Miami Museum.

66. Section 2-126.1 of Ordinance No. 768-2 describes, and underscores, the Board's duties and those of its chairman, specifically:

The board of trustees of the North Miami Museum and Art Center shall sponsor and promote exhibits, special events, functions and activities for the benefit of the public and shall further the development of the North Miami Museum and Art Center. The board of trustees shall serve as liaison between the public and the city council. The chairman of the board of trustees shall make all records, reports, financial statements and other necessary information available to the city council. (Emphasis in original)

67. Section 2-126.5 of Ordinance No. 768-2 describes the hiring and role of the Director of North Miami Museum and Art Center, specifically:

The museum director shall be an employee of the City of North Miami, and shall be a member of the classified service and shall be assigned as provided by the City Manager. The museum director shall assist the board in the performance of its duties.

68. Section 2-62 of Ordinance No. 925 further describes the Board's duties, specifically:

A. The board of trustees of the North Miami Center of Contemporary Art (COCA) shall sponsor and promote exhibits, special events, functions and activities for the benefit of the public and shall further the development of the North Miami center of Contemporary Art (COCA). The board of trustees shall serve as liaison between the public and the city council. The chairman of the board of trustees shall make all records, reports, financial statements and other necessary information available to the city council.

B. The board of trustees shall operate and manage the North Miami Center of Contemporary Art (COCA) physical plant and facilities (premises) and all activities thereon on behalf of the City of North Miami, pursuant to a Management Agreement entered into by and between the city of North Miami, as owner of the premises and COCA, as operator of such premises, in a form approved by the City Attorney and executed by the City Manager pursuant to authority hereby granted. The format utilized shall preserve the facility's exemption from ad valorem taxation and shall assure accomplishment of the cultural and educational mission of COCA in compliance with all applicable grants to which the facility is subject. (Emphasis in original)

69. The Board has negotiated and continues to negotiate with Bass without **CITY** authority to permanently move the **CITY** and MOCA's patrimony to Bass.

70. The **CITY** Manager, the **CITY** Council, and the Mayor have asked the Board to end their negotiations with Bass and not to move MOCA's patrimony without the **CITY**'s permission.

71. The Board's representatives have ignored the **CITY** and have clearly expressed their intention to move MOCA's patrimony, and have taken steps in furtherance of that defiant action, even during the pendency of litigation.

72. The Board's actions and the hostile environment they've created do not benefit the public; to the contrary, those actions detract from the public — the citizens of the City North Miami.

73. The Board elevated MOCA's Curator to the position of Interim Museum Director, contrary to **CITY** Ordinances.

74. Since 2013, the Board has kept an Interim Museum Director in place, instead of a Director as ordained and required by the **CITY** Council.

75. The Interim Museum Director's and Board's actions continue to jeopardize MOCA's patrimony and activities.

76. The Board has refused to approve the new Museum Director presented by the **CITY**, action that continues to damage and impair MOCA and its patrimony.

77. The Board has rejected the City's authority, to include illegally removing the Deputy Museum Director, from MOCA's bank and investment accounts.

78. Given the Board's recent actions, especially removing the Assistant Director from MOCA's Bank and investment accounts, it is reasonable to expect the Board is preparing to take other actions that will injure the **CITY** and MOCA's patrimony.

79. Those and numerous other Board recalcitrant actions too many to list, continue to

violate the stated Ordinances and threaten future harm to the **CITY** and MOCA.

**Chapter 617 Florida Statutes — Corporations Not For Profit**

80. Chapter 617 of the Florida Statutes governs non-profit corporations; it is the Florida Not For Profit Corporation Act, Fla. Sta. §617.01011 (2013).

81. §617.01401 (2) Fla. Stat (2013): “Board of directors means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated, including, but not limited to, managers or trustees.”

82. There is nothing in the Florida Not For Profit Corporation Act giving any designation or authority for a board of directors to take on a life of its own separate and apart from the non-profit corporation it serves.

83. MOCA is a Florida non-profit corporation operating in Miami-Dade County and, except for three out of twenty-seven Board members; all are Florida residents domiciled in Broward and Miami-Dade Counties. The other three are domiciled in California, New York, and Switzerland. Without addressing issues of piercing the corporate veil; since they have sued the City through MOCA, to the Court has jurisdiction over MOCA, the Board, and the **CITY**. Chapter 48 Fla. Stat. (2013).

84. Nowhere in Florida’s Statutes is there authority for a board to act contrary to the interests of the corporate entity for which they serve.

85. Nowhere in Florida’s Statutes is there authority for a board to act as an entity separate and apart from the corporate entity for which they serve.

86. Yet the Board has been operating on the misguided legal fiction that it has life separate and apart from MOCA.

87. Here, the Board was created by **CITY** Ordinance that specifically ordains what

the Board “shall” do, instead, the Board has engaged in repugnant illegal actions contrary to CITY Ordinances.

88. The Board’s past, current, and future actions (as the Board has described it will take) are contrary to the letter and spirit of CITY Ordinances and Florida Law.

89. Therefore, the Board must be enjoined from continued and future injury to the CITY, MOCA, and the Public.

**C - The *Ex-Parte* Temporary Injunction is Necessary and Proper to Enjoin the Board from Continued and Future Activities Injurious to MOCA’s Patrimony, the CITY and Public’s Interests**

90. “One of the most valuable phases of injunctions is to prevent an injury from occurring and not to be forced to wait until after the damage is done and then attempt to seek redress for the same.” (Internal citations omitted.) *Lewis v. Peters*, 66 So.2d 489, 492 (Fla. 1953).

91. Here, although the Board has recently sued the CITY, it has not stopped activities that damage MOCA’s patrimony and are contrary to CITY Ordinances. Worst yet, the Board has not said or shown it will stop with those injurious activities.

92. Therefore, it would be inequitable and unreasonable to expect the CITY to wait until the end of the ongoing litigation to obtain redress from the Board’s impending actions.

**The Status Quo and City’s Desire to Return to the Status Quo Ante**

93. “The general function of a temporary injunction is to preserve the status quo until full relief can be granted in a final hearing.” *Liberty Financial Mortg. Corp. v. Clampitt*, 667 So.2d 880, 881 (Fla. 2d DCA 1996).

94. “The purpose of a temporary injunction is not to resolve a dispute on the merits, but rather to preserve the status quo until the final hearing when full relief may be granted.”

*Tiffany Sands, Inc. v. Mezhibovsky*, 463 So.2d 349, 350 - 351 (Fla. 3d DCA 1985).

95. “The general function of a temporary injunction is to preserve the status quo until full relief can be granted following a final hearing.” *Tamiami Trail Tours, Inc., v. Greyhound Lines, Southern Greyhound Lines Division*, 212 So.2d 365, 366 (Fla. 4<sup>th</sup> DCA 1968), citing *North Dade Water Co. v. Adken Land Co.*, Fla.App.1959, 114 So.2d 347.

96. For several months, the Board has been acting contrary to the Agreement and CITY Ordinances by going behind the CITY’s figurative back, negotiating with Bass to move MOCA’s art collection and numerous art pieces from MOCA to Bass.

97. At this juncture, the CITY remains deeply troubled and concerned about the Board’s unauthorized future removal of MOCA’s art collection either in part from MOCA’s premises or offsite storage at Museo Vault to Bass or pledging to move it to Bass.

98. The Board has continued to act brazenly and defiantly not withstanding ongoing litigation.

99. The Board has resisted the CITY’s mandates, as authorized by Ordinance and the Agreement.

100. The Board has rejected the CITY’s authority, to include illegally removing the Deputy Museum Director from MOCA’s bank and investment accounts.

101. Given the Board’s recent actions, especially removing the Deputy Museum Director from MOCA’s Bank and investment accounts, it is reasonable to expect the Board is preparing to take other actions that will continue to injure the CITY and MOCA’s patrimony.

102. The Board’s actions, if they continue, will thwart and frustrate the legal process now before the Court.

103. Therefore, the CITY asks the Court to compel the Board to return all of MOCA’s

assets and return all conditions at MOCA to those in existence before it filed suit against the CITY, and to stop negotiating with Bass, or any entity, until a final hearing, or the dispute is otherwise resolved.<sup>5</sup>

**The Standard for an Ex-Parte Temporary Injunction**

104. “The allegations verified by the presenter must be strong and clear, and the trial judge should raise in his or her own mind all possible responses a defendant could raise if present. Because the incursion upon precious due process rights is facilitated by issuance of ex parte orders, trial courts should issue them only where an immediate threat of irreparable injury ‘which forecloses opportunity to give reasonable notice’ exists. (Internal citation omitted.) In such circumstances the trial court must balance the harm sought to be prevented against the rights of notice and hearing.” *State v. Beeler*, 530 So.2d 932, 933 (Fla. 1988).

105. “[T]he most compelling reason in favor of [granting an injunction] is the need to prevent the judicial process from being rendered futile by defendant’s action or refusal to act.”<sup>6</sup>

106. Here, the Board’s actions, as described above, present strong and clear evidence of impending harm.

107. Moreover, by its own pronouncements, it is evident the Board will continue with recalcitrant future activities, which will further injure MOCA’s and the CITY’s patrimony, and the public.

108. If the Board were given notice of the *ex-parte* hearing, it is likely they would commit other harmful acts, such as removing additional art from MOCA, that would further

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<sup>5</sup> January 1, 2014, is an appropriate back date.

<sup>6</sup> Excerpt From: Edited by The Florida Bar. “Business Litigation in Florida.” iBooks. <https://itunes.apple.com/WebObjects/MZStore.woa/wa/viewBook?id=3AD8E52B783268EBE4F6A60E848B13E8>

injure MOCA and the **CITY**'s patrimony.

109. The Court should balance the harm the **CITY** seeks to prevent against the Board's purported rights for notice and hearing. When doing so, the Court will find there is no credible or reasonable response the Board could raise to cause the Court to rule in its favor; especially, given the facts and the Board's damaging actions.

110. Therefore, the Court must compel the Board to return all of MOCA's assets and return all conditions at MOCA to those in existence before it filed suit against the **CITY**, and to stop negotiating with Bass, or any entity, until a final hearing, or the dispute is otherwise resolved.

**Fla. R. Civ. P. 1.610 Injunctions**

111. Fla. R. Civ. P. 1.610 (a) governs temporary injunctions. In pertinent part it reads, as follows:

(a) Temporary Injunction.

(1) A temporary injunction may be granted without written or oral notice to the adverse party only if:

(A) it appears from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts that have been made to give notice and the reasons why notice should not be required.

112. The specific facts stated above along with supporting affidavits show MOCA and the **CITY**'s patrimony will be irreparably injured before the Board can be heard in opposition. See affidavits of City of North Miami personnel Composite Exhibit — 7, incorporated herein by reference.

113. Undersigned certifies efforts have been made to give notice and additional notice should not be required. See Exhibit — 8, incorporated herein by reference.

114. The movant has to be able to prove and allege the following elements proof:<sup>7</sup>

- a. Irreparable harm will follow unless the injunction is issued.
- b. The [movant] lacks an adequate remedy at law.
- c. The [movant] has a “clear legal right” to the requested relief.
- d. That the public interest favors the issuance of an injunction.

**Irreparable Harm — The Future Harm Caused by the Board’s Actions Threatens the City’s Interests**

115. “Irreparable harm has been defined as harm ‘of such nature that it cannot be redressed in a court of law; an injury for which monetary compensation will not suffice.’”<sup>8</sup>

116. If, during the pendency of litigation, the Board is allowed to continue engaging in future actions similar to those it has already taken, like removing the Museum Deputy Executive Director from MOCA’s bank and investment accounts, and to without authorization further negotiate the movement of MOCA’s art.

117. The **CITY** asks the Court to compel the Board to return all of MOCA’s assets and return all conditions at MOCA to those in existence before it filed suit against the **CITY**, and to stop negotiating with Bass, or any entity, until a final hearing, or the dispute is otherwise resolved.

118. For the forgoing reasons, the **CITY** and the citizen’s of the City of North Miami

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<sup>7</sup> Excerpt From: Edited by The Florida Bar. “Business Litigation in Florida.” iBooks. <https://itunes.apple.com/WebObjects/MZStore.woa/wa/viewBook?id=3AD8E52B783268EBE4F6A60E848B13E8>

<sup>8</sup> Excerpt From: Edited by The Florida Bar. “Business Litigation in Florida.” iBooks. <https://itunes.apple.com/WebObjects/MZStore.woa/wa/viewBook?id=3AD8E52B783268EBE4F6A60E848B13E8>. Citing *Gonzalez v. Benoit*, 424 So.2d 957, 959 (Fla. 3d DCA 1983) *receded from on other grounds* 434 So.2d 51.

will suffer irreparable harm, if the Court does not grant the Temporary Injunction.

**No Adequate Remedy at Law**

119. “The true test is, could a judgment be obtained in a proceeding at law, and not, would the judgment procure pecuniary compensation.” *Stewart v. Manget*, 132 Fla. 498, 505-506 (1938) citing *Tampa & G. C. R. Co. v. Mulhern*, 73 Fla. 146, 74 So. 297.

120. “We recognize that impossibility of ascertaining the amount of plaintiff’s legal damages may establish inadequacy of the legal remedy so as to support an award of injunctive relief, ... and additionally, may establish the requisite irreparable character of the injury ....” *Liza Danielle, Inc., v. Jamko, Inc.*, 408 So.d 735, 736 (Fla. 3d DCA 1928). (Internal citations omitted.)

121. Under the foregoing facts, the **CITY** could not obtain a judgment at law given the unique nature of the **CITY** and MOCA’s artistic patrimony.

122. It is impossible to ascertain any money damages to which the **CITY** might be entitled.

123. Therefore, the **CITY** does not have an adequate remedy at law.

**Substantial Likelihood of Success on the Merits — Clear Legal Right**

124. “Finding that appellants demonstrated a prima facie showing of irreparable harm from the impending loss of their property interests, an inadequate remedy at law, and a likelihood of probable success on the merits of their action, ... , we hold that the trial court abused its discretion in failing to issue a temporary injunction.” *Southards v. Motel Management Co.*, 567 So.2d 523, 524 (Fla. 3d DCA 1990). (Internal citations omitted.)

125. *Shatel Corp. v. Mao Ta Lumber and Yacht Corp.*, 697 F.2d 1352, 1357 at fn. 2 (11<sup>th</sup> Cir. 1993). “In our opinion the word ‘substantial’ does not add to the quantum of proof

required to show a likelihood of success on the merits.”

126. Under the forgoing facts, the CITY has shown likelihood of prevailing on the merits and having a clear legal right through Ordinances and Florida Law.

127. Therefore, the Court should enjoin the Board from future harmful action.

**Injunction Must be Issued — The Public Interest Weighs in the City’s Favor**

128. “[T]he grant of a temporary injunction will serve the public interest—because the public has an interest in seeing that a county’s ordinances and permit requirements are observed.” *Ware v. Polk County*, 918 So.2d 977, 980 (Fla. 2d DCA 2005).

129. As stated in the foregoing paragraphs, CITY and the Public have a specific interest in the art at MOCA.

130. The stated Ordinances specifically require the Board to act for the benefit and on behalf of the Public.

131. The Board acting to take MOCA’s art to Bass does not benefit the citizens of the City of North Miami.

132. The citizens of the City of North Miami have an interest in ensuring the Board follows CITY Ordinances.

133. Here, it is clear the Board’s current and future actions do not and will not benefit the citizens of the City of North Miami — the Public.

134. Therefore, the Public interest weighs in the CITY’s favor and the injunction against MOCA’s Board must be granted.

**The Court May Dispense with the Bond Requirement**

135. “... When any injunction is issued on the pleading of a municipality or the state or any officer, agency, or political subdivision thereof, the court may require or dispense with a

bond, with or without surety, and conditioned in the same manner, having due regard for the public interest....” Fla. R. Civ. P. 1.610 (b).

136. The **CITY** is a municipality organized under the Florida Constitution. Accordingly, the Court may dispense with the bond.

137. Therefore, the **CITY** asks the Court to issue the injunction against the Board without requiring a bond.

### **Conclusion**

138. Under the facts presented and the law, the Court must enter an Order: requiring the Board to preserve the *status quo* by returning MOCA’s art to the condition and the locations these were in on January 1, 2014; enjoining the Board from all negotiations with Bass or any other third party regarding MOCA; and leaving the injunction in force until further Court order.

### **Equitable Accounting**

139. There is an imminent danger of MOCA and the **CITY**’s patrimony being removed and misused by the Board, the **CITY** prays for an Order requiring the Board to account for all of MOCA’s Assets.

### **The Standard for Equitable Accounting and Argument**

140. “[I]t may be said generally that whenever there is a fiduciary relation such as that of trustee, agent, executor, etc., the right to an accounting in equity is undoubted. The right in such cases is based upon the substantive equity of trusts which jurisdiction equity always had.” (Internal citation omitted.) *Royal Indemnity Co., v. Knott*, 101 Fla. 1495, 1509 (Fla. 1931).

141. The Board’s name is “The Board of Trustees of the North Miami Museum and Art Center.”

142. The Board was created to hold a position of trust.

143. The Board has a fiduciary relationship to both MOCA and the **CITY**.

144. The Board has engaged in improper and unauthorized negotiations with Bass involving the **CITY**'s patrimony.

145. Upon information and belief, the Board has moved and is planning to remove MOCA's art to bass and/or other locations.

146. The Board has taken additional steps control of MOCA's bank and investment accounts in the last ten days by removing, without notice or **CITY** approval, the Assistant Director from all of MOCA's bank and investment accounts.

147. The Board has engaged in complicated transactions related to MOCA's art and it is not clear that a remedy at law would be full adequate and as expeditious as a remedy in equity.

148. Therefore, the **CITY** prays for an equitable accounting to require the Board to account for all MOCA's assets.

### **Conclusion**

149. The Board has a fiduciary duty and obligation to account for all of MOCA's assets, especially during the pendency of litigation and term of the prayed for injunction.

**WHEREFORE**, the **CITY** asks the Court to render an Order finding good cause for issuing a Temporary Injunction on The Board of Trustees of the North Miami Museum and Art Center, which shall remain in force until the Court removes it and requiring the Board to:

1. Immediately cease and desist from all negotiations with any and all third parties regarding MOCA's art wherever located;
2. Immediately return any and all art belonging to, consigned, or loaned to MOCA and moved from MOCA's location in the City of North Miami back to MOCA's location in the City of North Miami;

3. Immediately return any and all art belonging to, consigned, or loaned to MOCA and moved from Museo Vault at 346 NW 29<sup>th</sup> Street, Miami, Florida 33127, back to Museum Vault;
4. Immediately reinstate or cause to reinstate access to all of MOCA's accounts to Alan Waufle, MOCA's Assistant Director;
5. Immediately return MOCA's affairs to how they were on January 1, 2014;
6. Immediately account for all MOCA's assets;
7. Immediately require the Board to approve the CITY's selection of Babacar MBow as MOCA's Director; and
8. Any other relief the Court deems just, proper, and right.

Dated: April 28<sup>th</sup>, 2014

Respectfully Submitted,  
/s/Olivia S. Benson, Esq.  
Olivia S. Benson, Esq.  
Florida Bar No.: 0874450  
/s/Gilbert K. Squires, Esq.  
Florida Bar No.: 584185  
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***Exhibit List***

- |                       |   |
|-----------------------|---|
| Exhibit — 1           | Ordinance No. 768   |
| Exhibit — 2           | Ordinance No. 768.1   |
| Exhibit — 3           | Articles of Incorporation   |
| Exhibit — 4           | Ordinance No. 925   |
| Exhibit — 5           | Agreement Between City and Board on MOCA's Behalf   |
| Exhibit — 6           | Board's rejection of and refusal to follow City's termination of Interim Museum Director.                         |
| Composite Exhibit — 7 | Affidavit of Interim City Manager<br>Affidavit of Assistant Director and Interim Deputy Director                  |
| Exhibit — 8           | Attorney Certificate for Temporary Injunction Without Notice<br>Gilbert K. Squires, Esq., Attorney for Defendants |

# Exhibit — 1

ORDINANCE NO. 768

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, CREATING THE BOARD OF TRUSTEES OF THE NORTH MIAMI MUSEUM; ORGANIZATION; TERM OF OFFICE; DUTIES; MEETINGS; FINANCING; HIRING OF A DIRECTOR; PROVIDING FOR REPEAL AND SEVERABILITY.

THE CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, HEREBY ORDAINS:

That the Code of the City of North Miami is hereby amended by adding certain sections which read as follows:

Section 1. Board of Trustees of the North Miami Museum; Organization; Term of Office.

- (A) There is hereby created and established the Board of Trustees of the North Miami Museum which shall consist of seven (7) members and one (1) ex officio member from the staff of the City of North Miami.
- (B) Initially, the Society of the Arts will recommend to the City Council fifteen (15) names for membership on the Board of Trustees. The City Council may also nominate candidates for membership on the board. Such candidates to be reviewed with appropriate recommendations by the Society of the Arts. The City Council shall select seven (7) members to serve on the Board, a majority of which shall be residents of the City. Thereafter, the Board of Trustees, nominating committee shall present three (3) names for each available seat on the Board to the Council for selection.
- (C) The term of office for the Board of Trustees shall be as follows:
- (1) Four members shall be appointed for a term of two years.
  - (2) Three members shall initially be appointed for a term of one year.
  - (3) Thereafter, appointments shall be made for a term of two years.
  - (4) In the event of the removal or resignation of a member of the Board of Trustees, the nominating committee of the Board shall recommend three names for the position to the City Council for selection.
  - (5) A member shall serve no more than two successive terms. A member who has served two successive terms may be reappointed after a two year interim.
  - (6) Any member may be removed by a majority of the Council. The Board of Trustees shall be given the opportunity to express their agreement or disagreement, before such removal vote occurs.

Section 2. Duties of the Board.

The Board of Trustees of the North Miami Museum shall sponsor and promote exhibits, special events, functions and activities for the benefit of the public and shall further the development of the North Miami Museum.

Section 3. Meetings.

The Board shall meet approximately once each month and there shall be a minimum of twelve (12) meetings each year. If a Board member is absent without good cause for more than two successive meetings, he may be removed by the Board of Trustees with the approval of the City Council.

Section 4. Finances.

The Board of Trustees of the North Miami Museum shall be incorporated and shall have a non-profit tax-exempt status. The monies received by the Board of Trustees shall be used in the performance of their duties. The City is contributing \$5,000 during the first year. This contribution is discretionary. The City is not binding itself to make further contributions. It is anticipated and expected that the Board of Trustees shall conduct fund-raising projects to fund the balance and future operational costs.

- (1) Any monies allocated to the Board by the City of North Miami shall be used toward the payment of general operating expenses.
- (2) All additional costs and expenses shall be borne exclusively by the Board of Trustees of the North Miami Museum.
- (3) All records and other documents of the Board and its employees or agents shall be regarded as public record.

Section 5. Insurance.

Appropriate insurance shall be provided for by the Board of Trustees, for their benefit and the City's benefit, to be reviewed and approved by the City.

Section 6. Director of the North Miami Museum.

The Board of Trustees may hire a Director of the North Miami Museum on a personal services agreement. The Director shall be directly responsible to the Board and shall assist the Board in the performance of its duties as per the Board's direction.

- (1) The Director shall give monthly status reports to the Board of Trustees.
- (2) The Chairman of the Board of Trustees shall present the reports of the Director, financial reports and any other necessary information to the City Council.

Section 7. Repeal.

All ordinances or parts of ordinances in conflict herewith are hereby repealed, but only insofar as such ordinances

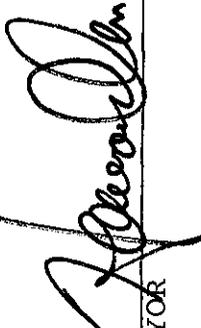
may be inconsistent or in conflict with the provisions of this ordinance.

Section 8. Severability.

If any word, clause, phrase, sentence, paragraph or section of this ordinance is held to be invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other word, clause, phrase, sentence, paragraph or section of this ordinance.

PASSED BY 4-0 vote of the City Council of first reading, in full, this 23rd day of September, 1980.

PASSED AND ADOPTED BY 4-0 vote of the City Council on second reading, by title only, this 14th day of October, 1980.

  
MAYOR

ATTEST:

Jan. T. Singsman  
CITY CLERK

# Exhibit — 2

ORDINANCE NO. 768.1

AN ORDINANCE AMENDING DIVISION 4 OF ARTICLE X OF CHAPTER 2 OF THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI, REGARDING TITLE, TERM OF OFFICE AND MEETINGS, PROVIDING FOR REPEAL AND SEVERABILITY.

THE CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA HEREBY ORDAINS:

Section 1. That Chapter 2, Division 4, of the Code of Ordinances now reading as follows:

DIVISION 4. BOARD OF TRUSTEES  
OF THE NORTH MIAMI MUSEUM

is hereby amended to read:

DIVISION 4. BOARD OF TRUSTEES  
OF THE NORTH MIAMI MUSEUM AND ART CENTER

Section 2. That Section 2-126(c) of the Code of Ordinances now reading as follows:

- (C) The term of office for the Board of Trustees shall be as follows:
- (1) Four members shall be appointed for a term of two years.
  - (2) Three members shall initially be appointed for a term of one year.
  - (3) Thereafter, appointments shall be made for a term of two years.
  - (4) In the event of the removal or resignation of a member of the Board of Trustees, the nominating committee of the Board shall recommend three names for the position to the City Council for selection.
  - (5) A member shall serve no more than two successive terms. A member who has served two successive terms may be reappointed after a two year interim.
  - (6) Any member may be removed by a majority of the Council. The Board of Trustees shall be given the opportunity to express their agreement or disagreement, before such removal vote occurs.
- is hereby amended to read:
- (C) The term of office for the Board of Trustees shall be as follows:
- (1) Four members shall be initially appointed for a term of four years.
  - (2) Three members shall be initially appointed for a term of two years.
  - (3) Thereafter, appointments shall be made for a term of four years.



(4) In the event of the removal or resignation of a member of the Board of Trustees, the nominating committee of the Board shall recommend three names for the position to the City Council for selection.

(5) A Trustee who has initially served one term of two years may be reappointed to serve a full four year term. A member shall serve no more than one four year term. A member who has served a full term may be reappointed after a two year interim.

(6) Any member may be removed by a majority of the Council without cause. The Board of Trustees shall be given the opportunity to express their agreement or disagreement, before such removal vote occurs.

Section 3. That Section 2-126.2 of the Code of Ordinances now reading as follows:

Meetings.

The Board shall meet approximately once each month and there shall be a minimum of twelve (12) meetings each year. If a Board member is absent without good cause for more than two successive meetings, he may be removed by the Board of Trustees with the approval of the City Council.

is hereby amended to read:

Meetings.

The Board shall meet approximately once each month and there shall be a minimum of nine (9) meetings each year. If a Board member is absent without good cause for more than two successive meetings, he may be removed by the Board of Trustees with the approval of the City Council.

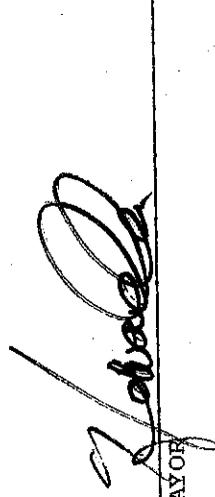
Section 4. Repeal. All ordinances or parts of ordinances in conflict herewith or inconsistent herewith are hereby repealed but only insofar as such ordinances may be inconsistent or in conflict with the provisions of this ordinance.

Section 5. Severability. If any word, clause, phrase, sentence, paragraph or section of this ordinance is held to be invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other word, clause, phrase, sentence, paragraph or section of this ordinance.

PASSED BY 5-0 vote of the City Council of the City of North Miami on first reading, in full, this 26<sup>th</sup> day of May, 1981.

PASSED AND ADOPTED BY 5-0 vote of the City Council of the City of North Miami on second reading, by title only, this 9<sup>th</sup> day

of June, 1981.

  
MAYOR

ATTEST:

  
CITY CLERK (DEPUTY)

# Exhibit — 3

ARTICLES OF INCORPORATION

OF

THE NORTH MIAMI MUSEUM AND ART CENTER, INC.  
(A Florida Corporation Not For Profit)

FILED  
AUG 19 10 00 AM '81  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ARTICLE 1.

The name of the Corporation is: THE NORTH MIAMI MUSEUM AND ART CENTER, INC.

ARTICLE 2.

The term of existence of the Corporation is perpetual.

ARTICLE 3.

The purposes for which the Corporation is organized are:

- a. To sponsor and promote exhibits, special events, functions and activities for the benefit of the public.
- b. To further the development of the North Miami Museum.
- c. To conduct classes in the visual arts.
- d. To do all things as may be permitted in the running of an institution engaged in the display and teaching of art.

ARTICLE 4.

There shall be seven (7) members of the initial Board of Trustees of the Corporation. The names and Addresses of the individuals who are to serve as Directors until the first election thereof are as follows:

| <u>NAME</u>                           | <u>ADDRESS</u>  |
|---------------------------------------|---|
| LOU ANNE COLODNY                      | 13155 Biscayne Bay Terrace<br>North Miami, Florida        |
| RICHARD SHACK                         | 1174 N.E. 110th Street<br>Miami Shores, Florida           |
| PEGGY HURST                           | 12811 Griffing Boulevard<br>North Miami, Florida          |
| BARNEY SHIRLEY                        | 1545 N.E. 140th Street<br>North Miami, Florida            |
| DOROTHY BLAU                          | 1086 Kane Concourse<br>Bay Harbour Islands, Florida       |
| PAUL FASKE                            | 12435 Keystone Island Drive<br>North Miami, Florida 33181 |
| SHEILA TISCHENKEL                     | 12455 Keystone Island Drive<br>North Miami, Florida 33181 |
| *ROBERT LANHAM<br>(ex-officio member) | 830 N.W. 135th Street<br>North Miami, Florida             |

ARTICLE 5.

The affairs of the Corporation are to be managed by a Chairman, Vice Chairman, Secretary and Treasurer. Such Officers will be elected annually on the 2nd Wednesday of every September or at such time as may be established by the By-Laws. The names of the persons who are to serve as Officers until the first election of Officers under these Articles of Incorporation are as follows:

| <u>NAME</u>                     | <u>ADDRESS</u>                                     |
|---------------------------------|--|
| PEGGY HURST, Chairman           | 12811 Griffing Boulevard<br>North Miami, Florida   |
| LOU ANNE COLODNY, Vice Chairman | 13155 Biscayne Bay Terrace<br>North Miami, Florida |
| PAUL FASKE, Treasurer           | 12435 Keystone Island Driv<br>North Miami, Florida |

ARTICLE 6.

The Corporation shall have Members. Members of the Corporation will be required to meet the following qualifications: Payment of a fee to be determined by the Board of Trustees. Individuals who meet such qualification will be admitted in the following manner: Upon payment of the fee to be determined, persons paying such fee will become a member of the corporation.

ARTICLE 7.

The By-Laws of the Corporation are to be made, altered, or rescinded by the Directors of the Corporation.

ARTICLE 8.

These Articles of Incorporation may be amended by the act of the Directors of the Corporation. Such amendments may be proposed and adopted in the manner provided in the By-Laws of the Corporation.

ARTICLE 9.

The names and residences of the subscribers of these Articles of Incorporation are:

| <u>NAME</u>      | <u>ADDRESS</u>   |
|------------------|--|
| LOU ANNE COLODNY | 13155 Biscayne Bay Terrace<br>North Miami, Florida 33181 |
| RICHARD SHACK    | 1174 N.E. 110th Street<br>Miami Shores, Florida          |

| <u>NAME</u>                   | <u>ADDRESS</u>                                      |
|-------------------------------|---|
| PEGGY HURST                   | 13811 Griffing Boulevard<br>North Miami Florida     |
| BARNEY SHIRLEY                | 1545 N.E. 140th Street<br>North Miami, Florida      |
| DOROTHY BLAU                  | 1086 Kane Concourse<br>Bay Harbor Islands , Florida |
| PAUL FASKE                    | 12435 Keystone Island Drive<br>North Miami, Florida |
| SHELIA TISCHENKEL             | 12455 Keystone Island Drive<br>North Miami, Florida |
| ROBERT LANHAM<br>(Ex-Officio) | 830 N.W. 135th Street<br>North Miami, Florida       |

ARTICLE 10

The Board of Directors, herein referred to as Trustees, will be selected according to the provisions of Ordinance No. 768, Sec. 1 of the City Council of North Miami.

ARTICLE 11.

The terms of office of the original Trustees shall be determined in accordance with the provisions of Ordinance No. 768, Section 1, of the City Council of North Miami.

ARTICLE 12.

After the terms of the original Trustees have expired all Trustees shall serve for a term of four (4) years.

ARTICLE 13.

A Trustee shall serve no more than one (1) four year term. A Trustee who has initially served 1 term of 2 years may be reappointed to serve a full four (4) year term. A Trustee may be reappointed after a two (2) year interim.

ARTICLE 14.

Any Trustee may be removed by a majority of the City Council after the Board has had an opportunity to express its position on such removal to the Council.

IN WITNESS WHEREOF, we have subscribed our names this 9 day of April, 1981.

Lou Anne Colodny  
LOU ANNE COLODNY

Peggy Hurst  
PEGGY HURST

Paul Faska  
PAUL FASKE

Richard Shack  
RICHARD SHACK

Barney Shirley  
BARNEY SHIRLEY

Dorothy Blau  
DOROTHY BLAU

Sheila Tischkenel  
SHEILA TISCHENKEL

STATE OF FLORIDA )  
                          :SS  
COUNTY OF DADE )

On this 9 day of April, 1981, before me appeared the initial subscribers and directors of THE NORTH MIAMI MUSEUM AND ART CENTER, INC., known to me to be the persons whose names are subscribed to the within instrument, and they acknowledged that they have executed the same for the purposes therein contained.

James S. Bechtel  
NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES NOV. 30, 1983  
BONDED THROUGH MUROSKI-ASHTON, INC.

# Exhibit — 4

ORDINANCE NO. 925

AN ORDINANCE AMENDING CHAPTER 2 "ADMINISTRATION" OF THE CITY CODE OF THE CITY OF NORTH MIAMI, FLORIDA BY AMENDING DIVISION 3 "BOARD OF TRUSTEES OF THE NORTH MIAMI CENTER OF CONTEMPORARY ART (COCA)", AMENDING SECTION 2-61 THROUGH 2-67 THEREOF TO REVISE CITY CODE PROVISIONS GOVERNING THE BOARD OF TRUSTEES INCLUDING PROVISIONS ENABLING THE BOARD TO HEREAFTER APPOINT PERSONS TO FILL VACANCIES ON THE BOARD, PROVIDING FOR THE MANAGEMENT OF THE CENTER OF CONTEMPORARY ART PHYSICAL PLANT AND FACILITIES BY THE BOARD OF TRUSTEES PURSUANT TO MANAGEMENT AGREEMENT, PROVIDING FOR STAFFING BY CITY PERSONNEL AND PROVIDING FOR OTHER PURPOSES; PROVIDING FOR SEVERABILITY AND EFFECTIVE DATE.

BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA THAT:

Section 1. Chapter 2 "Administration " of the City Code of the City of North Miami is hereby amended by amending Division 3. "Board of Trustees of the North Miami Center of Contemporary Art" by revising Section 2-61 through 2-67 thereof to read as follows:

"DIVISION 3. BOARD OF TRUSTEES OF THE NORTH MIAMI CENTER OF CONTEMPORARY ART (COCA)\*

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

(a) There is hereby created and established the board of trustees of the North Miami Center of Contemporary Art (COCA) which shall consist of a minimum of eleven (11) members and a maximum of twenty (20) members and one (1) ex officio member from the staff of the city. Such City staff member shall be designated by the City Council.

(b) ~~The city council shall select a minimum of eleven (11) members and a maximum of twenty (20) members to serve on the board.~~ The board of trustees' nominating committee may present one (1) name as a nominee for each available seat on the board to the ~~council~~ board for selection, to fill vacancies from time to time.

(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) shall continue to serve until their term expires. Appointments shall be made to fill the any expired term for a term of four (4) years.
- (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 city council board of trustees for selection by majority vote for the remainder of the unexpired term.



- (3) Any member may be removed by a majority of the city council ~~without~~ 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.

**Sec. 2-62. Duties.**

- A. The board of trustees of the North Miami Center of Contemporary Art (COCA) shall sponsor and promote exhibits, special events, functions and activities for the benefit of the public and shall further the development of the North Miami Center of Contemporary Art (COCA). The board of trustees shall serve as liaison between the public and the city council. The chairman of the board of trustees shall make all records, reports, financial statements and other necessary information available to the city council.
- B. The board of trustees shall operate and manage the North Miami Center of Contemporary Art (COCA) physical plant and facilities (premises) and all activities thereon on behalf of the City of North Miami, pursuant to a Management Agreement entered into by and between the City of North Miami, as owner of the premises and COCA, as operator of such premises, in a form approved by the City Attorney and executed by the City Manager pursuant to authority hereby granted. The format utilized shall preserve the facility's exemption from ad valorem taxation and shall assure accomplishment of the cultural and educational mission of COCA in compliance with all applicable grants to which the facility is subject.

**Sec. 2-63. Meetings; attendance.**

The board shall meet approximately once each month and there shall be a minimum of nine (9) meeting each year. If a board member is absent without good cause for more than two successive meetings, he may be removed by the board of trustees ~~with the approval of the city council.~~

**Sec. 2-64. Finances.**

The board of trustees of the North Miami Center of Contemporary Art (COCA) shall be incorporated and shall have and maintain a nonprofit tax-exempt status. The moneys received by the board of trustees shall be used in the performance of their duties. The board of trustees shall conduct fund-raising projects to assist in the funding of the operational and development costs of the North Miami Center of Contemporary Art (COCA). The City of North Miami shall not be obligated, bound, or indebted for any function or activity of the board except as approved by the City of North Miami budget ordinance.

**Sec. 2-65. Insurance.**

The board of trustees shall provide appropriate and adequate insurance for the benefit of the North Miami Center of Contemporary Art (COCA), the board of trustees and the city at no cost to the city. All insurance shall be reviewed and approved by the city manager or his designee and shall specifically name the City of North Miami as an additional insured.

**Sec. 2-66. Director of North Miami Art Center of Contemporary Art (COCA).**

The museum director shall be an employee of the city, and shall be a member of the classified service and shall be assigned as provided by the city manager and approved by the board. Additional staff shall be provided as budgeted by the City Council. The City Council shall provide sufficient staff resources.

**Sec. 2-67. All records to be public records.**

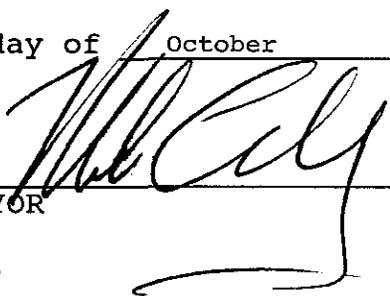
All records of the North Miami Center of Contemporary Art (COCA) shall be subject to the public records law of the state as it now exists or as it may hereafter be amended as provided by law.

Section 2. Severability. If any word, clause, phrase, sentence, paragraph or section of this ordinance is held to be invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other word, clause, phrase, sentence, paragraph or section of this ordinance.

Section 3. Effective Date. This ordinance shall be effective upon passage by the City Council on second reading.

PASSED AND ADOPTED by 5 - 0 vote of the City Council on first reading this 11th day of October, 1994.

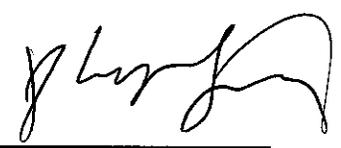
PASSED AND ADOPTED by 5 - 0 vote of the City Council on second reading this 25th day of October, 1994.

  
MAYOR

ATTEST:

  
CITY CLERK

APPROVED:

  
CITY ATTORNEY

# Exhibit — 5

## MANAGEMENT AGREEMENT

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

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

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

### I. PURPOSE

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

### II. OBLIGATION OF MOCA BOARD OF TRUSTEES

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

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

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

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

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

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

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

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

### **III. OBLIGATIONS OF THE CITY OF NORTH MIAMI**

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

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

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

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

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

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

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

#### IV. FEES

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

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

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

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

**V. TERM OF AGREEMENT**

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

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

## **VI. PREMISES**

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

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

## **VII. OPERATING POLICY AND INTENT**

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

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

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

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

## **VIII. LIENS; WASTE; ASSIGNMENT**

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

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

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

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

**IX. RIGHT OF INSPECTION**

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

**X. CITY'S RIGHT OF CANCELLATION**

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

1. The filing by BOARD of a voluntary petition for bankruptcy.
2. The institution of proceedings in bankruptcy against BOARD and the adjudication of BOARD as a bankrupt.

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

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

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

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

#### **XI. BOARD'S RIGHT OF CANCELLATION**

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

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

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

2. In the event that the New MOCA Facility is not under active and continuous construction (or construction completed) on or before three (3) years from the Effective Date of this agreement; provided, however that BOARD's right of cancellation pursuant to this section may only be exercised, if at all, for a period of two (2) years; i.e., during the fourth (4<sup>th</sup>) and fifth (5<sup>th</sup>) 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. 125<sup>th</sup> Street  
North Miami, Florida 33161

With copy to:

City Attorney  
City of North Miami  
776 N.E. 125<sup>th</sup> 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~~ <sup>2008</sup>

WITNESSES:

[Signature]  
[Signature]

CITY OF NORTH MIAMI

By [Signature]  
Name: CLARANCE PATTERSON  
Title: CITY MANAGER

ATTEST:

[Signature]

FRANK WOILAND  
CITY CLERK

*Deputy for*

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

[Signature]

V. LYNN WHITFIELD  
CITY ATTORNEY

BOARD OF TRUSTEES OF THE  
NORTH MIAMI CENTER  
OF CONTEMPORARY ART

By: [Signature]  
Name:  
Title Chairman

\_\_\_\_\_  
\_\_\_\_\_

# Exhibit — 6

From: **Nicole Mesko** <[nmesko@mocanomi.org](mailto:nmesko@mocanomi.org)>  
Date: Fri, Apr 18, 2014 at 11:13 AM  
Subject: A Letter from the MOCA Board  
To:  
Cc: Alex Gartenfeld <[agartenfeld@mocanomi.org](mailto:agartenfeld@mocanomi.org)>

Dear MOCA Staff,

In light of recent activity, we are writing on behalf of the Board of Directors to affirm that Alex Gartenfeld continues to lead the Museum in his dual role as Interim Director and Chief Curator, with our full support. While the City of North Miami has put forth Babacar M'Bow as a potential candidate for the position of Museum Director, he has not been approved by the Board and has no authority over the institution or MOCA employees.

We thank you for continuing with your responsibilities as an employee of MOCA, and appreciate your help in ensuring that the museum remains active in its service to the community. If you have any questions, please do not hesitate to contact us or Interim Director Alex Gartenfeld.

Sincerely,

Irma Braman and Ray Ellen Yarkin

# Composite Exhibit — 7

**IN THE CIRCUIT COURT OF THE 11<sup>th</sup> JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

**MUSEUM OF CONTEMPORARY ART, INC.,**

**Plaintiff,**

**V.**

**Case No.: 2014-008991 CA 01 (30)**

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

**Defendants.**

\_\_\_\_\_ /

**AFFIDAVIT OF CITY MANAGER ALEEM A. GHANY**

**STATE OF FLORIDA            )**

**COUNTY OF MIAMI-DADE    )**

I, the undersigned do hereby state:

1.     My name is Aleem A. Ghany.
2.     Since April 8, 2014, I have been employed by the City of North Miami, as the City Manager.
3.     I am *sui juris* and competent to make this Affidavit.
4.     I make this Affidavit of my own personal knowledge.
5.     The City Council created and established the Board of Trustees of the North Miami Museum and Art Center, Inc. (the “Board”), on October 14, 1980.

6. Thereafter, on August 19, 1981, the Board, appointed by the City Council, incorporated the North Miami Museum and Art Center, Inc.

7. The North Miami Museum and Art Center, Inc., was later renamed to Miami Museum of Contemporary Art, Inc. (“MOCA”).

8. The Board was created to sponsor and promote exhibits, special events, functions and activities for the benefit of the public and to further the development of MOCA’s predecessor, and of MOCA.

9. On December 15, 2008, the City entered into a Management Agreement (the “Agreement”) between the City and the Board of Trustees of the Museum of Contemporary Art, Inc., on behalf of MOCA.

10. The Agreement was for the Board to manage MOCA.

11. MOCA’s Director left in September 2013. Since then, the Board named Chief Curator, Alex Gartenfeld, to concurrently serve as Interim Director without City approval.

12. The Board elevated MOCA’s Curator to the position of Interim Director contrary to City Ordinances and the Management Agreement.

13. At no time did I, or the former City Manager, appoint, assign, or hire Mr. Gartenfeld as the Interim Director, or as a City employee.

14. Under the City’s Code Section 2-66 and the Agreement, the position of the Director is to be filled with a City employee, hired by the City Manager.

15. The Board has blatantly ignored the City’s termination of MOCA’s improperly named, Interim Director from the position, to allow for the appointment of a Director hired by the City and assigned by the City Manager.

16. Upon information and belief, the Board has engaged, is engaging in, and will continue to engage in future unauthorized negotiations with the Bass Museum of Art in Miami Beach (“Bass”).

17. The Board of MOCA continually, intentionally, knowingly, and repeatedly violates and ignores City Ordinances and the Agreement between the City and the Board, for the purpose of operating MOCA on the City’s behalf.

18. The City’s Mayor and Council, along with City administration are deeply troubled by the Board’s past, present, and future actions, which continually jeopardize MOCA’s assets.

19. Upon information and belief, the Board may have already moved assets from MOCA to Bass and other locations.

20. Those assets include, but are not limited to, numerous art pieces displayed at MOCA and at the Museo Vault located at 346 NW 29<sup>th</sup> Street, Miami, Florida, and MOCA's bank and investment accounts.

21. Upon information and belief, the Board will continue acting contrary to MOCA's interests.

22. Upon information and belief, the Board will continue acting contrary to the City's interests.

23. As recently as April 24, 2014, the Board removed, Alan Waufle, MOCA's Assistant Director, who is a City employee, from bank accounts without notice to or approval by the City.

24. The City does not have a clear accounting or inventory of the status and location of all the art pieces and of the moneys in MOCA's bank accounts.

25. The Board has disturbed, has been disturbing, and by its own pronouncements will continue disturbing the *status quo*.

26. The Board has defied the City's authority and has stated it will continue to do so, which would irreparably harm the City's and MOCA's patrimony.

27. Upon information and belief, the Board is planning to continue to move MOCA's art from the City's facilities at MOCA.

28. The Board took it upon itself without City approval to negotiate with and likely move to the Bass Museum of Art in Miami Beach ("Bass"), MOCA's art pieces.

29. Upon information and belief, without City approval, the Board will soon attempt to close on an agreement between the Board and Bass, to move MOCA's art and the City's patrimony to Bass.

30. The City has a legal right to the unique art displayed and kept at MOCA and the Museo Vault.

31. The City has been, is being, and will be irreparably harmed by the Board's illegal actions; unless the Board is enjoined from continuing and engaging in future illegal actions during the pendency of litigation.

32. The City will be irreparably harmed by the Board, if it is allowed to engage in future activities that threaten MOCA's viability as a world-class museum.

33. The Board has taken actions that have endangered, and are endangering and damaging MOCA's ability to obtain and/or maintain funding to support its cultural and educational mission.

34. The Board has been engaging in and conducting activities not authorized by the City, and detrimental to MOCA.

35. The Board's failure to follow the requirements of the Agreement with regards to the staffing of MOCA endangers the art and MOCA's operations.

36. The Board's unauthorized removal and/or attempt to convert MOCA's art collection is a real and immediate danger to MOCA and the City's patrimony.

37. The Board has misused and is misappropriating MOCA's funds and resources, including, but not limited to, utilizing the City and MOCA's resources to engage in unauthorized activities and in negotiations with Bass contrary to and against the City and MOCA's interests.

38. The Board, without the City's approval, has been surreptitiously negotiating to "transfer" MOCA's art collection to Bass, while under contract with the City to manage and operate MOCA.

39. The Board has been engaging in and conducting activities not authorized by the City, and detrimental to MOCA.

40. On April 14, 2014, pursuant to the Agreement, the City hired and appointed a MOCA Director to replace the Interim Director.

41. The Board has refused to approve and is refusing to approve the new Director.

42. On April 18, 2014, the Board's leadership sent an e-mail to MOCA staff telling them to disregard the City's new Museum Director and affirming the Interim Director's continued leadership of MOCA.

43. The Board has rejected the City's authority and removed the Assistant Museum Director from MOCA's bank and investment accounts.

44. Given the Board's recent actions, especially removing the Assistant Museum Director from MOCA's Bank and investment accounts, it is reasonable to expect the Board is preparing to take other actions that will injure the City and MOCA's patrimony.

45. Organization and activities related to exhibitions for Art Basel should have started several months ago.

46. The Board's current actions and threatened future actions are contrary to City Ordinances.

47. The Board's threatened future actions will cause harm to the City and MOCA.

48. The Board's actions against MOCA and the City may have already damaged MOCA's ability to attract, art, artists, and exhibits for the upcoming Art Basel at MOCA.

49. The Board's actions have sabotaged and will continue to sabotage MOCA, and the City's ability to attract important art exhibitions.

50. Unless the Board is stopped, MOCA and the City's ability to attract important art exhibitions will be further damaged.

51. Upon information and belief, the Board is improperly using MOCA's assets to pay for attorneys' fees and costs associated with the lawsuit it filed against the City, and plans to continue to do so.

52. The Board's continued actions breach the public and the City's trust.

53. The Board has filed suit against the City and the City Council.

54. For many months, the Board has been acting contrary to the Agreement and City Ordinances by going behind the City's figurative back, negotiating with Bass to move MOCA's art collection and numerous art pieces from MOCA to Bass.

55. The Board has negotiated, continues and will continue to negotiate with Bass without City authority to move MOCA's patrimony to Bass.

56. The City Council, the Mayor, and I have asked the Board to end their negotiations with Bass and not to move MOCA's patrimony without the City's permission.

57. The Board's representatives have ignored the City and have expressed their intention to move MOCA's patrimony, and have taken steps in furtherance of that defiant act even during the pendency of this litigation.

58. The Board's actions and the hostile environment they've created do not benefit the public, to the contrary, those actions detract from the public — the citizens of the City of North Miami.

59. At this juncture, the City remains deeply troubled and concerned about the Board's unauthorized removal and threatened removal and/or conversion of MOCA's art collection, and/or their attempt to move it to Bass.

60. The Board has resisted, and I believe will resist the City's mandates, as authorized by Ordinance and the Agreement.

61. If the Board were given notice of the *ex-parte* hearing, it is likely they would commit other harmful acts, such as removing additional art from MOCA, that would further injure MOCA and the City's patrimony.

62. The public has an interest in the Board following the City Ordinances.

63. The public has an interest in stopping the Board from taking the art to the Bass Museum.

**[THIS SECTION INTENTIONALLY LEFT BLANK]**

**Under penalties of perjury, I declare that I have read the foregoing Affidavit and the facts stated therein are true.**

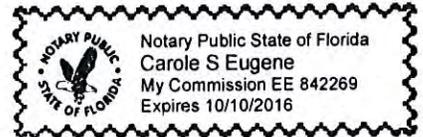
FURTHER AFFIANT SAYETH NAUGHT.

AFFIANT: X *Aleem A Ghany*  
ALEEM A GHANY  
(Print Name Clearly)

SWORN to (or affirmed) and subscribed before me by Aleem A. Ghany,  
and that the Affiant after being duly sworn, recited the facts as listed in the above Affidavit and  
indicated that they are true to the best of his/her knowledge and belief this 28<sup>th</sup> day of  
April, 2014.

Signature of Notary: *Carole Eugene*  
CAROLE S. EUGENE  
(Print, Type, or Stamp Name of Notary)

Commission expires:



Personally known   
Or produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

**IN THE CIRCUIT COURT OF THE 11<sup>th</sup> JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

**MUSEUM OF CONTEMPORARY ART, INC.,**

**Plaintiff,**

**V.**

**Case No.: 2014-008991 CA 01 (30)**

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

**Defendants.**

---

**AFFIDAVIT OF ASSISTANT DIRECTOR OF  
MUSEUM OF CONTEMPORARY ART ALAN WAUFLE**

**STATE OF FLORIDA            )**

**COUNTY OF MIAMI-DADE    )**

I, the undersigned do hereby state:

1.     My name is Alan Waufle.
2.     I have been employed by the City of North Miami, as the Assistant Director of the Museum of Contemporary Art since 2007.
3.     I am *sui juris* and competent to make this Affidavit.
4.     I make this Affidavit of my own personal knowledge.
5.     The City Council created and established the Board of Trustees of MOCA (the "Board") on October 14, 1980.
6.     Thereafter, on August 19, 1981, the Board, appointed by the City Council, incorporated the North Miami Museum and Art Center, Inc.
7.     The North Miami Museum and Art Center, Inc., was later renamed to Miami Museum of Contemporary Art, Inc. ("MOCA").

8. The Board was created to sponsor and promote exhibits, special events, functions and activities for the benefit of the public and to further the development of MOCA's predecessor and of MOCA.

9. The City's Mayor and Council, along with City administration are deeply troubled by the Board's past, present, and future actions, which continually jeopardize MOCA's assets (the "Assets").

10. Those Assets include, but are not limited to, numerous art pieces displayed at MOCA and at the Museo Vault located at 346 NW 29<sup>th</sup> Street, Miami, Florida, and MOCA's bank and investment accounts.

11. The Board took it upon itself without City approval to negotiate with and likely move to the Bass Museum of Art in Miami Beach ("Bass"), MOCA's art pieces.

12. Upon information and belief, the Board may have already moved or committed to move Assets from MOCA to Bass and other locations.

13. Upon information and belief, without City approval, the Board will soon attempt close on an agreement between the Board, improperly claiming to be acting on MOCA's behalf, and Bass to move the City's patrimony to Bass.

14. The art displayed and kept at MOCA and the Museo Vault is unique to which the City has a legal right.

15. As recently as April 24, 2014, the Board removed my access to bank accounts without notice to or City approval.

16. The City does not have a clear accounting or inventory of the status and location of all the art pieces and of the moneys in MOCA's bank accounts.

17. The Board's unauthorized removal and/or attempt to remove MOCA's art collection is a real and immediate danger to MOCA's and the City's patrimony.

18. On April 18, 2014, the Board's leadership sent an e-mail to MOCA Staff telling us to disregard the City's new Museum Director and affirming the *Interim* Director's continued leadership of MOCA.

19. Organization and activities of exhibitions related to "Art Basel" should have begun at least several months ago.

20. The Board's actions against MOCA and the City may have already damaged MOCA's ability to attract artists and art to be shown during "Art Basel."

21. The Board's actions sabotage and will continue to sabotage MOCA and the City's ability to attract important art exhibitions.

22. Unless the Board is stopped, MOCA and the City's ability to attract important art exhibitions will be further damaged.

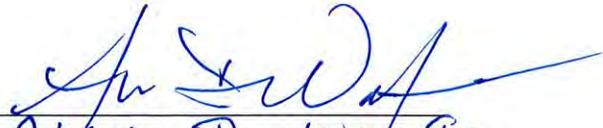
23. Upon information and belief, the Board has negotiated and continues to negotiate with Bass without City authority to move MOCA's patrimony to Bass.

24. Furthermore, the Board's actions have impaired and continue to impair MOCA's ability to bring art related to Art Basel, which will take place in Miami-Dade County later this fall.

**Under penalties of perjury, I declare that I have read the foregoing Affidavit and the facts stated therein are true.**

FURTHER AFFIANT SAYETH NAUGHT.

AFFIANT:

  
ALAN D. WAUFLIE  
(Print Name Clearly)

SWORN to (or affirmed) and subscribed before me by Alan D. Wauflie,

and that the Affiant after being duly sworn, recited the facts as listed in the above Affidavit and

indicated that they are true to the best of his/her knowledge and belief this 28<sup>th</sup> day of

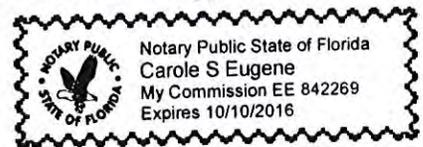
April, 2014.

Signature of Notary: Carole Eugene

CAROLE S. EUGENE

(Print, Type, or Stamp Name of Notary)

Commission expires:



Personally known

Or produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

# Exhibit — 8

**IN THE CIRCUIT COURT OF THE 11<sup>th</sup> JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

**MUSEUM OF CONTEMPORARY ART,  
INC.,**

**Plaintiff,**

**v.**

**Case No.: 2014-008991 CA 01 (30)**

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

**Defendants.**

---

**DEFENDANT, CITY OF NORTH MIAMI'S ATTORNEY'S CERTIFICATE FOR  
MOTION FOR TEMPORARY INJUNCTION WITHOUT NOTICE**

**I, GILBERT K. SQUIRES, ESQ., outside counsel, on the legal team for Defendant,  
City of North Miami, Florida (the "CITY"), herby certify that:**

1. I am one of the attorneys representing the City of North Miami, the party moving for a Temporary Injunction without notice in this action.

2. The following efforts were made to give notice to the Museum of Contemporary Art ("MOCA") and to its counsel Alan J. Kluger of KLUGER, KAPLAN, SILVERMAN, KATZEN & LEVINE, P.L.:

- a. The City of North Miami's Mayor's Office engaged in numerous conversations with members of MOCA's Board of Trustees in an attempt to resolve the dispute without litigation.
- b. The City of North Miami's City Manager's Office engaged in numerous conversations with members of MOCA's Board of Trustees in an attempt to resolve the dispute without litigation.
- c. The City of North Miami's City Attorney's Office engaged in numerous

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conversations and communications with counsel for MOCA's Board of Trustees in an attempt to resolve the dispute without litigation.

- d. The City of North Miami's City Attorney's Office engaged in numerous conversations and communications with counsel for MOCA's Board of Trustees since MOCA filed suit in an attempt to resolve the dispute and protect MOCA's art collection and the CITY's ability to bring world-class art to MOCA.
- e. The Board has stated it will proceed to move the art and has threatened engaging in future activities that will harm MOCA and the CITY's patrimony in MOCA.

3. Notice should not be required, because the Board continues, despite ongoing litigation, to act in ways that jeopardize the MOCA and the CITY's patrimony.

Date: April 28, 2014

Respectfully Submitted,  
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