

UNF Board of Trustees

April 16, 2009

Issue Approving a Revolving Line of Credit for the Museum of Contemporary Art (MOCA)

Proposed Action Approval

Background Information

The university administration seeks the UNF Board of Trustees' approval to extend a revolving line of credit of \$500,000 to the Museum of Contemporary Art Jacksonville. This revolving line of credit will be used to help cover the Museum's operational costs. If the DSO should be dissolved, works of art may be sold to repay this debt.

Supporting Documentation

- Revolving Line of Credit Note
- Subordination Agreement

REVOLVING CREDIT LINE NOTE

\$500,000.00

April ____, 2009

FOR VALUE RECEIVED, the undersigned, The Museum of Contemporary Art Jacksonville, Inc., a Florida not-for-profit corporation, whose address is 333 N. Laura Street, Jacksonville, Florida 32202 (the "Borrower"), hereby promises to pay to the order of the University of North Florida Board of Trustees (the "Lender"), whose address is 1 UNF Drive, Jacksonville, Florida 32224, the principal sum of Five Hundred Thousand and no/100 Dollars (\$500,000), or so much thereof as may from time to time be outstanding. This Note shall be governed by the following provisions:

1. Advances. The loan evidenced by this Note is a revolving loan, and the Borrower may at the Lender's option borrow, repay and reborrow principal amounts during the term hereof. Notwithstanding the foregoing, the outstanding principal balance hereof shall not exceed \$500,000 at anyone time. Nothing contained herein shall impose any obligation upon the Lender to make advances hereunder.

2. Payments. The obligations evidenced hereby shall be payable on demand.

3. Interest. This Note shall not bear interest, except upon an Event of Default (as defined below).

4. Prepayment. The Borrower shall be entitled to prepay this Note in whole or in part at any time without penalty.

5. Application of Payments. All payments hereunder shall be applied first to the Lender's costs and expenses, then to interest and then to principal.

6. Default. Nonpayment of principal upon demand therefor shall be considered an "Event of Default" hereunder.

If any Event of Default shall occur the Lender may declare the outstanding principal of this Note to be forthwith due and payable. Thereupon, the outstanding principal of this Note shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower. Upon the occurrence of any Event of Default, the outstanding principal of this Note, and any accrued and unpaid interest, shall bear interest at a rate of either five percent (5.0%) per annum above the Prime Rate (as published in The Wall Street Journal, from time to time) after default until paid or, if such rate is usurious under the laws of Florida, then at the highest legal rate permissible thereunder (the "Default Rate"). Nothing contained herein shall impose an obligation on the Lender to make advances prior to the occurrence of an Event of Default.

7. Expenses. All parties liable for the payment of this Note agree to pay the Lender all costs incurred by it in connection with the collection of this Note. Such costs include, without limitation, fees for the services of counsel and legal assistants employed

to collect this Note, whether or not suit be brought, and whether incurred in connection with collection, trial, appeal or otherwise. All such parties further agree to indemnify and hold the Lender harmless against liability for the payment of state documentary stamp taxes, intangible taxes or other taxes (including interest and penalties, if any), excluding income or service taxes of the Lender, which may be determined to be payable with respect to this transaction.

8. Miscellaneous. The Borrower and all sureties, endorsers and guarantors of this Note shall make all payments hereunder in lawful money of the United States at the Lender's address set forth herein or at such other place as the Lender may designate in writing. The remedies of the Lender as provided herein shall be cumulative and concurrent, and may be pursued singly, successively or together, at the sole discretion of the Lender and may be exercised as often as occasion therefor shall arise. No act of omission or commission of the Lender, including specifically any failure to exercise any right, remedy or recourse, shall be effective, unless set forth in a written document executed by the Lender, and then only to the extent specifically recited therein. A waiver or release with reference to one event shall not be construed as continuing, as a bar to, or as a waiver or release of any subsequent right, remedy or recourse as to any subsequent event. This Note shall be construed and enforced in accordance with Florida law and shall be binding on the successors and assigns of the parties hereto. The term "Lender" as used herein shall mean any holder of this Note. If more than one person executes this Note, such persons shall be jointly and severally liable hereunder.

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

By _____
Deborah Broder, Director

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") is entered into as of this ____ day of April, 2009, by and among the University of North Florida Board of Trustees, a public body corporate of the State of Florida (hereinafter "UNF"), the Museum of Contemporary Art Jacksonville, Inc., a Florida not-for-profit corporation (hereinafter "Debtor"), and Preston H. Haskell, an individual residing in Jacksonville, Florida (hereinafter "Creditor").

WHEREAS, this Agreement is executed and delivered in connection with that certain Revolving Credit Line Note dated as of April ____, 2009 (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "Loan Agreement"), by and between UNF and Debtor;

WHEREAS, Debtor and Creditor are parties to certain loan documents (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "Haskell Agreements");

WHEREAS, UNF is unwilling to enter into the Loan Agreement unless, among other things, Creditor subordinates his claims under the Haskell Agreements in the manner set forth below; and

WHEREAS, Creditor hereby specifically acknowledges and affirms that UNF's financial accommodations to the Debtor constitute good and valuable consideration to Creditor.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, and to induce UNF to extend such financial accommodations to the Debtor as it may determine, and to better secure UNF with respect to the foregoing, the parties hereby agree as follows:

1. Debtor's Representations

1.1 Debtor represents and warrants that as of the date hereof the following is a complete and accurate list of Debtor's outstanding debts in excess of \$10,000 (collectively, the "Indebtedness"):

- a. Regions Financial - \$416,000
- b. Haskell Corporation - \$73,000
- c. Creditor - \$423,000

1.2 Debtor represents and warrants that as of the date hereof the balance of the Florida Fine Arts Endowment is \$_____.

1.3 Debtor represents and warrants that to the best of its knowledge as of the date hereof, there is no default or breach with respect to any of the Indebtedness; and, specifically, that nothing herein contained and nothing contained in any other document, instrument or agreement with or in favor of UNF constitutes a default or breach with respect to the Indebtedness.

2. Subordination

Upon any cessation of the operations of Debtor, the parties agree that Debtor will owe a primary debt

to UNF pursuant to the Loan Agreement and will owe a subordinate debt to Creditor pursuant to the Haskell Agreements. At such time, the parties agree that the subordinate debt is and will remain subordinate to the primary debt and until the primary debt is paid, no payments on the subordinate debt will be made or accepted.

3. Creditor's Obligations

3.1 Upon any cessation of the operations of Debtor, the parties agree that:

- a. Creditor will hold in trust anything of value received on account of the subordinate debt and will immediately deliver it in the form received to UNF, who will apply it to the primary debt;
- b. Without UNF's permission, Creditor will not be a party to any proceeding to recover the subordinate debt;
- c. On written request of UNF, Creditor will file any claim or proof of claim or otherwise act to collect the subordinate debt in any bankruptcy, receivership, liquidation, reorganization, probate, or other proceeding that is related to Debtor's insolvency, that is for relief of debtors, or that is for liquidation or marshaling of Debtor's assets or liabilities. If Creditor fails to act in this regard on UNF's request, UNF may act on Creditor's behalf and in Creditor's name; and
- d. Creditor subordinates all security interests, liens, and mortgages now or later securing the subordinate debt to all security interests, liens, and mortgages now or later securing the primary debt.

3.2 Creditor will notify UNF at least ten (10) days before any assignment of the subordinate debt.

4. UNF's Rights

4.1 Upon any cessation of the operations of Debtor, the parties agree that:

- a. UNF is irrevocably appointed attorney-in-fact for Debtor and Creditor to act in their names or in UNF's name to sue for, compromise, collect, or receive money and other assets and take any other action UNF considers advisable for enforcement and collection of the subordinate debt. UNF will apply all assets received in this manner to reduction of the primary debt.
- b. Without limitation, consent, notice, or liability and without releasing or impairing any of UNF's rights against Creditor or any of Creditor's obligations in this agreement or the Loan Agreement, UNF may take any of the following actions:
 - i. Take additional security for the primary debt;
 - ii. Release, exchange, subordinate, or lose any security for the primary debt;

- iii. Release any person obligated on the primary debt;
- iv. Modify or waive compliance with any agreement relating to the primary debt;
- v. Grant any adjustment, indulgence, or forbearance to or compromise with any person liable for the primary debt; and
- vi. Neglect, delay, omit, fail, or refuse to take or prosecute any action for collection of the primary debt, to foreclose any collateral, or to take any action regarding any agreement securing the primary debt.

4.2 UNF may assign UNF's rights under this agreement in connection with any assignment or transfer of the primary debt.

5. General Provisions

5.1 Any foreclosure against any property securing the primary debt shall foreclose and discharge all security interests, liens, and mortgages securing the subordinate debt, and any purchaser at the foreclosure sale shall take title to such property free of all security interests, liens, and mortgages securing the subordinate debt.

5.2 The term "**debt**" means all present and future debts, obligations, and liabilities, direct or indirect, absolute or contingent, joint or several, secured or unsecured, due or not due, contractual or tortious, liquidated or unliquidated, arising by operation of law or otherwise. The term includes all costs incurred to obtain, preserve, perfect, or enforce any security interest, lien, or mortgage; to collect any debt; or to maintain, preserve, collect, and enforce any collateral. The term also includes interest, if any, accruing on these amounts, as provided in any written instrument.

5.3 For the purposes of this Agreement, written notices shall be sent by U.S. certified mail, return receipt requested, postage prepaid; or by nationally recognized overnight courier; or by personal delivery; or by facsimile confirmed by the recipient; and addressed to the notified party at its address set forth below its signature line, or such other address specified by the party with like notice. Notices shall be deemed received upon the date set forth in the return receipt, if by certified mail; upon the date set forth in the delivery records of the courier, if by nationally recognized overnight courier; on the day of confirmation of delivery by the recipient, if by facsimile; or on the day of transmittal by personal delivery.

5.4 This Agreement shall continue in effect until all primary debt has been fully paid and satisfied.

5.5 Debtor and Creditor will take all actions and execute all documents requested by UNF necessary for performance of this agreement.

5.6 UNF, DEBTOR AND CREDITOR EACH CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN JACKSONVILLE, FLORIDA. UNF, DEBTOR AND CREDITOR EACH WAIVES, TO THE FULLEST EXTENT EACH MAY EFFECTIVELY DO SO, ANY DEFENSE OR OBJECTION BASED UPON FORUM NON CONVENIENS AND ANY DEFENSE OR

OBJECTION TO VENUE OF ANY ACTION INSTITUTED WITHIN JACKSONVILLE, FLORIDA. EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION TO ENFORCE OR DEFEND ANY MATTER ARISING FROM OR RELATED TO THIS AGREEMENT.

5.7 THIS AGREEMENT HAS BEEN DELIVERED AND ACCEPTED AT AND SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF FLORIDA, AND SHALL BE INTERPRETED, AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED, IN ACCORDANCE WITH THE INTERNAL LAWS (AS OPPOSED TO CONFLICTS OF LAWS PROVISIONS) OF THE STATE OF FLORIDA.

5.8 This Agreement shall be binding upon and shall inure to the benefit of the parties' respective successors and assigns, subject to the provisions hereof.

5.9 This Agreement sets forth the entire understanding of the parties with respect to the within matters and may not be modified or amended except upon a writing signed by all parties.

5.10 Each of the signatories hereto certifies that such party has all necessary power and authority to execute and deliver this Agreement.

5.11 This Agreement may be executed in one or more counterparts, each one of which when so executed shall be deemed to be an original, and all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Agreement, under seal, as of the date first above written.

UNF

Date

Creditor

Date

Debtor

Date