

UNF Board of Trustees
April 16, 2009

Issue Agreements with the City of Jacksonville

Proposed Action Approval

Background Information

In establishing MOCAJax as a UNF direct support organization, it is necessary to sign specific agreements with the City of Jacksonville. The first of these reassigns the lease on the museum building to the University of North Florida. The other agreements include (a) a security agreement, and (b) a quit-claim bill of sale, with possibility of reverter (the "First Amendment"). These latter documents reassign responsibility to the university for the Joan Mitchell and three other gifts of art given by the city.

The administration recommends approval of these agreements with the City of Jacksonville.

Supporting Documentation

- Consent Agreement (For Assignment Of Lease And Use)
- First Amendment To (A) Security Agreement, And (B) Quit-Claim Bill Of Sale With Possibility Of Reverter
- Joinder And Consent Agreement

- e. Section 16 of the Prime Lease is hereby amended by adding the following sentence at the end of the existing section: “So long as Tenant submits proposed signage to Landlord for its reasonable approval according to the criteria set forth herein, Landlord hereby consents to the inclusion of either “University of North Florida” or “UNF” as approved text in the signage on the Premises; it being understood that such text shall not form the basis for denial of Tenant’s requested signage.”
- 7. A copy of the duly executed Assignment and the License are attached hereto as Exhibit A and Exhibit B, respectively.
- 8. By their execution below, MOCAJax and UNF (subject to the limitations and provisions of Florida law, including but not limited to the Florida Constitution and s. 768.28, F.S.) each agree to indemnify and hold harmless the City against any claims, demands, losses, liabilities, and expenses of any kind or nature, including attorneys’ fees and costs, incurred or arising by reason of breach or violation of any of their respective representations or covenants set forth herein.
- 9. Landlord agrees to execute and deliver to UNF an estoppel certificate in the form attached hereto as Exhibit C.
- 10. This Consent may be executed in counterpart and facsimile signature, the counterpart and facsimiles of which, when taken together, shall be deemed to constitute an entire and original document.

ATTEST:

CITY OF JACKSONVILLE, FLORIDA

By: _____
 Neill W. McArthur, Jr.,
 Corporation Secretary

By: _____
 John Peyton, Mayor

(CORPORATION SEAL)

Form Approved:
 By: _____
 Office of General Counsel

Witnesses:

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

 Name: _____

 Name: _____

By: _____
 Name: _____
 Title: _____

**THE UNIVERSITY OF NORTH FLORIDA
BOARD OF TRUSTEES**

Name: _____

Name: _____

By: _____
John A. Delaney, President
The University of North Florida

EXHIBIT A

This Instrument was prepared by
P. Christopher Wrenn
1 UNF Drive
Jacksonville, Florida 32224

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE, made as of the ____ day of _____, 2008 (the "Effective Date"), by and between **MUSEUM OF CONTEMPORARY ART JACKSONVILLE, INC.**, a Florida not-for-profit corporation formerly known as The Jacksonville Museum of Modern Art, Inc., whose address is 333 North Laura Street, Jacksonville, Florida 32202 ("Assignor"), and **THE UNIVERSITY OF NORTH FLORIDA BOARD OF TRUSTEES**, a public body corporate of the State of Florida, whose address is 1 UNF Drive, Jacksonville, Florida 32224, Attention: Office of the General Counsel ("Assignee").

WITNESSETH:

In consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by Assignee to Assignor, the receipt and sufficiency whereof is hereby acknowledged, and of the acceptance hereof by Assignee, Assignor does hereby assign, set over and transfer absolutely unto Assignee, its successors and assigns, effective as of the Effective Date, the lease more particularly described as follows ("Lease"):

Lease dated April 28, 2000, by and between The Jacksonville Museum of Modern Art, Inc., a Florida not-for-profit corporation as tenant and City of Jacksonville, Florida conveying a leasehold interest in that certain parcel of real property and any and all improvements thereon, more particularly described as follows:

Lot 5, Block 34, HARTS MAP OF JACKSONVILLE, DUVAL COUNTY, FLORIDA.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, for and during the remainder of the original term thereof subject nevertheless to the Assignee's payment of the rents and performance of the covenants, conditions and provisions therein contained.

Assignor covenants that: the Lease is valid and in full force and effect; Assignor is the lawful owner of all the right, title, interest and estate of every kind of the Tenant under the Lease and in and to the leased premises and all leaseholds and other leasehold improvements thereon; all of such options, right, title, interest and estate of Tenant are free and clear of all liens, encumbrances and assignments created by or through Assignor, but subject, however, to the terms, conditions, limitations and restrictions contained in the Lease; and Assignor has full power and lawful authority to convey the same and will defend the same against lawful claims of all persons claiming by, through or under Assignor.

Assignee, by accepting this Assignment, assumes and agrees to timely pay the rents and other charges and to keep and perform all of the covenants, conditions, and provisions in the Lease on the part of the Tenant therein named to be paid, performed and observed. Assignee agrees to make no amendments or modifications of the Lease which increase Assignor's contingent obligations under the Lease without Assignor's prior written consent.

Assignor will have the right, but not the obligation, to cure any defaults by Assignee. If Assignor does so cure Assignee's default, Assignee shall reimburse Assignor for the cost of such cure within thirty (30) days of receipt of Assignor's written demand.

THIS ASSIGNMENT shall bind and inure to the benefit of the successors and assigns of Assignor and Assignee, respectively.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals effective as of the Effective Date.

Witnesses:

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

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

Witnesses:

**THE UNIVERSITY OF NORTH FLORIDA BOARD
OF TRUSTEES**

Printed Name: _____

By: _____

John A. Delaney
President, The University of North Florida

Printed Name: _____

State of Florida)
County of Duval)

I, _____, a Notary Public, State and County aforesaid, do hereby certify that John A. Delaney, whose name is signed to the writing above, bearing date on the ____ day of _____, 20____, has acknowledged the same before me in the County aforesaid on behalf of The University of North Florida Board of Trustees.

Witness my hand and official seal this ____ day of _____, 20_____.

Printed Name: _____
Notary Public
My Commission Expires: _____
Notary ID No.: _____
(NOTARIAL SEAL)

State of Florida)
County of Duval)

I, _____, a Notary Public, State and County aforesaid, do hereby certify that _____, whose name is signed to the writing above, bearing date on the ____ day of _____, 20____, has acknowledged the same before me in the County aforesaid on behalf of Museum of Contemporary Art Jacksonville, Inc.

Witness my hand and official seal this ____ day of _____, 20_____.

Printed Name: _____
Notary Public
My Commission Expires: _____
Notary ID No.: _____
(NOTARIAL SEAL)

EXHIBIT B

Facilities Usage Memorandum
Between the
University of North Florida Board of Trustees
and the
Museum of Contemporary Art Jacksonville, Inc.
January ____, 2009

THIS MEMORANDUM, is entered into as of this ____ day of January, 2009, by and between the University of North Florida Board of Trustees (the "University") and the Museum of Contemporary Art Jacksonville, Inc., ("MOCA").

University is, as a result of the Assignment of Lease dated January ____, 2009, authorized to occupy and use the building located at 333 North Laura Street, Jacksonville, Florida 32202 (the "Premises"), in accordance with the terms and conditions of the Lease dated April 28, 2000 (the "Lease"), by and between the City of Jacksonville and The Jacksonville Museum of Modern Art, Inc. now known as Museum of Contemporary Art Jacksonville, Inc.

In accordance with MOCA's articles of incorporation, bylaws and its obligations as a direct support organization, as defined in Section 1004.28 F.S., the University hereby authorizes MOCA to operate a museum of modern and contemporary art, including, but not limited to, the operation of ancillary activities such as operation of a museum gift shop and the operation of a restaurant, on the Premises on behalf of and in support of the University.

MOCA shall comply with all terms and conditions of the Lease, as amended.

This memorandum does not grant MOCA any interest in the Premises and is revocable by the University.

IN WITNESS WHEREOF, the parties have caused this Facilities Usage Memorandum to be executed by their duly authorized officers as of the day and date first above written.

R. Bruce Taylor, Chair
Board of Trustees
University of North Florida

Its Authorized Officer
Museum of Contemporary Art Jacksonville, Inc.

Date: _____

Date: _____

John A. Delaney, President
University of North Florida

Date: _____

EXHIBIT C
ESTOPPEL CERTIFICATE
MUSEUM OF CONTEMPORARY ART JACKSONVILLE, INC. ("Tenant")
Jacksonville, Florida

The undersigned officer of the City of Jacksonville, Florida ("Landlord") hereby certifies, on behalf of Landlord, that as of _____, 2009 (the "Certificate Date"), the following statements are true and correct based on the undersigned's actual knowledge (but without any inquiry regarding the same):

1. Landlord is the fee simple owner of that certain parcel of real property and any and all improvements thereon (collectively, "Premises") more particularly described as follows:

Lot 5, Block 34, HARTS MAP OF JACKSONVILLE, DUVAL COUNTY,
FLORIDA.

2. Tenant is the tenant under a lease dated April 28, 2000, by and between The Jacksonville Museum of Modern Art, a Florida not-for-profit corporation, as tenant and City of Jacksonville, Florida ("Lease"), conveying to Tenant a leasehold interest in the Premises, a copy of which has been previously delivered to UNF (as defined hereafter).
3. The term of the Lease commenced April 28, 2000 and is scheduled to expire on April 30, 2099, unless extended, or unless terminated in accordance with the terms of the Lease.
4. The Lease is in full force and effect and not in default; all rent and other sums for which Tenant is responsible under the Lease have been paid in full; Landlord has received no notice from a governmental authority of non-compliance with any statute, regulation, rule or ordinance or of any assessment or proposed assessment; Landlord has issued no notice of default or notice to correct or cure any matter for which it believes Tenant to be responsible under the Lease; to the best of Landlord's knowledge and belief, Tenant has completed any and all repairs and renovations to the Premises required by Landlord; to the best of Landlord's knowledge and belief, there is no condition on the Premises which, but for the exercise of ordinary maintenance, could ripen into a matter requiring cure by Tenant; and, to the best of Landlord's knowledge and belief, Tenant's current occupancy and use of the Premises is lawful and permitted under the Lease.
5. Landlord has received no notice of any sale, transfer, assignment, subletting or pledge of Tenant's interest in the Lease to any party.

This Estoppel Certificate was prepared at the request of The University of North Florida Board of Trustees, a public body corporate ("UNF") in connection with an agreement to assume Tenant's interest in the Lease. Landlord acknowledges that UNF is relying on, and Landlord is estopped to deny the truth and correctness of the matters certified herein.

IN WITNESS WHEREOF, the undersigned has executed this certificate on behalf of Landlord.

ATTEST:

CITY OF JACKSONVILLE, FLORIDA

By: _____
Neill W. McArthur, Jr.,
Corporation Secretary

By: _____
John Peyton, Mayor

(CORPORATION SEAL)

Form Approved:
By: _____
Office of General Counsel

**FIRST AMENDMENT TO (A) SECURITY AGREEMENT, AND
(B) QUIT-CLAIM BILL OF SALE WITH POSSIBILITY OF REVERTER**

This First Amendment is made effective this ___ day of January, 2009, between **CITY OF JACKSONVILLE**, a municipal corporation, whose address is 117 West Duval Street, Jacksonville, Florida 32202 (ACity@) and **MUSEUM OF CONTEMPORARY ART JACKSONVILLE, INC.**, a Florida non-profit corporation (and formerly known as The Jacksonville Museum of Modern Art, Inc.), whose address is 333 North Laura Street, Jacksonville, Florida 32202 (AMOCAJax@).

RECITALS:

Whereas, the City and MOCAJax entered that certain Security Agreement and that certain Quit-Claim Bill of Sale With Possibility of Reverter, both dated October 20, 2006, and both relating to the following Art (sometimes referred to as Property or Collateral):

1. Joan Mitchell, Iva, oil on canvas, 110½@ x 238@
2. John Walker, untitled, mixed media, 120@ x 96@
3. Robert Arthur Goodnough, Diagonal Movement, acrylic on canvas, 80@ x 176@
4. Harold Buchwald, untitled, oil on linen, 77@ x 66@

Whereas, on or about even date herewith, MOCAJax is entering into certain transactions with the University of North Florida Board of Trustees, a Florida body politic and corporate, or its permitted affiliated successors and assigns (“UNF”) whereby: (a) UNF will become the sole member of MOCAJax; and (b) MOCAJax shall become a “direct support organization” of UNF and UNF will be authorized to exert control over certain MOCAJax’s actions;

Whereas, notwithstanding the foregoing, MOCAJax shall continue to operate and exist as a separate Florida non-profit corporation, and maintain its status as a 501(c)3 organization pursuant to the requirements of the Internal Revenue Code;

Whereas, MOCAJax and UNF shall continue to operate MOCAJax’s museum as a modern and contemporary fine arts museum in substantially the same fashion as commenced in May 2003; however it is contemplated that UNF may add its own educational and outreach programs so long as such additions do not materially adversely affect the core activities of MOCAJax;

Whereas, in order to further facilitate MOCAJax’s operations, the City desires to amend its reversion rights to the Art (as defined hereafter) to expand the locations in which the Art may be displayed to be within Duval County, Florida, and receive MOCAJax’s reconveyance back to the City certain of the Art; and,

Whereas, the City and MOCAJax desire to amend the Security Agreement and the Bill of Sale as set forth herein.

Now, Therefore, for and in consideration of good and valuable consideration, the receipt and

sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The Recitals set forth above are true and correct and are incorporated herein by this reference.
2. Capitalized terms used but not defined herein shall have the meanings in the Security Agreement and the Bill of Sale.
3. Section 3(b) of the Security Agreement is hereby deleted in its entirety and replaced with the following: “Except upon the prior written consent of the City, the Company will not encumber, sell or otherwise transfer or dispose of the Collateral other than in accordance with the terms and conditions of the Bill of Sale.”
4. Section 3(c) of the Security Agreement is amended by adding the following language at the end of the section: “Notwithstanding the foregoing, the Collateral also may be displayed for viewing by the public at the campus of the University of North Florida, but only so long as the Grantee delivers prior written notice to Grantor of the new location of the Collateral and takes such actions as may be necessary to continue the perfection of the City’s security interest in said Collateral.”
5. The first three of the four paragraphs comprising the “Reverter” provisions on page 1 of the Bill of Sale are deleted in their entirety and replaced with the following:

“REVERTER: In the event Grantee fails to comply with the terms below or with the Covenants, the Art (or portion thereof) shall, at the option of the Grantor, its successors and assigns, revert to Grantor, its successors and assigns. Upon the request of Grantor, its successors and assigns, Grantee, its successors and assigns, shall execute an instrument evidencing that the title to the Art (or portion thereof) has reverted to and revested in Grantor, its successors and assigns.

Except for times of normal rotation, such storage or temporary removal from public display as is necessary for reasonable care, repair, and maintenance, the Art shall be displayed for viewing by the public (a) at 333 North Laura Street, Jacksonville, Florida 32202 or (b) on the campus of the University of North Florida located at 1 UNF Drive, Jacksonville, Florida 32224, in Duval County, Florida.

Grantee shall not sell, transfer, donate or otherwise dispose of the Art; provided, however, that upon the dissolution or discontinuation of Grantee the Grantee may sell, transfer, donate, or otherwise dispose of Art only to The University of North Florida Board of Trustees, a Florida body politic and corporate (“UNF”) without further action or approval of Grantor; but such approval by Grantor is provided only so long as Grantee delivers prior written notice to Grantor of such conveyance to UNF and UNF takes such actions as may be reasonably necessary to continue the perfection of the City’s security interest in said Collateral. Thereafter, these provisions in this Quit Claim Bill of Sale shall be applicable to UNF.

6. MOCAJax, for and in consideration of the sum of Ten and no/100 dollars (\$10.00) and other valuable considerations, receipt of which is hereby acknowledged, does hereby remise, release and quit-claim unto City, its successor and assigns, all the right, title, interest, claim and demand which MOCAJax has in and to the following described goods and chattels: John Walker, untitled, mixed media, 120" x 96"; Robert Arthur Goodnough, Diagonal Movement, acrylic on canvas, 80" x 176"; and Harold Buchwald, untitled, oil on linen, 77" x 66" (collectively, the "Re-Conveyed Property"). MOCAJax and the City shall take such actions as are necessary to terminate any and all Uniform Commercial Code Financing Statement filings and execute and deliver such other documents as needed related to the Re-Conveyed Property. Exhibit A to both the Bill of Sale and the Security Agreement is hereby amended such that any reference to the Re-Conveyed Property is deleted and Exhibit A is comprised solely of the following: Joan Mitchell, Iva, oil on canvas, 110½" x 238".
7. All other terms of the Agreement remain unchanged and in full force and effect and are hereby ratified and confirmed as of this amendment date.
8. This First Amendment may be executed in counterpart and facsimile signature, the counterpart and facsimiles of which, when taken together, shall be deemed to constitute an entire and original First Amendment.

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals as of the day and year set forth above.

Attest:

CITY OF JACKSONVILLE

Neill W. McArthur, Jr.
Corporation Secretary

By _____
John Peyton, Mayor

**STATE OF FLORIDA
COUNTY OF DUVAL**

The foregoing instrument was acknowledged before me this _____ day of January, 2009, by John Peyton and Neill McArthur, Jr., the Mayor and Corporation Secretary, respectively, of the City of Jacksonville, a municipal corporation, on behalf of the corporation. Such persons are personally known to me.

_____(x)

[Print or type name]
NOTARY PUBLIC

WITNESS:

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

By _____

Print name _____

By _____

Print name _____

By _____

Print name _____

Title: _____

**STATE OF FLORIDA
COUNTY OF DUVAL**

The foregoing instrument was acknowledged before me this _____ day of January, 2009, by _____, the _____, of Museum of Contemporary Art Jacksonville, Inc., a Florida corporation, on behalf of the corporation. Such person is personally known to me or provided a Florida driver's license as identification.

_____ (x)

[Print or type name]

NOTARY PUBLIC

JOINDER AND CONSENT AGREEMENT

To enable Museum of Contemporary Art Jacksonville, Inc., a Florida non-profit corporation, formerly known as The Jacksonville Museum of Modern Art, Inc. (“MOCAJax”) and the City of Jacksonville, a Florida municipal corporation (the “City”) to enter into that certain First Amendment To (A) Security Agreement, And (B) Quit-Claim Bill Of Sale With Possibility Of Reverter (the “First Amendment”) on or about of even date herewith, the University of North Florida Board of Trustees, a Florida body politic and corporate (“UNF”) executes and delivers this Joinder and Consent Agreement. UNF agrees that in the event the Art is transferred to it by MOCAJax as permitted by the First Amendment, then UNF shall execute and deliver to the City such financing statements and security agreements as necessary for the City’s maintaining its security interest in the Art, so long as such documents are not materially and adversely different than the existing security agreement documents between the City and MOCAJax. UNF represents and warrants to MOCAJax and the City that it has full authority to execute this Joinder and Consent Agreement without the need for further consent or approval by of any party (or if such consent is required, that such consent has been obtained).

**THE UNIVERSITY OF NORTH FLORIDA
BOARD OF TRUSTEES**

Name: _____

By: _____
John A. Delaney, President
The University of North Florida

Name: _____

**STATE OF FLORIDA
COUNTY OF DUVAL**

The foregoing instrument was acknowledged before me this _____ day of January, 2009, by John A. Delaney, the President of The University of North Florida Board of Trustees, a Florida body politic and corporation, on behalf of the body politic and corporate. He person is personally known to me or provided a Florida driver’s license as identification.

_____(x)

[Print or type name]
NOTARY PUBLIC