

**AMENDED AND RESTATED AGREEMENT FOR OPERATION
OF THE CORAL GABLES MUSEUM**

This Amended and Restated Agreement for Operation of the Coral Gables Museum ("Agreement") is effective as of this ____ day of _____, 2011, by and between the City of Coral Gables, a municipal corporation of the State of Florida, hereinafter referred to as "City," and the Coral Gables Museum, Corp., a non- profit Florida corporation, hereinafter called "CGM."

WHEREAS, the City has one of the oldest and most successful historic preservation programs in Florida, and

WHEREAS, CGM has as its mission statement the "Mission Statement" attached hereto as Exhibit "A" (the "Mission Statement"), and

WHEREAS, the City's multinational business community comprises an array of corporations with diverse interests due to the strong municipal services, high quality of life, convenient access, responsible growth, and a diversified economy making Coral Gables a highly desirable location, and

WHEREAS, Coral Gables has such a fascinating history, the success of a museum is insured by good public policy and enlightened private interest, and

WHEREAS, the City has dedicated the historic municipal building at 285 Aragon Avenue, known as the Old Police and Fire Station as a general museum, and

WHEREAS, CGM will use the building as a museum and performing arts center promoting the artistic, educational, historic, cultural, civic and charitable qualities of the City of Coral Gables and its residents, and

WHEREAS, CGM has secured dedicated funding in the amount of two million dollars (\$2,000,000) to construct a new exhibition gallery at the corner of Salzedo Street and Giralda Avenue by virtue of that Agreement of Gift dated April 30, 2008, by and between CGM and Robert J. Fewell and Marian Fewell (the "Donors Agreement"), which building is being constructed by the City and is connected to the historic municipal building collectively comprising the "Coral Gables Museum", and

WHEREAS, the City and CGM agree that they entered into that Agreement for Operation of the Coral Gables Museum dated as of December 14, 2006 (the "Original Agreement"), and

WHEREAS, the City and CGM are desirous of entering into an Amended and Restated Agreement for Operation of the Coral Gables Museum upon the terms and conditions contained herein, which amended and restated agreement is intended to replace and supersede the Original Agreement in its entirety and to define their respective relationship and responsibilities relative the museum facilities; and

WHEREAS, it is the purpose and intent of this agreement for the City to provide the Facility (as defined below) owned by the City to the Coral Gables Museum to operate a museum and related activities exhibiting and supporting the City's culture, history and other exhibits for the benefit of the general public, and

WHEREAS, it is the desire of CGM that the museum be independent of the City with regard to the museum operation, and staff as set forth herein,

NOW THEREFORE, in consideration of the promises and covenants contained herein, the parties agree that the Original Agreement shall be and is hereby amended and restated in its entirety as follows:

ARTICLE I

Recitals and Prior Agreements

This Agreement shall supersede all prior agreements between the parties said hereto. The foregoing recitals are incorporated herein in their entirety. This Agreement contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by an agreement in writing signed and sealed by CGM and City. CGM and the City acknowledge and agree that neither CGM nor the City has relied upon any statement, representation, prior written or prior or contemporaneous oral promises, agreements or warranties except such as are expressed herein.

ARTICLE II

Facilities and Acceptance

The City hereby allows CGM to operate the property described and delineated as that shaded areas shown on Exhibit "B" (hereinafter such shaded portion is referred to as the "Facility"), under the terms and conditions of this Agreement. In addition, any building, land or other capital improvement which CGM acquires or builds on City property shall become part of the Facility. CGM shall have the exclusive use of the Facility as exhibit space for its museum

and related activities as set forth in Article V and subject to the terms of this Agreement. In addition, CGM shall have the non-exclusive right to use portions of the site deemed to be "Shared Facilities" including but not limited to the courtyard and the garden plaza for their intended purposes in accordance with the terms of this Agreement. The "Shared Facilities" are delineated as those shaded areas shown on Exhibit "C". The City is retaining certain portions of the facilities for the exclusive use of the City, which portions are delineated as the shaded portions on Exhibit "D" and hereinafter referred to as the "City's Portion". The Shared Facilities, the Facility and the City's Portion shall be referred to as the "Entire Facility". This Agreement does not grant any right to light or air over or about the Premises.

CGM acknowledges and agrees that it shall inspect the Facility and conduct its own due diligence with regard to the conditions of the Facility prior to the Commencement Date, and that it is accepting the Facility in "as is" condition. CGM further acknowledges and agrees that the taking of possession of the Facility by CGM shall be conclusive evidence against CGM that the Facility was in satisfactory condition when possession was taken, with the exception of any punchlist items that CGM provides in writing to the City upon taking possession.

ARTICLE III

Term of Agreement

The term of this Agreement shall be for a period of twenty (20) years commencing on the date of issuance of the final Certificate of Occupancy for the Entire Facility (the "Commencement Date") and terminating twenty (20) years thereafter (the "Termination Date"). Upon determination of the Commencement Date and the Termination Date, the parties shall execute the certificate attached hereto as Exhibit "E".

ARTICLE IV

Consideration

As consideration of the City providing the Facility, access to the Shared Facilities and the services set forth herein, the CGM agrees to operate a general museum consistent with the provisions of the "Mission Statement" attached hereto as Exhibit "A."

ARTICLE V

Option to Renew

Provided CGM is not in default of this Agreement at the time of the applicable renewal, CGM shall have an option to renew this Agreement for two (2) additional twenty (20) year periods, and this option shall be deemed automatically exercised unless either party notifies the other of its intention not to renew the Agreement within one hundred-eighty (180) days from expiration of initial Term or the first renewal term, as applicable. Notwithstanding the foregoing, if the first renewal term is not exercised, the second renewal term shall become void.

ARTICLE VI

Use of Facilities; Right to Charge Fees

A. Use of the Facility and Shared Facilities by CGM. In conjunction with operation of a museum in the Facility and Shared Facilities in accordance with the Mission Statement set forth in Exhibit "A", and subject to the provisions of this Agreement: (1) CGM may undertake fund-raising activities in the Facility such as, but not limited to, parties, and benefits; (2) CGM may sublet meeting rooms and charge reasonable fees as it deems appropriate for classes, lectures, shows, tours, special exhibits, and other activities; and (3) CGM may operate a retail museum store in the location shown on Exhibit "B" as a gift shop (the "Store"); provided that the primary operation of the Facility and Shared Facilities shall be that of a museum. CGM shall not operate the Facility or Shared Facility for uses other than those expressly stated herein. In connection with its activities, programs or fund raising events, CGM may sell and serve food and beverages including alcoholic drinks on the Facility and Shared Facilities subject to applicable Federal, State, or City laws, statutes, codes, ordinances, rules, regulations or agreements (collectively "Law" or "Laws"). Any other auxiliary sale of food or drink on a regular basis shall require City approval, except that CGM may have a soda machine, with the location of such machine to be subject to City's approval.

CGM may operate programs, exhibits, fund raising events, and other activities at locations other than the Entire Facility in line with the goals as stated in its by-laws and as generally accepted by the American Association of Museums, for an accredited museum. CGM

may seek support, undertake mutual programs, and enter into contracts with other governmental or private entities in pursuit of its goals.

The City may at its expense supply the Store with City merchandise which shall be sold by CGM. CGM may retain net profits from such sales, but shall remit to the City in reimbursement the cost of the items sold on a quarterly basis (i.e. by January 1, April 1, July 1, and October 1 each year), along with a statement reasonably acceptable to the City documenting the sales made during the prior quarter.

CGM agrees to maintain exhibitions at the Facility open to the public no less than 1,000 hours a year. CGM shall determine the hours of operations and admission fees. CGM shall not have the right to name the exterior of the historic building located at 285 Aragon Avenue, Coral Gables, Fl and known as the Municipal Building; however, CGM shall have the right to name the new gallery building, plazas and courtyards with exterior signage and other interior building that form part of the Facility as well as portions of the Shared Facilities, provided CGM obtains the City's approval for such names, and such naming is, subject to compliance with State, Federal, and City statutes, codes, rules, ordinances and regulations. CGM shall remove any donor's name who does not complete his or her gift in full in accordance with the applicable donor agreement. CGM shall be permitted to install interior signage in the Facility, and with regard to naming of the Shared Facilities in the Shared Facilities, without City's prior consent provided such signage is professionally prepared, and CGM removes any signage to which the City reasonably objects.

B. Use of the Shared Facilities. It is intended that the Shared Facilities shall be available to the City without charge for public meetings, as well as for City boards and committees. CGM will handle scheduling the Shared Facilities, and shall give priority to regularly scheduled City board and committee meetings, which may be conducted during the day or in the evenings until conclusion of such meetings. Any discrepancy regarding which event shall have priority shall be resolved by the City. With regard to the Community Room located as shown on Exhibit C, CGM shall provide portable chairs as needed for meetings, and the City may provide a portable dais which dais shall be stored in the Shared Facilities or Facility in a location acceptable to CGM. The City will consider the ease of storage and set up when procuring a dais. The Archive Room located as shown on Exhibit C shall be available to the City and visitors to the City's historical department at no charge for the review of archive materials, and shall be equipped by

with appropriate tables and chairs for such use. The City will provide to CGM up to \$10,000 for furnishing the Archive Room, such items purchased with funds provided by the City to remain owned by the City, with the Museum's right to use such items for the Archive Room during the Term. Any cost of furnishing the Archive Room in excess of \$10,000 shall be covered by CGM. The City may also, in its discretion, display items owned by the City in the Archive Room. CGM shall be permitted to schedule the Shared Facilities for use of others not in conflict with the City's use as set forth above.

C. The City Portion. The City Portion of the Entire Facility is reserved to the City for its own use in its discretion.

Disputes arising out of this Article VI shall be resolved by the City, whose determination shall be final and binding on the parties. All use of the Entire Facility by CGM shall be in accordance with Laws.

ARTICLE VII

Right to Permit Use of the Facility and Shared Facilities

CGM may not directly or indirectly assign, transfer, mortgage, pledge or otherwise encumber or dispose of this Agreement or sublet the Facility or any part thereof unless approved in writing by City, which consent shall be in the sole discretion of the City. This prohibition includes, without limitation, any transfer which would otherwise occur by operation of law, merger, consolidation, reorganization, transfer or other change of CGM's structure or ownership. Notwithstanding the foregoing, CGM may permit other organizations and individuals to license portions of the Facility and Shared Facilities to the extent not in conflict with the City's use thereof for the periods not to exceed one (1) week, unless extended in writing by the City, under reasonable terms and conditions and for reasonable charges. Such third parties and/or CGM shall provide insurance and indemnification as required by the City policies.

Notwithstanding anything to the contrary herein, CGM may license the operation of the Store to an operator who has at least five (5) years' experience in the retail gift or book store business with the consent of the City, such consent not to be unreasonably withheld. Such

operator and/or CGM shall provide insurance covering the operation of the Store in accordance with the requirements of Article XIII below. The license agreement shall provide that City is entitled to collect and retain any payments under the license in the event that CGM is in default of this Agreement beyond applicable notice and cure periods such that City is entitled to terminate this Agreement, and that no such collection or acceptance shall be construed as or implied to be, a release of CGM from the further observance and performance by the CGM of the terms, provisions, covenants and conditions herein contained. Consent by City to any license shall not constitute a waiver of the requirement for such consent to any subsequent license.

ARTICLE VIII

Hazardous Materials

With the exception of minor amounts of Hazardous Materials customarily and lawfully used in conjunction with the uses permitted under this Agreement, CGM, its employees, contractors, agents, and any party acting on behalf of CGM, shall not store, use, treat, generate, or dispose of Hazardous Materials at the Entire Facility or other property owned by City. "Hazardous Material(s)" means any substance that, by itself or in combination with other materials, is either (i) generally regarded injurious to public health, safety, or the environment; or (ii) now or in the future regulated by any federal, state, or local governmental authority as potentially injurious to public health, safety, or the environment. CGM, its employees, contractors, agents, and any party acting on behalf of CGM shall comply, and shall keep the Facility and Shared Facilities in compliance, with all laws and regulations relating to Hazardous Materials ("Environmental Laws"); and in addition CGM shall:

- (i) Promptly provide City with copies of any document, correspondence, report or communication, written or oral, relating to Hazardous Materials at or affecting the Entire Facility (x) to or from any regulatory body, or (y) stating a basis for any potential liability or responsibility of CGM, City, or the Entire Facility; including all such documents, correspondence, reports or communications prepared by or on behalf of CGM. In addition to the above, at City's request, CGM shall provide copies of any and all records and communications whatsoever relating to Hazardous Materials at or affecting the Entire Facility.

- (ii) Immediately notify City in the event of a suspected or confirmed release of a Hazardous Material or violation of Environmental Laws at or affecting the Entire Facility or other property owned by City and caused by or related to the operations of CGM, its employees, contractors, agents, or any party acting on behalf of CGM and, at City's sole option, either promptly remediate or correct such release or violation to City's satisfaction or reimburse City's cost of remediation (including reasonable attorneys' and consultants' fees); and compensate City and/or third parties for all resultant damage.
- (iii) Permit City reasonable access to the Facility and Share Facilities for the purpose of conducting an environmental audit or testing, the cost of which shall be borne by City unless the results indicate activity prohibited by Environmental Laws or hereunder.
- (iv) Upon expiration or other termination of this Agreement, remove all Hazardous Materials from the Facility caused by the acts or omissions of CGM, its officers, agents, contractors, employees or invitees, and at City's option cause to be performed and provided to City an environmental audit of the Premises, using a consultant reasonably acceptable to City, and correct, at its expense, any deficiencies noted by the audit.

The provisions regarding Hazardous Materials shall survive the expiration or other termination of this Agreement.

ARTICLE IX

Ownership of Personal Property

Subject to Articles X, XXII, and XXXIII below, title to all personal property including collections now owned or hereafter acquired by CGM shall remain in CGM ownership even though placed within the City's Portion or Shared Facilities, unless CGM, by appropriate instrument shall divest itself of such ownership or unless a donor by express written statement provides that the donation shall be given to the City under certain circumstances. This shall include temporary and permanent displays and exhibits including cases and display materials and non-artifact items built for the Facility even though they may be of a built-in or quasi-permanent

nature. Title to all personal property including collections now owned or hereafter acquired by the City and placed in the Facility or Shared Facilities shall remain in the City ownership unless the City, by appropriate instrument, shall divest itself of such title. The City and CGM will each clearly label its personal property, and maintain an annual inventory of the same.

ARTICLE X

Collections, Exhibits, Artifacts, and Displays

CGM will accept and/or acquire collections, artifacts, documents, images, and historic property and loan of said property only in accordance with established Collections and Loan Policies developed by CGM. CGM's policies must include a provision establishing that operation of the museum shall be in the public interest, and consistent with the Mission Statement. Such policy shall at a minimum track all donations to the collection and loans to the museum for exhibition, research or study, with regard to ownership of each item and location where each item is either displayed or stored. The rights to the name "Coral Gables Museum" and the furniture, fixtures, equipment, displays, and all other personal property owned by CGM, including the collections (subject to the rights of others), whether stored at the Entire Facility or not, shall be conveyed to the City if CGM ceases to exist to operate within a City facility, or if CGM is in default of this Agreement such that the City is entitled to terminate this Agreement. CGM shall provide the City with such policies and any amendments made to such policies. The accession and de-accession system and the records documenting its functioning shall meet prescribed standards required for accreditation by the American Association of Museums. The City, other governmental agencies, and private citizens may have access, upon request and under reasonable terms established by CGM, to the CGM collections. CGM shall have sole control of exhibit contents. The City will retain all licensing and intangible property rights, including but not limited to copyright, that it may have with regard to items loaned to CGM by the City. Any reproduction of City owned property or images published by CGM shall acknowledge that such item is reproduced with the permission of the City of Coral Gables.

ARTICLE XI

Structural Changes and Alterations

The City shall have the right to make such additions to or modifications of the Entire Facility as may be reasonably necessary or desirable in accordance with the City's responsibilities as set forth in Article XII, provided, however, that such modifications or improvements shall not change the primary use, nature and purpose of the existing Entire Facility. Such additions and/or modifications shall not alter the historic integrity of the building and shall be performed in accordance with all applicable Laws. The City shall exercise the right in such a manner as to create a minimum of interference with the operation of the museum and related programs and only upon consultation and approval of CGM, which approval shall not be unreasonably withheld.

CGM will not make any alterations, renovations, improvements or other installations in, on or to any part of the Facility or Shared Facilities (including, without limitation, any alterations of the structural alterations, or any cutting or drilling into any part of the Entire Facility or any securing of any fixture, apparatus, or equipment of any kind to any part of the Entire Facility) unless and until CGM shall have caused plans and specifications therefor to have been prepared, at CGM's expense, by an architect or other duly qualified person and shall have obtained City's approval (not to be unreasonably withheld or delayed) thereof, including, but not limited to, all appropriate approvals required for any change to the historical portions of the Facility. If such approval is granted, CGM shall cause the work described in such plans and specifications to be performed, at its expense, promptly, efficiently, competently and in a good and workmanlike manner by duly qualified and licensed persons or entities, using first grade materials, without disruption to the operations of neighboring occupants. All such work shall comply with all applicable codes, rules, regulations and ordinances. Notwithstanding the foregoing, subject to approval by the City's Historical Preservation Officer, CGM shall have the right to make interior repairs or replacements to the Facility under twenty-five thousand dollars (\$25,000), which do not require any structural alteration or impose any greater load on any structural portion of the Entire Premises, and are in accordance with CGM's originally approved plans.

ARTICLE XII

Taxes, Assessments, Maintenance and Utilities

A. Repairs and Maintenance by CGM: Except to the extent City is obligated to maintain or repair as set forth in subsection B. below, CGM, at CGM's own expense, will keep and

maintain the Facility and Shared Facilities continuously in a neat and attractive manner, in good repair and condition during the Term. CGM, at its sole cost and expense, during the entire Term, shall be responsible for the painting and cleaning of the interior of the Facility, and the cleaning of the Shared Facilities, as well as minor plumbing repairs to the bathrooms in such areas such as cleaning out clogged pipes. CGM warrants that it shall be solely responsible for the cost to repair of any damages to any portion of the Entire Facility caused by CGM, its employees, representatives, contractors and/or agents. No changes shall be made of any nature or kind to the historic portions of the Entire Facility without the approval of the Historic Resources Department in each instance.

B. Repairs and Maintenance by City: City agrees to make any and all repairs reasonably required with regard to the Entire Facility to: (1) exterior walls, doors and windows (2) the foundation and structural portions, (3) major building systems (plumbing, electrical, HVAC), except as set forth above with regard to minor plumbing issues, (4) courtyards and plazas, (5) floors, walls, ceilings, (6) alarm systems as expressly set forth below; and (7) the roof, the cost of such repair to be reimbursed by CGM to the extent CGM, its employees, representatives, contractors and/or agents caused damage to any portion of the Entire Facility. City shall have thirty (30) days after receipt of written notice from CGM to perform such repairs of the items described in the foregoing sentence, or such additional time as may be reasonably required for the nature of the repair; provided however, it is acknowledged that the City will respond promptly to emergency situations, and will take remedial measures deemed necessary by the City in the interim before emergency repairs are completed. The City will respond to loss of HVAC service within 24 hours. The City also shall maintain and make repairs to landscaping components of the Entire Facility, including fountains. All maintenance and repairs shall comply with Laws. The City will paint the exterior of the Entire Facility (excluding the historic building) when, in the judgment of the City, such renovations are considered necessary and to the extent available resources permit.

The City shall not be responsible for costs incurred by CGM and not identified in the City operating budget or for the maintenance of permanent or temporary exhibits, the Store, Museum store displays or items related thereto, such as, but not limited to exhibit lighting, and interior

security systems (other than the base alarm system as expressly stated below). CGM shall be responsible for costs for programming including but not limited to educational programs and permanent and temporary exhibits. Further, CGM shall be responsible for maintenance and up keep caused by the installation and removal of exhibits. The operation of the Facility and Shared Facilities by CGM shall comply with all reasonable rules and regulations required by City from time to time with regard to operation of a City owned building.

In the event of tropical depressions, hurricanes, or other naturally occurring phenomenon, the City shall make such reasonable preparations and take such precautionary steps to secure the Entire Facility as it would in the preparation of other City property. CGM shall be responsible for securing / removing all temporary exterior exhibit installations in such situations.

C. Utilities and Trash.

The City will provide water, and sewer. The City will provide its own telephone, information technology (IT) needs, and janitorial in the City Portion, and at its option, may install card access readers for the Entire Facility (in which case appropriate access rights shall be programmed with regard to the Facility and Shared Facilities). The City will also install, monitor and maintain the base fire monitoring and alarm systems at the City's cost for the Entire Facility; provided, however, that the City shall undertake no liability with regard to failure of such systems for any reason whatsoever. It is understood and agreed that the City is not an insurer, and that its sole obligation hereunder shall be to pay for the cost of such monitoring and repairs. It shall be the obligation of CGM to notify the City of any repairs required to the Facility or Shared Facilities, and that CGM shall carefully and properly test the alarm systems with reasonable frequency to determine whether repairs are necessary. IT IS FURTHER UNDERSTOOD AND AGREED THAT CITY IS NOT AN INSURER AND THAT ANY INSURANCE, IF ANY, COVERING PERSONAL INJURY AND PROPERTY LOSS OR DAMAGE ON THE FACILITY OR SHARED FACILITIES AS A RESULT OF AN ERROR OR OMISSION INVOLVING AN ALARM OR MONITORING SYSTEM SHALL BE OBTAINED BY CGM; THE CITY IS MERELY PAYING FOR MONITORING AND REPAIR SERVICES FOR SYSTEMS DESIGNED TO REDUCE CERTAIN RISKS OF LOSS BUT THE PROVISION OF SUCH SYSTEMS IS NOT A GUARANTY THAT NO LOSS WILL

OCCUR. THE CITY IS NOT ASSUMING RESPONSIBILITY FOR ANY LOSSES WHICH MAY OCCUR EVEN DUE TO CITY'S NEGLIGENT PERFORMANCE OR FAILURE TO PERFORM WITH REGARD TO ANY ALARM OR SECURITY SYSTEMS, AND CITY HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY FOR FITNESS THAT THE SYSTEMS INSTALLED OR THE SERVICE SUPPLIED MAY NOT BE COMPROMISED OR THAT SERVICES WILL IN ALL CASES PROVIDE THE PROTECTION FOR WHICH IT IS INTENDED. CGM AGREES TO AND SHALL INDEMNIFY AND SAVE HARMLESS THE CITY, ITS EMPLOYEES AND AGENTS, FOR AND AGAINST ALL THIRD PARTY CLAIMS, LAWSUITS, AND LOSSES ALLEGED TO BE CAUSED BY THE CITY'S PERFORMANCE, NEGLIGENT PERFORMANCE, OR FAILURE TO PERFORM ITS OBLIGATIONS WITH REGARD TO ANY ALARM OR SECURITY SYSTEMS.

CGM will be responsible for the cost of telephone, janitorial, and any additional security systems above the base security/alarm system CGM requires for its operation of the museum. CGM will be also be responsible for the costs of IT infrastructure needs such as voice, data, video, cable TV, security, space, conduits, low-voltage cabling, UPS, servers, computers, handsets, internet connections, onetime and recurring charges, and telecommunications services.

The cost of electrical service to Entire Premises will be shared by CGM and the City with the City paying 75% and CGM paying 25%, which is intended to cover a portion of CGM's electricity usage. CGM shall pay its proportion of the cost no more than fifteen (15) days after receipt of the bill, payable to the City of Coral Gables and delivered to the Finance Department at 405 Biltmore Way, Coral Gables, Florida, 33134.

The City believes that pursuant to that Solid Waste and Recycling Collection Franchise Agreement dated September 20, 2000 by and between the City and Waste Management, Inc., as such agreement may be amended from time to time, the City should not be charged for the solid waste and recycling collection services for the Entire Facility. However, in the event of a charge, CGM shall be responsible for the cost of all removal of waste from the Facility and Shared Facilities.

D. Assessments and Taxes. CGM and City acknowledge that while CGM is currently exempted from various taxes by virtue of being a qualified non-profit organization,

CGM is responsible for and shall pay before delinquency all applicable municipal, county or state taxes and assessments, without limitation, assessed during the Term of this Agreement against any occupancy interest, payments or personal property of any kind, owned by or placed in, upon or about the Facility and Shared Facilities by CGM. If applicable, CGM shall be solely responsible for its portion of the real property taxes that are subject to ad valorem taxation. CGM shall be responsible to pay all amounts due hereunder to City within thirty (30) days after receipt of an invoice therefor. CGM shall have the right to contest, at its sole expense, from time to time, any taxes or tax assessments levied against the Facility and Shared Facilities by legal proceedings; provided, however, that such protest is made in accordance with applicable law and that all such taxes or assessments are paid as and when due pursuant to such legal proceedings and further provided that the City is held harmless by CGM in connection with such tax contest. In the event that CGM fails to make the appropriate payment for taxes when due, CGM shall be responsible for any penalties imposed on the City as a result of CGM's delinquency in the payment of said taxes.

CGM also agrees to be responsible its proportionate share of all assessments, to the extent applicable and including any Business Improvement District (BID) assessments that may be assessed to the Facility and Shared Facilities. CGM shall be responsible to pay all amounts due hereunder to City within thirty (30) days after receipt of an invoice therefor. In the event that CGM fails to make the appropriate payment for assessments when due, CGM shall be responsible for any penalties imposed on the City as a result of CGM's delinquency in the payment of said assessments.

Any disputes regarding the provisions of this Article XII shall be resolved by the City whose determination shall be final and binding on the parties.

ARTICLE XIII

Insurance by CGM

Without limiting the CGM's indemnification of the City, and during the Term of this Agreement, CGM shall provide and maintain at its own expense the below described programs of insurance. Such programs and evidence of insurance shall be satisfactory to the City and shall be primary to and not contributing with any other insurance or self-insurance program

maintained by the City. All certificates of insurance or other forms evidencing coverage to the City must be acceptable to the City. The certificate holder should read and all coverage shall be evidenced to:

City of Coral Gables
Risk Management Division
2801 Salzedo Street, 2nd Floor
Coral Gables, Florida 33134

Such certificates or other document evidencing all insurance coverage shall be delivered prior to taking possession of the Facility under this Agreement, and at a minimum evidence of Commercial General Liability Insurance shall be provided prior to the City executing this Agreement. All insurance coverage evidenced to the City shall specifically identify this Agreement, and shall contain the express condition that the City is to be given written notice, by receipted delivery, at least thirty (30) days in advance of any cancellation, non-renewal or material change of any insurance policy.

A. CGM shall maintain during the Term of this agreement, except as noted, the following insurance:

1. A Commercial General Liability insurance with broad form endorsement or equivalent, products liability, contractual liability, personal and advertising injury, severability of interests with cross liability provision, and personal injury and property damage liability with limits no less than \$1,000,000 per occurrence for bodily injury and property damage, and \$2,000,000 in the aggregate, with a deductible not to exceed Five Thousand Dollars (\$5,000.00) covering all actions of CGM, and all acts or omissions within the Facility and/or Shared Facilities. Said policy or policies shall name the City as an additional insured on a primary and non-contributory basis and shall reflect the hold harmless provisions contained herein. If CGM serves alcohol of any kind, Liquor Liability, with a limit of \$1,000,000 per occurrence shall be required in addition to the coverage outlined above.

2. Worker's Compensation Insurance for all employees of CGM including statutory limits for employer's liability insurance contained in Florida Statutes Section 440.
3. Automobile Liability insurance covering all owned, non-owned and hired vehicles of CGM with a Combined Single Limit of no less than one million dollars per occurrence. If vehicles are not owned or leased (long term) by CGM, then only hired and non-owned coverage applies.
4. Property insurance covering all of CGM's furniture, equipment, security systems, displays, collections, personal property of CGM, and items on loan to CGM, on a replacement cost basis using as a minimum standard the equivalent terms and conditions included in the most recent edition of an unendorsed ISO (Insurance Services Office, Inc.) "Cause of Loss-Special Form." In addition, business interruption coverage in an amount sufficient to reimburse CGM for a minimum of one year's income for direct or indirect loss on an actual loss sustained basis shall be provided. In any event, CGM waives any claim it may have against the City and any insurer of the City for any type of property insurance loss, whether owned by CGM or owned by others in the care, custody or control of CGM, and for any claim for business interruption. Failure to maintain adequate insurance coverage shall not relieve CGM of its obligations as set forth in this Agreement, including, but not limited to, CGM's obligation to rebuild and reopen as set forth in this Agreement. City may require CGM to provide an appraisal to determine or substantiate that an appropriate amount of insurance coverage has been purchased. The deductible for any type of property insurance or inland marine insurance shall not exceed five thousand dollars (\$5,000) for all other perils and five percent (5%) for windstorm/hail coverage.
5. Comprehensive Boiler and Machinery and/or Equipment Breakdown Insurance, including electrical apparatus, with a deductible not to exceed five thousand dollars (\$5,000). The limit of insurance shall be the same limit of insurance evidenced to City on the property insurance policy and shall include coverage for business interruption

in an amount sufficient to reimburse CGM for a minimum of one year's income on an actual loss sustained basis for direct or indirect loss, including overhead power lines.

6. Other (or increased amounts of) insurance which City shall from time to time deem advisable or appropriate. Such new or additional insurance to be effective as of the sooner of ninety (90) days after notice thereof or the next annual renewal of any policy being increased (as applicable).

All applicable policies shall name the City as an additional insured on a primary and non-contributory basis, and all applicable policies shall name the City as a loss payee.

All insurance policies evidenced to the City shall contain a waiver of subrogation endorsement in favor of the City.

All insurance policies evidenced to the City shall contain provisions and/or be endorsed so that the City will receive written notice, by receipted delivery, at least thirty (30) days in advance of any cancellation, non-renewal or material change of any insurance policy that has evidenced to the City. The City will accept the State of Florida statutory notice provisions (including 10 day notice for cancellation due to non-payment of premium) provided such notice is provided to the City in the same manner it is provided to the first named insured, the CGM. **The standard cancellation language on a certificate of insurance does not meet this requirement.**

All of the above insurance policies evidenced to the City shall be placed insurance companies with an A.M. Best or equivalent rating of "A-", "VI" or better, qualified to do business under laws of the State of Florida.

Said policies shall contain a "severability of interest or "cross liability" clause without obligation for premium payment of the City. The City reserves the right to request a copy of the required policies directly from their insurance representative for review at any time.

CGM shall provide evidence of all insurance required under this Article X to City, along with applicable copies of all applicable endorsements prior to occupying the Facility, and at a

minimum, evidence of Commercial General Liability Insurance coverage shall be provided prior to execution of this Agreement by City.

Failure on the part of the CGM to obtain and maintain all required insurance coverage is a material breach upon which the City may, in its sole discretion, immediately terminate this Agreement or obtain such insurance on behalf of CGM and charge the cost therefor to CGM, along with a twenty percent (20%) administration fee. CGM agrees to pay any increase in City's insurance premiums, resulting from CGM's activities, whether or not City has consented to such activity.

If City's insurance premiums for any separate insurance carried by City exceed the standard premium rates for similar property because the nature of CGM's operation results in extra hazardous exposure, then CGM shall reimburse City, immediately upon receipt of appropriate invoices from City, for such increase in premiums.

B. City shall provide Commercial General Liability insurance with regard to the City Portion up to the limits contained in Florida Statutes Section 768.28. City, at its cost, shall insure the building, structure, roof, and major building systems of the Entire Facility on a 100% replacement cost basis, and shall cover the cost of any deductible for claims that are not caused directly or indirectly by CGM, its agents, employees or contractors.

C. CGM's contractors and subcontractors shall provide evidence of insurance, and CGM shall include or cause to be included in each contract for work to be performed at the Entire Facility on behalf of CGM the following insurance requirements:

(a) Installation, floater or builder risk-completed value fire and extended coverage form covering damage to the construction and improvements to be made by CGM in amounts at least equal to the estimated complete cost of the construction and improvements with one hundred percent (100%) coinsurance protection. City and CGM shall be named as an additional insured and loss payee.

(b) Commercial General Liability insurance with broad form endorsement or equivalent, product liability, contractual liability, personal and advertising injury, severability of interests with cross liability provision, and personal injury and property damage liability with limits

no less than \$1,000,000 per occurrence for bodily injury and property damage, and \$2,000,000 in the aggregate, and with a deductible not to exceed Five Thousand Dollars (\$5,000.00). Said policy or policies shall name the CGM and City as an additional insured on a primary and non-contributory basis and shall reflect the hold harmless provisions contained herein.

- (c) Worker's Compensation Insurance for all employees of contractor including statutory limits for employer's liability insurance contained in Florida Statutes Section 440.
- (d) Automobile Liability insurance covering all owned, non-owned and hired vehicles with a Combined Single Limit of no less than one million per occurrence. If vehicles are not owned or leased (long term) by the contractor, then only hired and non-owned coverage applies.

Evidence of insurance of all contractors and subcontractors working under this Agreement shall be maintained and kept for a period of time no less than the applicable statute of limitations and/or statute of repose for any claim that could be brought against CGM and/or City and/or for any claim that could be made against the contractor as a result of the work performed. These records must be made available to the City upon request. Evidence of insurance shall include a Certificate of Insurance and copies of all applicable endorsements evidencing the required coverage. The Certificate of Insurance alone does not evidence insurance adequately. This includes, but is not limited to, endorsements evidencing additional insured status on a primary and non-contributory basis, waivers of subrogation, and endorsements amending the standard cancellation clause. The obligations set forth in this paragraph shall survive expiration or earlier termination of this Agreement.

CGM and its contractors and/or subcontractors shall comply with Florida Statutes Section 255.05, as applicable.

ARTICLE XIV

Indemnification

A. CGM hereby covenants and agrees that it will hold City harmless from and indemnify City against any claim, loss or expense sustained by City arising directly or indirectly out of the

performance by CGM (or City) of this Agreement relative to claims for personal injury, disease, death, loss of use, advertising injury, or property damage on the part of any third party (including employees and agents of CGM) or relative to any loss or damage or both to CGM's or City's property from any cause whatsoever, excluding only the gross negligence of City, its agents, representatives or employees occurring within the Facility and/or Shared Facilities. In amplification of the foregoing, CGM shall be required to indemnify City against or hold City harmless even from any such liability (other than any liability for accidents or events occurring outside of the immediate vicinity of the Facility and Shared Facilities) which results from the negligence (but excluding the gross negligence) of City, its agents, representative or employees. The obligations of CGM under this Article XIV shall not be limited in any respect by the requirements of Article XIII.

At CGM's expense, CGM shall promptly and diligently settle or defend any claim, action, or proceeding brought against City or CGM jointly or severally arising out of or connected with any of the foregoing, and CGM shall hold City harmless from and fully indemnify City against any judgment, loss or settlement on account thereof, regardless of the jurisdiction in which any such claims, actions, or proceedings may be brought. In amplification of the foregoing, CGM shall be required to indemnify City against or hold City harmless even from any such liability (other than any liability for accidents or events occurring outside of the immediate vicinity of the Facility and/or Shared Facilities) which results from the negligence (but excluding the gross negligence) of City, its agents, representatives or employees. The obligation of City under this Article XIV shall not be limited in any respect by the requirements of Article XIII.

CGM shall reimburse City upon demand for any money or other property which City is required to pay out for any reason whatsoever, except as is otherwise expressly provided herein, including without limitation, charges or debts incurred or assumed by City relative to judgments, settlement, or expenses in defense of any claim, civil or criminal action, proceeding, charge, or prosecution instituted or maintained against City or CGM, jointly or severally, related to or arising out of (a) the condition or use of the Facility and/or Shared Facilities; (b) acts or omissions on the part of the CGM, or employees of the CGM; (c) events arising out of, or based upon any law, regulation, requirement, contract or award relating to the hours of employment, working conditions, wages and/or compensation of employees or former employees of CGM; or

(d) any other cause in connection with the Facility and/or Shared Facilities; including (in each instance) any claims which are caused by the negligence (but excluding the gross negligence) of City, or its agents, representatives or employees.

Notwithstanding any other provision of this Agreement, in no event shall CGM make any claim against the City on account of any alleged errors of judgment made in good faith in connection with the Entire Facility or the implementation of its rights or obligations under this Agreement, and CGM hereby releases City from any liability for such errors.

CGM is and shall be deemed to be in control and possession of the Facility and/or Shared Facilities and the museum operations, and the City shall not, in any event whatsoever, be liable for any injury or damage to any property or to any person happening in, on or about the Facility and/or Shared Facilities, nor for any injury or damage to any property of CGM, or of any other person or person contained therein.

B. Notwithstanding anything herein to the contrary, City acknowledges and agrees that, with respect to any claims or causes of action which may be asserted against City solely in its capacity as the municipality in which the museum exists (i.e., those actions or claims which could have been brought against the City even if the City did not own the demised property), shall not be subject to indemnifications by CGM under any applicable provision of this Agreement.

ARTICLE XV

CGM Budget

CGM shall fund its own museum operating budget, which shall not include any operating or capital expenses that are the responsibility of the City pursuant to this Agreement. Any contribution made by the City toward the CGM budget shall be based on a yearly grant as approved by the City Commission in its sole discretion. To qualify for funding by the City, the CGM shall at a minimum, prepare and submit a proposed budget to the City Manager no later than March 1, of each year in which CGM is seeking funding from the City. This will include anticipated and/or projected revenues (including contributions from the City) and expenses.

The City shall either hire or fund, at the City's discretion, a receptionist to provide agreed upon services to the museum under the direction of the Historical Resource Department for not

more than forty (40) hours a week.

The final balanced budget for CGM is subject to final approval by the Museum Board of Trustees.

ARTICLE XVI

Accounting

CGM shall submit to the City, by March 1 of each year, a reviewed statement prepared by a Certified Public Accountant covering the previous fiscal year. The City shall have the right to audit the books and records of CGM at all times. CGM shall maintain accurate and complete records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. CGM agrees that the City or its agents shall have access to and the right to examine, audit, excerpt, or copy any pertinent transaction, activity, records, software and any records in electronic form relating to this Agreement including but not limited to financial statements, invoices, documents, receipts, costs, and any and all other agreement or sources of information that may in the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by this Agreement. All costs shall also be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of other accounting documents pertaining in whole or in part to this Agreement and shall be clearly identified and readily accessible. The City or its designee shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.

CGM agrees to make such records, books of account, and other materials available to City at its office during normal business hours and upon three (3) days notice at a location in Miami-Dade County, Florida, provided that if any such material is located outside Miami-Dade County, then, at City's option CGM shall pay the City for the travel, per diem, and other costs incurred by the City to examine, audit, excerpt or copy such material at such other location. At such times and in such form as the City may require, there shall be furnished to City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement. All records, books of account, and other materials will be made available to City during the term of this Agreement including any and all renewals thereof and for a period of three (3) years after receipt of final payment or all pending matters are closed, whichever is later. If an audit, litigation or other action involving this Agreement is started before the end of the three year period, the records shall be retained until all issues arising out of

the action are resolved or until the end of the three year period, whichever is later. Any contract or other agreement issued by CGM or its contractors related to this Agreement for work and/or any use of the Facility or Shared Facilities exceeding one (1) week shall have an audit clause similar in form and execution to this clause.

Such inspection and audit shall be at City's expense unless it shall disclose a cumulative variance of more than five percent (5%) from the payments due to the City for any period covered by the inspection or audit, or if the audit reveals that the condition of CGM's records is such that the revenue due the City cannot be properly determined. In the event of either condition described above, the cost of such inspection or audit, including any applicable travel costs, shall be at CGM's expense and shall be immediately paid to the City within five business days of receipt of invoice.

In the event that an audit is conducted by CGM specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by the CGM, then CGM shall file a copy of the audit report with the City's auditor within thirty (30) days of CGM's receipt thereof, unless otherwise provided by applicable Federal or State law. City shall make a reasonable effort to maintain confidentiality of such audit report(s).

This audit right clause shall not construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by State, City, or Federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

ARTICLE XVII

Relationship of Parties

Nothing herein contained to the contrary shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between City and CGM. Notwithstanding the City's role under this Agreement, CGM acknowledges that this Agreement does not grant CGM any rights or create any exceptions to its obligation to comply with and meet the requirements of all the City's ordinances, resolutions and codes, and that this contractual relationship shall have no effect upon the jurisdiction and governing rights of the City over the Entire Facility and CGM shall be required to fulfill and comply with all applicable laws, rules and regulations, ordinances

and resolutions of the City as though no such contractual relationship existed, including, without limitation, all requirements of the City's Building and Zoning Department or other pertinent City agencies.

The City designates the City Manager (or his/her designee) as City's authorized representative to CGM on all matters in connection with this Agreement. This will remain as the official and primary means of communication between the respective parties to this Agreement; notwithstanding, there will be communications between City personnel, the City Commission, CGM Trustees and officers, etc. All requests for action or approvals by the City shall be sent to the City Manager for decision as to whom within the City, including the City Commission, must act or approve the matter of behalf of the City. If the City Manager's office shall be vacant or if the City Manager shall not have the full authority to act or approve matters required of the City pursuant to this Agreement, then the City shall promptly, upon written request by CGM, designate such other officer or department as may be appropriate to perform the City's obligations. The City Commission may designate one of its members as a non-voting member of the Board of Trustees of CGM.

In the event that CGM has a vacancy or long term temporary absence of its museum director, CGM may request from the City that the City provide administrative staff assistance for a short period of time acceptable to City to assist with administration of the museum, during which time CGM shall work in good faith to procure the services of a new museum director or interim museum director. The City may provide such interim assistance, or not, in its sole discretion. In the event that the City elects to provide such interim assistance, it shall incur no liability therefor, regardless of the City's negligent performance or failure to perform with regard to the provision of such assistance, and shall have the right to terminate such services at any time. CGM agrees to and shall indemnify and save harmless the City, its employees and agents, for and against all third party claims, lawsuits, and losses alleged to be caused by the City's performance, negligent performance, or failure to perform with regard to such assistance.

ARTICLE XVIII

Non-Compete

The City will attempt not to undertake, through its agencies or through other entities, programs, which will conflict with or duplicate specific CGM programs. It will be in the City's sole discretion to determine whether such a conflict exists. This Article in no way is meant to restrict either party's ongoing efforts to assist proposed or existing programs.

ARTICLE XIX

Mutuality of Interest

The City and CGM agree that the creation and success of a local museum is of mutual interests to the parties. The program(s) delivered to the public cannot be achieved without the mutual cooperation in fact and spirit of both parties. The City and CGM will work to ensure that both governing bodies and employees will work to achieve the most favorable program(s) and image of the City and Museum possible in the eyes of the public. CGM acknowledges that a portion of the cost of construction and development of the Coral Gables Museum was funded with the proceeds of governmental bonds the interest on which is excluded from gross income for federal income tax purposes. CGM and the City acknowledge that they will not enter into any agreement or take any action that would adversely affect such exclusion from gross income for federal income tax purposes of the interest on such bonds.

ARTICLE XX

Conformance with City Policy

CGM shall comply with all federal, state and local statutes and laws with the City's established policy concerning no discrimination in employment, CGM membership, or in the use of CGM facilities by the general public.

ARTICLE XXI

Notices

It is understood and agreed upon between the City and CGM that written notice addressed to the City and mailed or delivered to:

As to City:

City Manager
405 Biltmore Way
Coral Gables, FL 33134

With Copy to:

City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134

As to CGM:

Executive Director
Coral Gables Museum
285 Aragon Avenue
Coral Gables, FL 33134

Any notice to be given City as provided for in this Agreement shall be in writing and shall be sent to City by United States certified mail, postage prepaid, return receipt requested, addressed to City at City's office at the notice address, or hand delivered or sent by a nationally recognized overnight courier to City at such offices. Any notice to be given CGM under the terms of this Agreement shall be in writing and shall be sent by United States certified mail, postage prepaid, return receipt requested, or hand delivered or sent by a nationally recognized overnight courier to CGM at the Facility (except that prior to commencement of the Term, notices to the CGM shall be sent to the address set to PO Box 141687, Coral Gables, FL 33114. Either party, from time to time, by such notice, may specify another address to which subsequent notice shall be sent. Any notice given by mail shall be deemed given on delivery or refusal.

ARTICLE XXII

Default and Termination

In the event the City determines that it is in the public interest to terminate this Agreement, the City may cancel this Agreement upon issuing a sixty (60) day advance written notice to CGM; provided, however, that CGM shall be given reasonable access and adequate time to vacate the Facility. CGM was created as a not-for-profit organization to operate the Coral Gables museum at the Facility as its primary location, and the parties agree that the

primary purpose of this Agreement is provide for a museum in the City for the benefit of the City and its residents. If the City determines that CGM has failed to continue with its primary purpose as provided herein, then this agreement shall terminate in its entirety, subject to Article XLIII.

The City and CGM acknowledge that upon termination, all furniture, fixtures, collections, exhibits, displays, and any other items owned by CGM or the City will remain with the Facility. In the event the City elects to terminate, CGM shall have the right to present any objections to the City Commission, however the right to present any objections shall not diminish the City's right to terminate in its sole discretion. In the event the City exercises such right of termination and ceases using the Facility as a museum, the City shall have no further liability; provided, however, that the City shall commit to invest in other historic uses within the City of Coral Gables an amount equal to the unamortized value of any land, real property or permanent improvements incorporated into the Facility [amortized over a twenty (20) year period] of funds donated to CGM expressly for the purpose of construction of a museum. It is acknowledged that money received for grants shall not be considered donations hereunder. Upon written notice canceling this Agreement, CGM agrees to vacate the Facility and Shared Facilities with due diligence, but in no event more than one hundred and eighty (180) days.

CGM shall be in default if any one or more of the following events (herein sometimes called "Events of Default") shall happen:

- A. if CGM fails to make any payments due to City after thirty (30) days' written notice under the Agreement at the time and in the manner required by the Agreement;
- B. if default shall be made by CGM in the performance of, or compliance with, any of the covenants, agreements, or terms or conditions contained in this Agreement or default be made by CGM in compliance or non-compliance with any and all Laws now in force or which may hereafter be in force, and such default shall continue for a period of thirty (30) days after written notice thereof from City to CGM; provided, however, that if CGM is unable to cure such default within such thirty (30) day period and such default results solely from the failure to obtain a building permit after diligent effort and such need for a building permit is not the result of any actions of CGM, then, and in that event, CGM shall have such additional reasonable time as is necessary;

C. if CGM shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, wage earner's plan, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other debtor's relief statute or law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of CGM or of all or any substantial part of CGM's properties or of the Facility; or

D. if within ninety (90) days after commencement of any proceeding against CGM seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other debtor's relief statute or law, such proceeding shall not have been dismissed, or stayed on appeal, or if, within ninety (90) days after the appointment, without the consent or acquiescence of CGM, of any trustee, receiver or liquidator of CGM or of all or any substantial part of CGM's properties or of the Facility, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within ninety (90) days after the expiration of any such stay such appointment shall not have been vacated; or

E. if the Facility shall be seized under any levy, execution, attachment or other process of court and the same shall not be promptly vacated or stayed on appeal or otherwise, or if the CGM's interest in the Entire Facility is sold by judicial sale and the sale is not promptly vacated or stayed on appeal or otherwise; or

F. if CGM:

1. fails to open to the public within 200 days of the Commencement Date, or
2. vacates, abandons, or deserts the Facility, or
3. ceases the continual operation of CGM's business at the Facility for fifteen (15) continuous days and forty-five (45) days (in the aggregate)

in any one year during the Term, unless prevented from operating said business as a result of the occurrence of Force Majeure, or

4. ceases the primary operation as a museum; or
5. violates any terms or conditions of this Agreement more than two (2) times during the term of the Agreement stated herein within any four (4) consecutive years, or
6. loses its 501c3 non-profit designation.

The term "Force Majeure" as used in this Agreement shall mean "Acts of God", labor disputes (whether lawful or not), material or labor shortages, restrictions by any governmental or utility authority, civil riots or floods, but shall not mean financial inability.

In the Event of a Default, City may, at its option:

1. terminate this Agreement and retake possession;
2. cure the default and charge CGM the cost to cure such default along with a twenty percent (20%) administrative fee;
3. deem all of CGM's personal property, including, but not limited to CGM's furniture, fixture and equipment, collections, displays, goods and chattels from the Facility and Shared Facilities abandoned, and therefore the property of City, it being the intent of the parties that all such items shall belong to the City upon expiration or earlier termination, including termination for an Event of Default, of this Agreement, and otherwise enforce City's lien on such items by distress, foreclosure or otherwise; and/or
4. pursue any other right or remedy available at law or equity;

In addition to the foregoing, in the event CGM defaults three or more times during any four (4) consecutive years of the Term of this Agreement, City, at its option, may terminate this Agreement.

All rights and remedies granted in this Agreement to City or available at law or equity shall be cumulative and not mutually exclusive. In no event shall the City be liable for indirect,

consequential, or punitive damages or for damages based on lost profits. Upon an Event of Default, City shall be permitted to place a leasing sign on the Facility.

CGM agrees that, in exchange for the promises made in this Agreement and other good and valuable consideration received from City, in the event CGM files a voluntary petition in bankruptcy or is the subject of an involuntary bankruptcy at any time during the Term or any extensions hereof, City shall not be subject to the provisions of 11 U.S.C. §362, and shall automatically and immediately be entitled to relief from the stay imposed thereby without necessity of further action or court approval. Nothing contained in this Agreement shall limit or prejudice the right of City to prove for and obtain, in proceedings for the termination of this Agreement by reason of bankruptcy or insolvency, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above. The failure or refusal of City to relet the Premises or any part or parts thereof shall not release or affect CGM's liability for damages.

ARTICLE XXIII

Successors and Assigns

All terms and provisions of this Agreement to be observed and performed by CGM shall be applicable to and binding upon CGM's respective heirs, personal representatives, successors and assigns, subject, however, to the restrictions as to assignment and subletting by CGM as provided herein.

ARTICLE XXIV

City's Control of Lawsuits

The parties agree that in any lawsuit brought in its name or defended in its name, City must retain all final control and authority of the lawsuit. Therefore, in any lawsuit envisioned in this agreement in which City is a party, City retains full control of the lawsuit, including full authority to determine what legal actions or positions may be asserted to the courts in the name of City and the full authority to settle or compromise any claim on behalf of City. CGM agrees that its responsibilities under this Agreement continue in full force and effect regardless of any decision of City in this regard.

ARTICLE XXV

Mechanic's Liens

CGM shall keep the Entire Facility and all parts thereof at all times free of mechanic's liens and any other lien for labor, services, supplies, equipment or material purchased or procured, directly or indirectly, by or for CGM. CGM further agrees that CGM will promptly pay and satisfy all liens of contractors, subcontractors, mechanics, laborers, materialmen, and other items of like character, and will indemnify City against all expenses, costs and charges, including bond premiums for release of liens and attorneys' fees and costs reasonably incurred in and about the defense of any suit in discharging the Entire Facility or any part thereof from any liens, judgments, or encumbrances caused or suffered by CGM. In the event any such lien shall be made or filed, CGM shall bond against or discharge the same within ten (10) days after the same has been made or filed. It is understood and agreed between the parties hereto that the expenses, costs and charges above referred to shall be immediately due upon invoice.

CGM shall not have any authority to create any liens for labor or material on the City's interest in the Entire Facility and all persons contracting with CGM for the construction or removal of any facilities or other improvements on or about the Entire Facility, and all materialmen, contractors, mechanics, and laborers are hereby charged with notice that they must look only to CGM and to CGM's interests in the Entire Facility to secure the payment of any bill for work done or material furnished at the request or instruction of CGM. The provisions of this Article shall survive expiration or earlier termination of this Agreement.

ARTICLE XXVI

Loss; Damage

City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, gas, electricity, water, rain or leaks or from the pipes, appliances or plumbing works or from the roof, street or sub-surface or from any other place or by dampness, humidity or by any other cause or nature whatsoever, unless due to the gross negligence of City, its agents, or employees; nor shall City or its agents be liable for any such damage caused by other tenants or persons or caused by construction of any private, public or quasi-public work; nor shall City be liable for any latent defect in the Entire Facility. CGM shall give immediate notice to City in case of fire or accidents in the Entire Facility or of defects

therein or in any fixtures or equipment. City shall not be responsible or liable for the theft, loss or damage to person or property in, on or about the Facility or Shared Facilities.

ARTICLE XXVII

Estoppels

CGM agrees that from time to time, upon not less than ten (10) days' prior request by City, CGM will deliver to City a statement in writing certifying (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the Agreement as modified is in full force and effect and stating the modifications); (b) the dates to which any charges have been paid; (c) that City is not in default under any provisions of this Agreement, or, if in default, the nature thereof in detail; and (d) other matters reasonably requested by City. Failure to provide such estoppel statement as required shall be a material default of this Agreement.

ARTICLE XXVIII

Casualty

If any improvements on the Entire Facility shall be destroyed or damaged in whole or in part during the Term as a result of fire or other casualty not covered under the hazard insurance maintained by City, or as a result of the gross negligence or willful misconduct of CGM or any person occupying the Facility or Shared Facilities under CGM, then City shall have the option of not rebuilding the Entire Facility and canceling the terms of this Agreement. In the event that City does not elect to terminate the Agreement, then City shall repair, rebuild, restore, or reconstruct the structure of the Entire Facility, but only to the extent of the insurance proceeds available therefor. CGM shall at its own expense promptly repair, restore, or reconstruct those portions of Facility and Shared Facilities required to be insured by CGM. CGM shall have the right to use for such purposes the proceeds of any hazard insurance policy(ies) maintained by CGM, however, CGM shall be responsible for any amounts not covered by CGM's insurance coverage. If CGM fails, within thirty (30) days following written notice from City, to commence such repair, restoration or reconstruction or fails thereafter diligently to prosecute the same to completion, then upon written notice to CGM, City shall have the right (but not the obligation) to assume full and exclusive control of CGM's insurance proceeds and cause such repair,

restoration or reconstruction to be done; provided, however that CGM shall have such additional reasonable time as is necessary in order to coordinate its reconstruction efforts with any reconstruction being or to be done by City. CGM hereby expressly authorizes City to enter the Facility and Shared Facilities for such purposes and CGM agrees that such entry by City shall have no other legal consequences. If the damage or destruction resulted from the gross negligence or willful misconduct of CGM or any person occupying the Facility or Shared Facilities or portion thereof under CGM, then all costs and expenses incurred in accomplishing repairs, restoration or reconstruction in excess of the insurance proceeds available therefor (if any) shall be paid by CGM, and if City shall advance any sums for such excess costs and expenses, then CGM shall repay and reimburse City therefor promptly upon demand and said sums shall be considered due. Nevertheless, to the extent that any of the above-described property damage is covered by valid, collectible insurance, the City hereby waives any subrogation rights against the City, and CGM likewise agrees to waive any subrogation rights against the City. In no event shall City be liable for interruption to CGM's business or for damage to or replacement or repair of CGM's personal property, trade fixtures, and inventory.

ARTICLE XXIX

Condemnation

In the event that the Entire Facility or any material part thereof is taken for any public or quasi-public use by condemnation or by right of eminent domain, or purchase in avoidance or settlement of a condemnation or eminent domain proceeding, City and CGM agree that this Agreement shall be cancelled. Any and all condemnation awards shall be the property of the City.

ARTICLE XXX

No Waiver

Failure of City to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but City shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, in law and/or in equity. No waiver of any term, provision, condition or covenant of this Agreement by City nor the failure of City to insist upon strict performance of

one or more covenants or conditions of this Agreement shall be deemed to imply or constitute a further waiver by City of any other term, provision, condition or covenant of this Agreement, and no acceptance of payment shall be deemed a waiver of any default hereunder, nor shall such acceptance operate as a waiver of any provisions of the Agreement or any of City's rights, remedies, privileges or options.

ARTICLE XXXI

Right of Entry

City, or any of its agents, shall have the right to enter the Facility during all reasonable hours and after twenty-four (24) hours notice to CGM (except in the event of an emergency, to be determined in City's sole discretion, in which event no notice shall be required) to examine the same or to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort, or preservation thereof or to otherwise exhibit the Facility to third parties, including, without limitation, mortgagees, insurance examiners and building inspectors. Said right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations, or additions which do not conform to this Agreement. City and CGM agree that any restriction on City's right of entry to the Facility applies solely to City in its capacity under this Agreement and does not apply to City in its capacity as a municipality with jurisdiction over the Facility and the property where it is located.

ARTICLE XXXII

Surrender

CGM agrees to surrender to City, at the end of the Term of this Agreement and/or upon any cancellation or early termination of this Agreement, the Facility, furniture, fixtures, equipment, collections, displays, and exhibits in as good condition as the Facility was at the beginning of the Term of this Agreement, ordinary wear and tear, and damage by fire, or other casualty not caused by CGM's negligence excepted. CGM agrees that if CGM does not surrender the Facility to City at the end of the Term of this Agreement, then CGM will pay to City, to the extent permitted by law and as liquidated damages, five thousand dollars (\$5,000) for each month or portion thereof that CGM holds over, plus all damages that City may suffer on account of CGM's failure to so surrender to City possession of the Facility, and will indemnify

and save City harmless from and against all claims made by any succeeding occupant of the Facility against City on account of delay of City in delivering possession of the Facility to the succeeding occupant so far as such delay is occasioned by failure of CGM to so surrender the Facility in accordance herewith or otherwise. No receipt of money by City from CGM after termination of this Agreement or the service of any notice of commencement of any suit or final judgment for possession shall reinstate, continue or extend the Term of this Agreement, affect any such notice, demand, suit or judgment, or waive any of City's rights and remedies set forth in this Agreement. No act or thing done by City or its agents during the Term hereby granted shall be deemed an acceptance of a surrender of the Facility, and no agreement to accept a surrender of the Facility shall be valid unless it be made in writing and signed by a duly authorized officer or agent of City. Any personal property, furniture, fixtures, goods or chattels remaining in the Facility or Shared Facilities after the Termination Date shall be deemed abandoned. No surrender of the Facility prior to the end of the Term shall terminate this Agreement unless City agrees to such termination in writing.

ARTICLE XXXIII

Trial By Jury

It is mutually agreed by and between City and CGM that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters arising out of or in any way connected with this Agreement, the relationship of City and CGM, and CGM's use or occupancy of the Facility and Shared Facilities. CGM further agrees that CGM shall not interpose any noncompulsory counterclaim(s) in a summary proceeding or in any action based upon non-payment hereunder. CGM expressly waives any and all rights of redemption granted by or under any present or future laws.

ARTICLE XXXIV

Invalidity of Provision

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision, to persons or circumstances other than those as to

which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law. This Agreement shall be construed in accordance with the laws of the State of Florida and venue shall be in Miami-Dade County.

ARTICLE XXXV

Time of Essence

It is understood and agreed between the parties hereto that time is of the essence of all the terms and provisions of this Agreement.

ARTICLE XXXVI

Attorney's Fees

If either party defaults in the performance of any of the terms or provisions of this Agreement and by reason thereof the other party employs the services of an attorney to enforce performance of the covenants, or to perform any service based upon defaults, or in the event a party successfully defends an action against them for breach under this Agreement, then in any of said events the prevailing party shall be entitled to receive from the other party reasonable attorneys fees and expenses and costs incurred by the prevailing party pertaining thereto (including costs and fees relating to any appeal) and in enforcement of any remedy.

ARTICLE XXXVII

Miscellaneous

The terms CGM and City as herein contained shall include singular and/or plural, masculine, feminine and/or neuter, heirs, successors, personal representatives and/or assigns wherever the context so requires or admits. The terms and provisions of this Agreement are expressed in the total language of this Agreement and the Article or article headings are solely for the convenience of the reader and are not intended to be all-inclusive and shall not be deemed to limit or expand any of the provisions of this Agreement. Anything herein to the contrary notwithstanding, City shall not be or be deemed to be in default hereunder unless it has failed to cure its default within a reasonable time following its receipt of notice thereof. All exhibits attached to this Agreement, if any, are hereby incorporated in and made a part hereof. Neither

this Agreement nor any memorandum or short form thereof shall be recorded in the Public Records of Miami-Dade County, Florida. CGM certifies that it is not acting directly or indirectly for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and that it is not engaged in this transaction, directly or indirectly on behalf of any such person, group, entity or nation. CGM agrees to defend, indemnify and hold harmless City from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification; this indemnity shall survive expiration or earlier termination of this Agreement. The drafting and negotiation of this Agreement have been participated in by each of the parties, and for all purposes, therefore, this Agreement shall be deemed to have been drafted jointly by each of the parties.

ARTICLE XXXVIII

Brokerage

CGM represents and warrants that it has dealt with no broker, salesman, agent or other person in connection with this transaction and that no broker, salesman agent or other person brought about this transaction, and CGM agrees to indemnify and hold City harmless from and against any claims by any other broker, salesman, agent or other person claiming a commission or other form of compensation by virtue of having dealt with CGM with regard to this leasing transaction. The provisions of this Article shall survive the termination of this Agreement.

ARTICLE XXXIX

Authority to Execute

CGM hereby represents and warrants to City that the Agreement has been duly authorized, executed and delivered by and on behalf of CGM and constitutes a legal, valid and binding agreement of CGM enforceable in accordance with its terms. Simultaneously with the execution of the Agreement, CGM shall deliver to City a certified resolution of the Board of Trustees of CGM authorizing the execution and delivery of the Agreement by CGM and the performance of CGM's obligations hereunder.

ARTICLE XL

Radon Gas

RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

ARTICLE XLI

Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute but one and the same instrument.

ARTICLE XLII

Survival

All provisions of this Agreement intended by their terms to survive expiration or earlier termination shall survive including, but not limited to all indemnification obligations contained herein.

IN WITNESS WHEREOF, the parties hereto have signed, sealed and delivered this Agreement at Miami-Dade County, Florida, as of the day and year first above written.

CITY OF CORAL GABLES, a
municipal corporation of the State of
Florida

By: _____
Patrick Salerno
City Manager

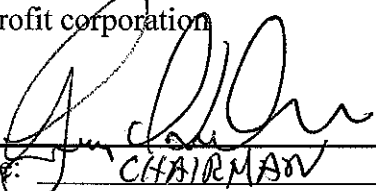
ATTEST:

By: _____
Walter Foeman
City Clerk

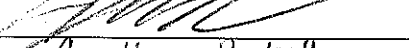
Approved as to form and legal
sufficiency:

By: _____
Lourdes Alfonsin-Ruiz
Acting City Attorney

Coral Gables Museum, Corp., a Florida not-
for profit corporation

By:  _____
Name: Cynthia Bidsill
Title: CHAIRMAN

ATTEST/WITNESS:

By:  _____
Name: Cynthia Bidsill


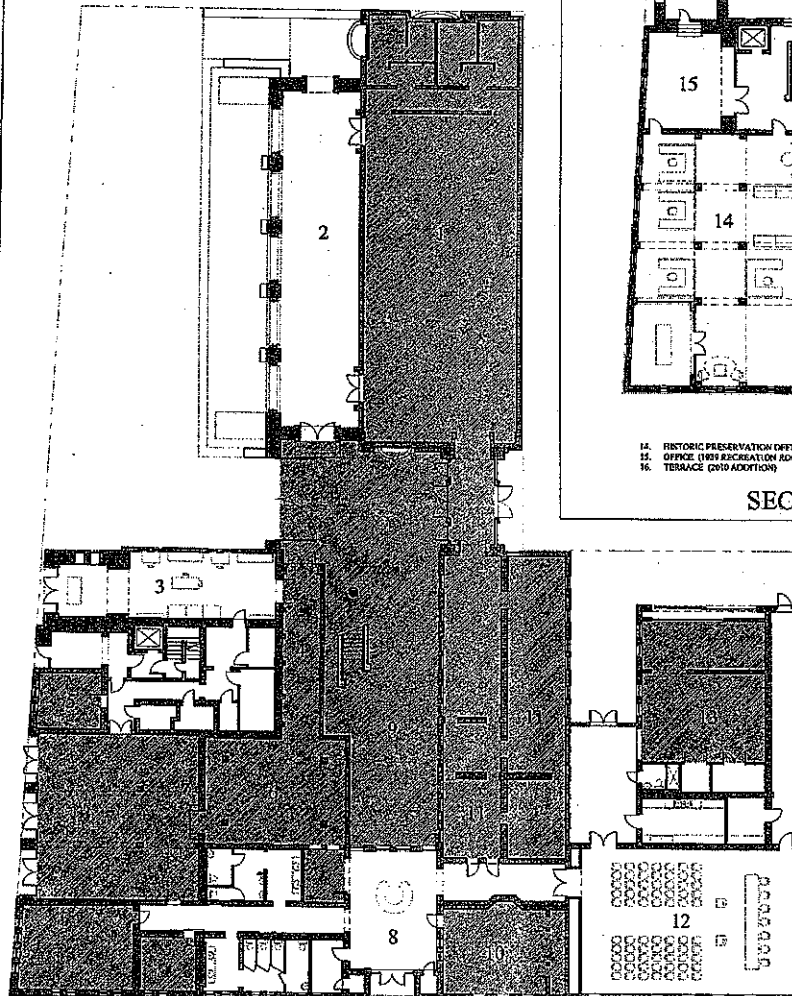
By:  _____
Name: OSCAR Meli

EXHIBIT A

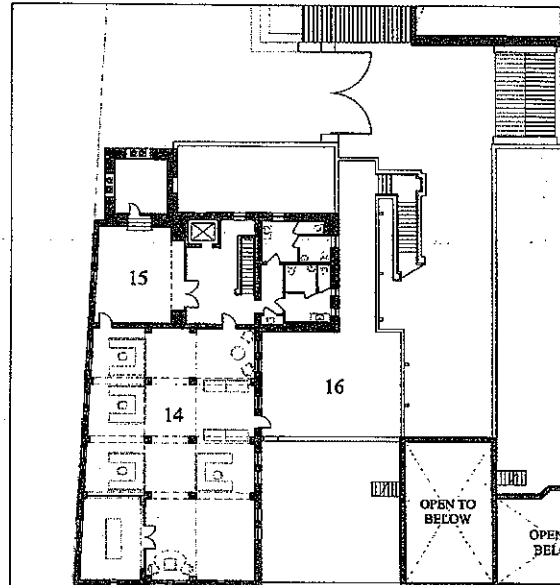
MISSION STATEMENT

The Museum's mission is to celebrate, investigate and explore the civic arts of architecture and urban and environmental design, including fostering appreciation for the history, vision, and cultural landscape of Coral Gables to promote beauty and planning as well as historic and environmental preservation. The museum programming will include exhibitions, collections, educational offerings, publications, and special events.

EXHIBIT B: FACILITY



FIRST FLOOR



LEGEND

- 14. HISTORIC PRESERVATION OFFICES (1939 DORMITORY)
- 15. OFFICE (1939 RECREATION ROOM)
- 16. TERRACE (2010 ADDITION)

SECOND FLOOR

LEGEND

- 1: FEWELL GALLERY (2010 ADDITION)
- 2: LOGGIA (2010 ADDITION)
- 3: ARCHIVE (1939 HOOK & LADDER ROOM)
- 4: DISPLAY (2010 ADDITION)
- 5: VAULT (1939)
- 6: GALLERY (2010 ADDITION)
- 7: GALLERY (1939 APPARATUS ROOM)
- 8: LOBBY (1939)
- 9: SCULPTURE GARDEN
- 10: GIFT SHOP (1939 COURT ROOM)
- 11: CORAL GABLES EXHIBIT (1939 JAIL)
- 12: COMMUNITY ROOM (1952 COURT ROOM)
- 13: WORK ROOM (1939 WORK ROOM)

DRAWING:

DATE:

SHEET:

REVISIONS:

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△
△

JORGE L. HERNANDEZ
Architect

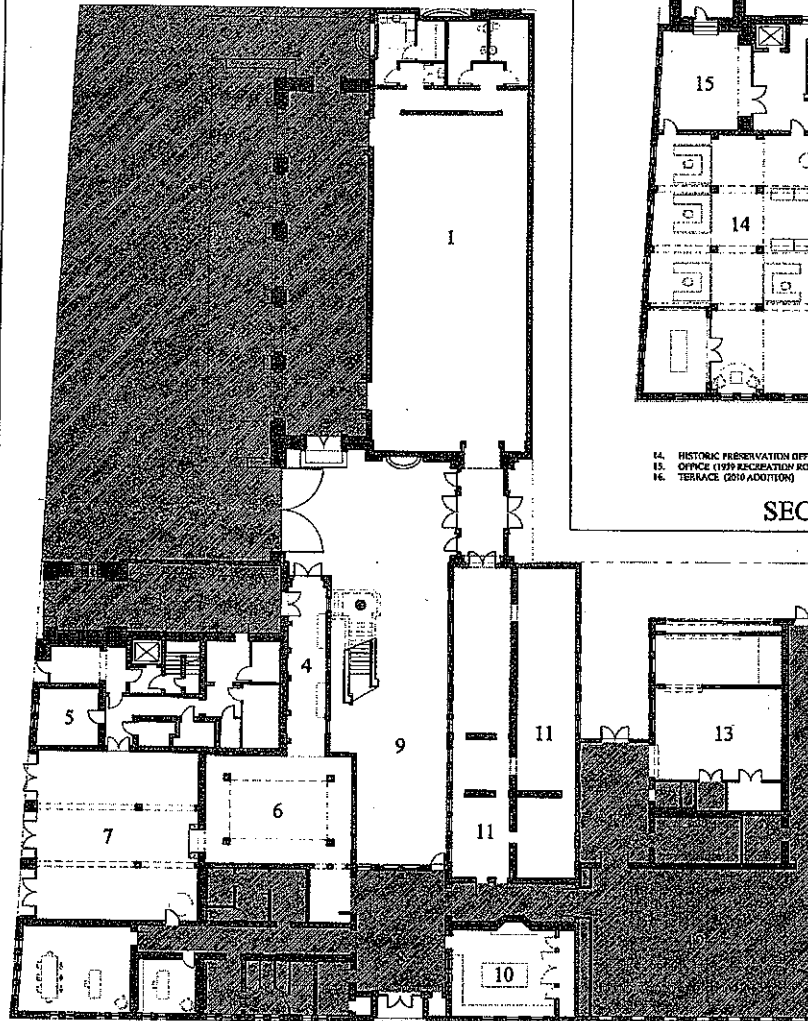
FLORIDA REGISTRATION # 0161

337 Palermo Avenue, Coral Gables, Florida 33134 (305) 774-0022

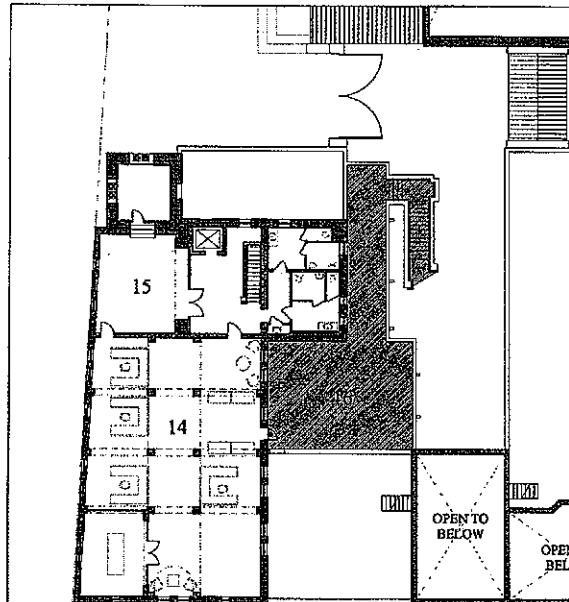
PROJECT:
C.G. MUSEUM

NO.

EXHIBIT C: SHARED FACILITIES



FIRST FLOOR



LEGEND

- 14. HISTORIC PRESERVATION OFFICES (1939 DORMITORY)
- 15. OFFICE (1939 RECEPTION ROOM)
- 16. TERRACE (2010 ADDITION)

SECOND FLOOR

LEGEND

- 1: FEWELL GALLERY (2010 ADDITION)
- 2: LOGGIA (2010 ADDITION)
- 3: ARCHIVE (1939 HOOK & LADDER ROOM)
- 4: DISPLAY (2010 ADDITION)
- 5: VAULT (1939)
- 6: GALLERY (2010 ADDITION)
- 7: GALLERY (1939 APPARATUS ROOM)
- 8: LOBBY (1939)
- 9: SCULPTURE GARDEN
- 10: GIFT SHOP (1939 COURT ROOM)
- 11: CORAL GABLES EXHIBIT (1939 JAIL)
- 12: COMMUNITY ROOM (1932 COURT ROOM)
- 13: WORK ROOM (1939 WORK ROOM)

DRAWING:

DATE:

SHEET:

REVISIONS:

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JORGE L. HERNANDEZ
Architect

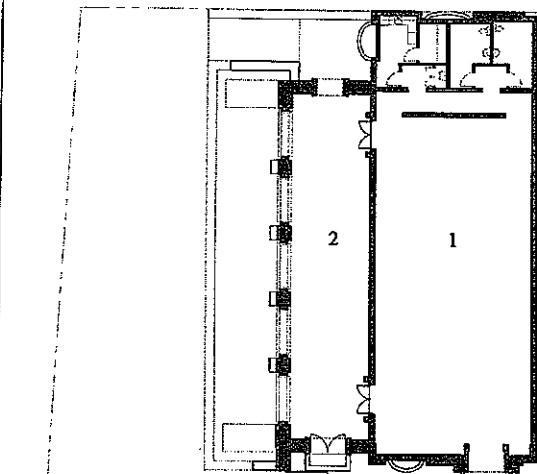
FLORIDA REGISTRATION # 9401

337 Palermo Avenue, Coral Gables, Florida 33134 (305) 774-0022

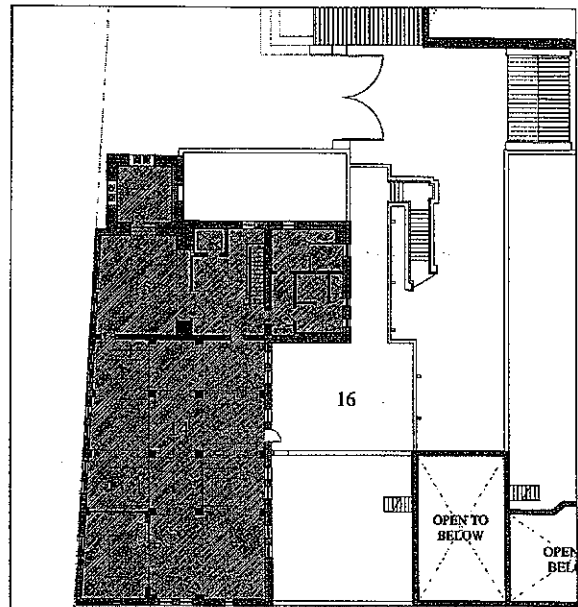
PROJECT:
C.G. MUSEUM

NO.

EXHIBIT D: CITY PORTION



FIRST FLOOR



LEGEND

- 14. HISTORIC PRESERVATION OFFICES (1939 DOMESTORY)
- 15. OFFICE (1939 RECREATION ROOM)
- 16. TERRACE (2010 ADDITION)

SECOND FLOOR

LEGEND

- 1: FEWELL GALLERY (2010 ADDITION)
- 2: LOGGIA (2010 ADDITION)
- 3: ARCHIVE (1939 HOOK & LADDER ROOM)
- 4: DISPLAY (2010 ADDITION)
- 5: VAULT (1939)
- 6: GALLERY (2010 ADDITION)
- 7: GALLERY (1939 APPARATUS ROOM)
- 8: LOBBY (1939)
- 9: SCULPTURE GARDEN
- 10: GIFT SHOP (1939 COURT ROOM)
- 11: CORAL GABLES EXHIBIT (1939 JAIL)
- 12: COMMUNITY ROOM (1932 COURT ROOM)
- 13: WORK ROOM (1939 WORK ROOM)

DRAWING:

DATE:
11.25.09

SHEET:

REVISIONS:

△
△
△

JORGE L. HERNANDEZ
Architect

FLORIDA REGISTRATION # 9860

337 Palermo Avenue, Coral Gables, Florida 33134 (305) 774-0022

PROJECT:
C.G. MUSEUM

NO.

EXHIBIT E

CERTIFICATE AFFIRMING DATES

This Certificate is being provided pursuant to that certain Amended and Restated Agreement for Operation of the Coral Gables Museum dated as of December 15, 2009 (the "Agreement"), by and between the City of Coral Gables ("City") and Coral Gables Museum, Inc. ("CGM"). The parties to the Agreement desire to confirm the following:

1. The Commencement Date under the Agreement is _____
2. The Expiration Date under the Agreement is _____
3. The Date to Exercise the Right NOT to renew the Agreement for the first renewal term of 20 years is _____
4. The Date to Exercise the Right NOT to renew the Agreement for the second renewal term of 20 years is _____

WITNESS WHEREOF City and CGM have executed this Certificate under seal on _____, 20____.

CITY OF CORAL GABLES, a
municipal corporation of the State of
Florida

By: _____
Patrick Salerno
City Manager

ATTEST:

By: _____
Walter Foeman
City Clerk

Approved as to form and legal
sufficiency:

By: _____
City Attorney

Coral Gables Museum, Corp., a Florida not-
for profit corporation

By: _____
Name: _____
Title: _____

ATTEST/WITNESS:

By: _____
Name: _____

By: _____
Name: _____