

**FISCAL AGENT AGREEMENT
OF THE CORAL GABLES MUSEUM**

This Fiscal Agent Agreement 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 and CGM agree that they entered into that Agreement for Operation of the Coral Gables Museum dated as of December 14, 2006, which has been amended by that Amended and Restated Agreement for Operation of the Coral Gables Museum dated _____ (the "Operating Agreement"); and

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

WHEREAS, Robert J. Fewell and Marian Fewell, as donors, entered into that Coral Gables Museum Agreement for Gift dated April 30, 2008 to pledge a gift of \$2,000,000 to be used by the City for payment of a portion of the costs of the Coral Gables Museum (the "Donation"); and

WHEREAS, the Donation was made for the purpose of assisting the City with the construction and development of the Coral Gables Museum; and

WHEREAS, CGM, as a non-profit corporation, has received and will receive the Donation for the benefit of the City as a fiscal agent for the purpose of contributing to the construction and development of the Coral Gables Museum as more particularly set forth herein; and

WHEREAS, both CGM and the City desire that CGM act as fiscal agent pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the promises and covenants contained herein, the parties agree as follows:

1. Recitals and Other Agreements. The foregoing recitals are incorporated herein in their entirety. In addition to the Operating Agreement referenced herein, 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. In the event of any conflict of inconsistency in the definition or interpretation of any provision between this Agreement and the Operating Agreement, such conflict or inconsistency shall be resolved by giving precedence first to the body of this Agreement, and then to the Operating Agreement.

2. Receipt and Transfer of Funds. CGM, as fiscal agent, has received a portion of and shall receive the remainder of the Donation, expected in the total amount of \$2,000,000.00, for the benefit of the City. Promptly upon receipt, CGM shall remit such remaining payments of the Donation to the City for reimbursement to the City of a portion of the costs that the City has paid for the construction and development of the Coral Gables Museum. The Donation payments are expected as follows:

\$500,000 already paid to the City of Coral Gables by September 30, 2009

\$250,000 already paid to the City of Coral Gables by July 1, 2010

\$250,000 paid to the City of Coral Gables by January 31, 2011

\$250,000 paid to the City of Coral Gables by June 1, 2011

\$250,000 paid to the City of Coral Gables by November 15, 2011

\$250,000 paid to the City of Coral Gables by June 1, 2012

\$250,000 paid to the City of Coral Gables by November 15, 2012

3. Tax Status. CGM is a nonprofit 501c3 corporation whose purpose is to operate the Coral Gables Museum in accordance with the Operating Agreement. CGM shall immediately notify City of any change in its legal or tax status.

4. Annual Statement and Audit. CGM shall submit by March 1 of each year, along with its annual reviewed statement required by the Operating Agreement, a statement reporting all

disbursements made under this Agreement. CGM shall maintain complete and accurate records of all Donation payments received, and City shall have the right to audit the books of CGM at all times in accordance with the Operating Agreement.

5. Insurance and Indemnity. This Agreement shall contain the same insurance and indemnity provisions as are contained in the Operating Agreement as if such provisions were more fully set forth herein.

6. Default and Termination. This Agreement shall remain in effect until the total of \$2,000,000 of the Donation has been remitted to the City. The City shall have all available remedies at law and equity in the event that CGM is in default of this Agreement, and has failed to cure after receipt of three (3) days' written notice. Default of this Agreement shall be a default under the Operating Agreement, and a default under the Operating Agreement shall be a default under this Agreement.

7. 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.

8. Miscellaneous.

a. 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.

b. 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 and the relationship of City and CGM.

c. 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.

d. This Agreement shall be construed in accordance with the laws of the State of Florida and venue shall be in Miami-Dade County.

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

f. 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.

g. 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.

h. Neither this Agreement nor any memorandum or short form thereof shall be recorded in the Public Records of Miami-Dade County, Florida.

i. 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.

j. 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.

k. 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.

l. 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.

m. 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.

n. CGM may not assign its obligations under this Agreement.

o. 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.

p. 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.

q. In performance of the services, CGM will comply with all applicable laws, statutes, ordinances, and codes including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards.

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: George KAKOURIS
Title: CHAIRMAN

ATTEST/WITNESS:

By: _____
Name: Cynthia Birdsill

By: _____
Name: Oscar Melan