

AMENDMENT TO AND ASSIGNMENT AND ASSUMPTION OF GROUND LEASE

THIS AMENDMENT TO AND ASSIGNMENT AND ASSUMPTION OF GROUND LEASE (this "Agreement") is entered into this ____ day of _____, 2013 (the "Effective Date"), between DISCOVERY WORLD, LTD., a Wisconsin nonstock, nonprofit corporation f/k/a Museum of Science, Economics and Technology, Inc. (the "Assignor"), the MILWAUKEE PUBLIC MUSEUM, INC., a Wisconsin nonstock, nonprofit corporation (the "Assignee"), and MILWAUKEE COUNTY, WISCONSIN, a political subdivision of the State of Wisconsin (the "County").

RECITALS

A. Pursuant to a Purchase and Sale Agreement dated as of October ____, 2013 by and between Assignor and Assignee, Assignor has conveyed to Assignee all of Assignor's rights, title and interest in and to the building and all improvements, fixtures, systems and facilities (collectively, the "Improvements") located on the real property known as 815 North James Lovell Street in the City of Milwaukee, Milwaukee County, State of Wisconsin, together with Assignor's interest in and to that certain Ground Lease dated November 3, 1994 by and between the Assignor, as lessee, and the County, as lessor (the "Ground Lease") (the Improvements and Ground Lease are collectively referred to herein as the "Property"). A legal description of the Property is attached hereto as **Exhibit A** and incorporated herein. A true and correct copy of the Ground Lease is attached hereto as **Exhibit B** and incorporated herein.

B. In furtherance of the Purchase and Sale Agreement described herein, Assignor desires to assign all of its rights, interests and obligations in and to the Ground Lease to Assignee, and Assignee wishes to assume all of Assignor's rights, interests and obligations in and to the Ground Lease.

C. Pursuant to the terms of this Agreement, the County desires to consent to the assignment and assumption contained herein.

D. Assignor, Assignee and County also wish to amend the Ground Lease as provided in this Agreement.

AGREEMENT

NOW, THEREFORE, for value received, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the terms, covenants and conditions of this Agreement, Assignor, Assignee and the County agree as follows:

1. **Assignment of Ground Lease.** As of the Effective Date, Assignor hereby sells, assigns, and conveys to Assignee, its successors and assigns, all of Assignor's rights, interests and obligations arising under the Ground Lease.

2. **Assumption of Ground Lease.** As of the Effective Date, Assignee hereby accepts assignment of the Ground Lease and, in consideration thereof, hereby assumes all of the Assignor's rights, interests and obligations arising under the Ground Lease.

3. **Consent and Representations and Warranties by the County.**

- (a) The County consents to the assignment of Assignor's rights, interests and obligations under the Ground Lease to Assignee as provided in this Agreement.
- (b) The County hereby represents, warrants and covenants that:
 - i. Upon the execution and delivery of this Agreement, the obligations of the lessee under the Ground Lease will have been fully performed and satisfied through and as of the date of this Agreement, and no condition will exist which, with the giving of notice, passage of time, or both, would constitute a default under the Ground Lease; and
 - ii. Execution and delivery of this Agreement, and consummation of the transactions contemplated hereby, will not constitute a default under the Ground Lease.

4. **Assignor Indemnity.** Assignor agrees to indemnify, defend and hold Assignee and its officers, directors, partners, members, agents, employees, affiliates, attorneys, heirs, successors and assigns (collectively, "Assignee's Indemnified Parties") harmless from and against any and all liabilities, liens, claims, damages, costs, expenses, suits or judgments paid or incurred by any of Assignee's Indemnified Parties and all expenses related thereto, including, without limitation, court costs and reasonable attorneys' fees, arising out of or in any way connected or related to (i) any breach or nonperformance by Assignor of this Agreement, (ii) any liability arising because of a breach of the Ground Lease by Assignor that occurred or arose or is alleged to have occurred or arisen prior to the Effective Date and which is not solely due to actions taken by Assignee, or (iii) the ownership or operation of the Property before the Effective Date.

5. **Assignee Indemnity.** Assignee agrees to indemnify, defend and hold Assignor and its officers, directors, partners, members, agents, employees, affiliates, attorneys, heirs, successors and assigns (collectively, "Assignor's Indemnified Parties") harmless from and against any and all liabilities, liens, claims, damages, costs, expenses, suits or judgments paid or incurred by any of Assignor's Indemnified Parties and all expenses related thereto, including, without limitation, court costs and reasonable attorneys' fees arising out of or in any way connected or related to (i) any breach or nonperformance by Assignee of this Agreement, (ii) any liability arising because of a breach of the Ground Lease by Assignee that occurred or arose or is alleged to have occurred or arisen on or after the Effective Date and which is not solely due to actions taken by Assignor, or (iii) the ownership or operation of the Property on or after the Effective Date.

6. **Amendments.** The Ground Lease is hereby amended as follows:

- (a) Section 2.01 shall be amended and restated to read in full as follows:
Section 2.01. Term. The Term shall be for the period commencing on the date of this Lease and expiring at 11:59 p.m. on December 31, 2022,

(the “Initial Term”), unless extended or sooner terminated as provided herein.”

- (b) Section 2.02 shall be amended and restated to read in full as follows:

“Section 2.02. Extension of Initial Term. The Initial Term shall automatically extend for four (4) successive periods of five (5) years each (each such extended term is an “Extension Term”, and collectively such extended terms are the “Extension Terms”). (The Initial Term and the Extension Terms are collectively referred to herein as the “Term”). (The term preceding any Extension Term is the “Preceding Term”). Each Extension Term shall commence upon the expiration of the Preceding Term, except that any Extension Term shall not so commence if (a) the Lessee gives Lessor notice not less than six (6) months prior to the expiration of any Preceding Term that Lessee elects not to extend such Preceding Term, in which case this Lease shall terminate upon the expiration of such Preceding Term, or (b) the Lessor gives the Lessee notice not less than six (6) months prior to the expiration of any Preceding Term that the Lessor elects not to extend such Preceding Term, in which case this Lease shall terminate upon the expiration of such Preceding Term. All terms, covenants and conditions of this Lease applicable to the Initial Term shall be applicable to any Extension Term.”

- (c) Section 5.01 shall be amended and restated to read in full as follows:

“Section 5.01. Use of Premises. Lessee shall use the Premises in furtherance of the charitable and educational purposes set forth in Lessee’s by-laws, provided that Lessor has approved of such use in writing (such approval not to be unreasonably withheld or delayed). Lessor hereby approves the use of the Premises by Lessee as a natural history museum. Subject to Lessor’s consent, which consent shall not be unreasonably withheld or delayed, Lessee may make whatever improvements, additions or renovations to the Premises that Lessee deems necessary or desirable. Notwithstanding the foregoing, Lessor approval shall not be required for non-structural modifications or additions to the interior of the Improvements.”

- (d) Section 7.02 entitled Abandonment shall be deleted in its entirety.

- (e) Section 9.01 shall be amended and restated to read in full as follows:

“Section 9.01. Insurance. Throughout the Term hereof, Lessee shall purchase and maintain a public liability insurance policy to afford protection with limits, for each occurrence, of not less than Five Million Dollars (\$5,000,000) with respect to personal injury and death, and Five Hundred Thousand Dollars (\$500,000) with respect to property damage. Lessor shall be named as additional insured. Workers Compensation

coverage shall be at statutory limits with a waiver of subrogation in favor of Lessor. A Certificate of Insurance indicating the public liability insurance and workers compensation insurance shall be submitted to the Lessor's Risk Manager for review and approval."

(f) Section 10.01 shall be amended and restated to read in full as follows:

"Section 10.01. Casualty. In the event the Premises, or any portion thereof, is destroyed or damaged by fire, explosion or any other insured casualty, then Lessee shall have the right to terminate this lease, as of the date of the destruction, and all insurance proceeds shall be paid to Lessee. In such an event, Lessee shall bear the responsibility and cost of all demolition work and other work necessary to make whatever repairs, improvements and additions to the Premises and construct whatever additional improvements on the Premises as promptly as practicable as the Lessee deems necessary or desirable in the best interests of Lessee, provided sufficient insurance proceeds are paid to Lessee for such repairs and improvements. Notwithstanding anything contrary in this Lease, Lessor approval shall not be required for non-structural modifications or additions to the interior of the Improvements."

(g) Exhibit 2 to the Ground Lease (plans and specifications) and Exhibit 3 (articles of incorporation of lessee) are hereby deleted in their entirety and the words "Intentionally Omitted" shall be inserted in their place.

7. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and any prior negotiations, correspondence, memoranda or agreements are superseded in total by this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

8. **Amendment.** This Agreement may not be amended or modified except in writing executed by both parties.

9. **Governing Law.** This Agreement and any other documents issued pursuant to this Assignment shall be governed by the internal laws of the State of Wisconsin.

10. **Counterparts.** This Agreement may be executed in counterpart, each of which shall be deemed to be an original, but all of which shall constitute one and the same document.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Assignor, Assignee, and the County have each caused this Agreement to be duly executed and delivered in Milwaukee, Wisconsin, as of the day, month, and year first written above.

ASSIGNOR:

DISCOVERY WORLD, LTD

By: _____
Name: _____
Title: _____

State of Wisconsin)
 : SS
_____ County)

 This instrument was acknowledged before me on _____ by
_____ as _____ of
_____.

[Seal]

(_____)
Notary Public, State of Wisconsin
My commission _____

ASSIGNEE:

MILWAUKEE PUBLIC MUSEUM, INC.

By: _____
Name: _____
Title: _____

State of Wisconsin)
 : SS
_____ County)

This instrument was acknowledged before me on _____ by
_____ as _____ of
_____.

[Seal]

(_____)
Notary Public, State of Wisconsin
My commission _____

COUNTY:

MILWAUKEE COUNTY, WISCONSIN

By: _____

Name: _____

Title: _____

State of Wisconsin)

: SS

_____ County)

This instrument was acknowledged before me on _____ by
_____ as _____ of
_____.

[Seal]

(_____)

Notary Public, State of Wisconsin

My commission _____

EXHIBIT A

Legal Description

EXHIBIT B
Ground Lease

[see attached]