

Contractual agreement For the loan of Sean Kenney's sculpture(s)

This Contractual Agreement for the loan of Sean Kenney's sculpture(s) (hereafter referred to as "Agreement") is made and entered into this ____ day of _____ 20__, by and between Sean Kenney Design, Inc. (hereafter referred to as "Sean") and the Milwaukee County Zoo (hereafter referred to as "Show Host").

In consideration of the mutual promises and covenants contained herein, Sean and Show Host agree that this Agreement forms a binding contract for the loan of the Sean Kenney's sculpture(s) (hereafter "Show"). The Show is for exhibition purposes only and subject to the terms and conditions set forth below:

1. **Description.** This Agreement is for the loan of the Sculptures to the Show Host. The Show consists of the sculptures and supplementary materials detailed in **Exhibit 1** (the "Sculptures"). Sean will pack and crate the Sculptures for delivery to Show Host site, and arrange for pickup of the Sculptures after the Loan Period has concluded.
2. **Loan Period.** The loan period for this Agreement is provided in **Exhibit 1**.
3. **Catalog of sculptures.** A description of the Sculptures is provided in **Exhibit 1**.
4. **Fee.** The fee for the loan period is provided in **Exhibit 1**.
5. **Terms of payment.** To reserve the Loan Period dates, Show Host shall pay a 10% non-refundable deposit, due upon signing of the Agreement. The remaining 90% shall be due in installments, as outlined in **Exhibit 1**. Shipping fees are an additional Fee and will be invoiced by Sean after shipments are made. All payments are due within 30 days of invoice; late payments will be assessed a 3% late charge as an additional Fee.
6. **Show host responsibilities.** Show Host will be responsible for the following:
 1. Delivery/shipping fees. Sean will pack and ship Sculptures to Show Host. Show Host will be responsible for the cost of shipping the Sculptures to and from the Show Host.
 2. Unpacking/packing. Show Host will provide a minimum of three employees to assist in the unloading, unpacking, cleaning, repacking, and reloading of the Sculptures. If shipment(s) arrive damaged, Show Host must photograph any damaged packaging, crates, sculptures, or other damage and report such damage to Sean.
 3. Preparation. Show Host will prepare installation sites for Sculptures as per the specifications provided by Sean, including pedestals or display cases for indoor applica-

tions and/or concrete, wooden or steel pads if required for outdoor installations, as specified by Sean.

4. Cleaning and maintenance. Show Host will provide cleaning and maintenance for sculptures during Loan Period as per the instructions provided by Sean.
 5. Installation. Show Host will provide appropriate equipment as per the instructions provided by Sean to assist in the installation and removal and cleaning of the Sculptures.
 6. Insurance. During the Loan Period, Show Host agrees to provide an “All Risk” Fine Arts property damage insurance policy insuring against losses and/or damages due to fire, theft, flood, earthquake, and vandalism. The Show Host shall provide a certificate of insurance naming Sean Kenney Design, Inc. as additional named insured in said policy(s). The amount of insurance to be provided by Show Host shall cover a minimum replacement cost of the values indicated in **Exhibit 1** and commercial general liability of \$1,000,000 (each occurrence), \$2,000,000 (aggregate).
 7. Care, preservation and inspection. Show Host is responsible for inspecting and protecting the Sculptures during the Loan Period. See Section 8 for full details.
 8. Artist’s credit. Show Host shall display the provided credits for each Sculpture and for the Show. Sean Kenney’s name must be present in all advertisements, marketing, electronic media, and literature. The link www.seankenney.com must be present in any digital or online reference to the Show, the Sculptures, or Sean.
 9. Marketing and branding. Show Host must abide by the branding requirements outlined by The LEGO Group (see Section 12 and **Exhibit 2**) and as specified by Sean. All advertisements, marketing, electronic media, and literature must be sent to Sean for approval.
 10. Storage. Show Host will store all packing materials, crates, pallets, and/or boxes throughout the duration of the Loan Period in a dry climate-controlled area. Crates must be stored closed.
 11. Terms from The LEGO Group. The LEGO Group is not party to this relationship but Show Host must abide by the terms listed in **Exhibit 2** and Section 12.
 12. Return shipment. Prior to return-shipping the Sculptures, Show Host must photograph the packed sculptures, and exterior of crates / boxes to use as evidence in potential cases of damage during shipment back to Sean.
7. **Sean’s responsibilities.** Sean will be responsible for the following:

1. Sculptures. Sean will provide the sculptures specified in **Exhibit 1**. Unless specified in **Exhibit 1**, the Sculptures do not come with pedestals or display cases.
2. Delivery/shipping logistics. Sean will pack and ship Sculptures to Show Host. Show Host will be responsible for the cost of shipping the Sculptures to and from Sean. Sean will provide information on how Show Host can properly return ship the Sculptures after Loan Period has ended.
3. Unpacking and installation. Sean will provide employee(s) to assist Show Host with the unloading, unpacking, and installation of Sculptures at Show Host site. As needed, Sean will provide installation specifications and guidelines to assist Show Host in the installation of the Sculptures. The cost of the installation crew is included in the fee. Shipping is additional.
4. Repacking and deinstallation. Sean will provide employee(s) to assist Show Host with the de-installation, cleaning, repacking, and reloading of Sculptures at Show Host site. As needed, Sean will provide specifications and guidelines to assist Show Host in the deinstallation, packing, and loading of the Sculptures. The cost of removal is included in the fee. Shipping is additional.
5. Digital materials. Sean will provide Show Host with digital copies of high-resolution photographs of the Sculptures, logos, and information about Sean and the Sculptures. All use of these materials must be approved by Sean.
6. Approvals. As needed, Sean will provide staff to review and approve in a timely manner Show Host's marketing materials, signage, barriers, merchandise, and other items requiring review and approval.
7. Site Visit. Sean's staff will conduct a site visit prior to the Loan Period to assess the Show Host's site and to offer advice on display of the Sculptures as well as to conduct an assessment of site security, staging area, crate storage area, and other recommendations to successfully display the Show. The cost for this site visit is included in the Fee.
8. **Care, preservation and inspection**. It is expressly acknowledged between the parties to this Agreement that the Sculptures are works of art made from numerous individual parts and as such are subject to gradual deterioration from the elements for which neither party is responsible. Further, it is expressly acknowledged between the parties to this Agreement that minor damages to or defects in or to the Sculptures may occur from time to time during the loan period.

1. Show Host acknowledges that it has the sole responsibility to provide security against damage to the Sculptures.
2. Show location must be secured from theft and vandalism by use of lockable facilities. Inadequate site security is grounds for termination of this Agreement at the expense of Show Host.
3. Show Host will erect barriers in accordance with instructions provided by Sean and post signage to warn, protect and prevent injury to any person attending the Show including but not limited to visitors and employees. All barriers and signage must be approved by Sean.
4. Show Host shall be responsible for any damage to or theft of any part of the Show, except for damage caused by normal wear and tear, or the acts or omissions of Sean or Sean's employees or agents. Show Host shall also be responsible for injuries or property damage arising out of the negligent or wrongful acts or omissions of the Show Host, its employees or agents. Nothing in this agreement shall be construed to constitute a waiver of any otherwise applicable immunity, limited immunity or limitation on liability under law.
5. Show Host shall perform a close visual inspection of the Sculptures and the area immediately surrounding the Sculptures once per week. It is the responsibility of Show Host to notify Sean of any damage, defect or theft that occurs.
6. Sean, upon receiving notice of damage or defect, shall make all reasonable efforts to repair said damage or defect, if, in Sean's sole determination, such repair is required. If, in Sean's sole determination, the Sculpture is defective or the Sculpture is damaged as the result of normal wear and tear, or by the acts or omissions of Sean or Sean's employees or agents, Sean shall be responsible for the cost of the repair.
7. If damage is the result of causes other than normal wear and tear, or the acts or omissions of Sean or Sean's employees or agents, then Show Host shall be responsible for the costs of the repair. Such costs may include round-trip shipping of the Sculpture to Sean's studio and/or travel costs to Show Host site.
8. If any damages to or defects in the Sculptures occurs repeatedly or are major in Sean's sole determination, Sean has the right to remove any or all Sculptures from the Show. Upon such removal, Sean may provide a replacement Sculpture or negotiate a change in the Fee with Show Host unless the damage or defect is caused by the negligent or wrongful acts or omissions of the Show Host, its employees or agents.
9. **Artist visit.** If desired, Sean can provide a one-day artist visit at the Show Host for an additional fee of \$5,000 for activities such a book signings, media interviews, donor events, and

other promotional activities for an eight-hour period plus all travel expenses. Sean will work with Show Host to determine the best possible program including but not limited to meet-and-greets, autograph sessions, building with visitors, speeches and/or presentations. Additional days may be negotiated at additional cost.

10. Ownership of design.

1. All design of and intellectual property related to the Sculptures and the Show is owned by Sean. No reproduction, duplication, distribution, or modification of the Sculptures or their likeness or any of Sean's copyrights and trademarks may be undertaken without the express written consent of Sean.
2. Unless otherwise notified in writing by Sean, Show Host may photograph the Sculptures for archival, catalog and publicity purposes only. It is understood that the Sculptures may be photographed by the general public.
3. All rights to commercial production or reproduction remain with Sean.

11. Merchandise and gift shop.

1. Show Host may open a wholesale account with Sean to sell Sean's merchandise at the Show.
- 1.2. If Show Host wishes to create their own merchandise displaying images of Sean's sculptures or the Nature Connects logo for the Show, it must first be approved by Sean. Fifteen percent (15%) of gross sales of these items, net of applicable taxes, credit card fees and discounts, shall be paid to Sean upon closing of the Show.
3. Show Host may not sell merchandise from Sean's competitors or "knockoff" / "clone" construction toys from The LEGO Company's competitors.

12. The LEGO Group. The LEGO Group is not party to this relationship.

1. Show Host may not imply that Show Host or Sean represent The LEGO Group in any way.
2. Show Host may not use The LEGO Group's brands, trademarks, trade names, or logos without prior written permission.
3. Shows reaching over 100,000 people may require approval by The LEGO Group.
4. In advertisements and literature, Show Host may not use The LEGO Group's name ("LEGO") to describe the Show, the Sculptures, or Sean except for fair use of

“LEGO” to describe LEGO products or The LEGO Company. All advertisements and literature must be approved by Sean.

13. **Assignment.** This Agreement may not be assigned or transferred by either party without the prior written consent of the other party.

14. **[INTENTIONALLY DELETED]**

15. **Amendments to the agreement.** This Agreement shall not be changed, modified, altered, or amended in any respect without the mutual consent of the parties hereto, which consent shall be evidenced by a written amendment to the Agreement executed by both parties.

16. **Termination.** This Agreement shall terminate upon expiration of the Loan Period or, upon mutual agreement, at the end of an extended term, unless any of the following termination rights are earlier exercised:

1. If Show Host is adjudged bankrupt or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of Show Host's insolvency, Sean may terminate the Agreement after giving Show Host a minimum thirty (30) days written notice, without penalty to Sean.
2. If either party fails to provide services as required by this Agreement, to provide proper materials, or disregards applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over this Agreement, or otherwise is liable for a material breach of the Agreement after written notice and an opportunity to cure as set forth below, then the non-breaching party may, without prejudice to any right or remedy it may have, terminate the Agreement upon thirty (30) days written notice of termination. The foregoing right to terminate is contingent upon the non-breaching party first having provided a written “Cure Notice” to the breaching party, affording the breaching party thirty (30) days (in the event of non-monetary default) and seven (7) days (in the case of monetary default) in which to cure the default. The breaching party will not be entitled to a return of Fees.
3. Sean may terminate this Agreement for any reason by giving the Show Host 120 days’ written notice. Sean shall return any deposits and payments made by Show Host within 30 days of that termination, less out-of-pocket expenses incurred up to the date of termination.
4. Sean may terminate this Agreement if the sculptures are damaged, stolen, or otherwise deemed unpresentable prior to shipment to Show Host. Any such termination shall entitle the Show Host to a refund of any Fees paid less expenses incurred for a site visit and other negotiable items.

5.5. This Agreement may be terminated at any time and for any reason upon mutual written agreement.

17. **Cancellation.** Cancellation or termination of this Agreement by the Show Host more than 30 days prior to the Loan Period beginning will result in the forfeiture of the deposit specified in Section 5. Cancellation or termination less than 30 days prior to the Loan Period will result in the forfeiture of all Fees paid.
18. **Limitation of liability.** Sean's total liability under this Agreement for damages, costs, and expenses shall not exceed the compensation received under this Agreement. Neither party shall be liable for the other's lost profits or special, incidental or consequential damages. Sean will not, for any reason, be held liable for lost sales, profits or any damages resultant from cancellation or termination of a Show.
19. **Indemnification.** To the fullest extent permitted by law, the parties shall defend, indemnify, and hold the other party, its agents, successors, and assigns, harmless from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from any wrongful, intentional, or negligent act or omission of the indemnifying party, its subcontractors, its agents, or anyone directly or indirectly employed by any of these parties or anyone for whose acts any of them may be liable. Nothing in this agreement shall be construed to constitute a waiver of any otherwise applicable immunity, limited immunity or limitation on liability under law.
20. **Severability of the Agreement.** In the event any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, but shall be construed as if such invalid or unenforceable provision had never been contained. Further, in the event that any provision shall be held to be unenforceable by virtue of its scope, but may be made enforceable by a limitation thereof, such provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the laws of the jurisdiction in which enforcement is sought.
21. **Failure to enforce.** The parties shall not be required to enforce any right or remedy available under the Agreement, however, if any party elects to waive a right or remedy under this Agreement, the waiving party shall not be precluded from asserting said right or remedy thereafter.
22. **Force majeure.** Except as otherwise provided, neither party shall be obligated to perform hereunder, and neither shall be deemed to be in default, if performance is prevented by fire, earthquake, flood, act of God, riot, civil commotion, destruction of the Facilities, or other matter or condition of like nature, or any law, ordinance, rule regulation or order of any public or military authority stemming from the existence of economic controls, riot, hostilities,

war, or governmental law and regulations. In the event of a labor dispute which lasts more than ten (10) days and which results in a strike, picket, or boycott impacting Show Host's ability to provide goods and services pursuant to this Agreement, Sean reserves the right to provide or contract to provide any of the goods and services which Show Host is not adequately performing hereunder.

23. **Legal fees.** In no event shall either party be liable or responsible for the other party's legal fees associated with disputes between Sean and Show Host hereunder. Each party shall be responsible for its own legal costs.

24. **Audit** Show Host will maintain records to sufficiently and accurately document financial matters that pertain to this Agreement, including but not limited to records relating to gross admission fees throughout the Loan Period and for a minimum of three years after the expiration or termination of this Agreement. Show Host shall permit Sean to examine, audit, and copy such records. Show Host shall not impose a charge for audit or examination of such records. If an audit discloses incorrect billings or improprieties, Sean reserves the right to charge Show Host for the cost of the audit and appropriate reimbursement.

Signatures

Any and all modifications to the contractual documents shall require written consent from Show Host and Sean. Show Host and Sean having read and understood all the aforementioned provisions of the contractual documents have signed all three copies of this Agreement and regard each copy as an original.

For Show Host

Name: _____
Signed: _____
Title: _____
Date: _____

For Sean Kenney Design, Inc.

Name: _____
Signed: _____
Title: _____
Date: _____

Approved with regards to County Ordinance Chapter 42:

By: _____ Date: _____
Community Business Development Partners

Reviewed by:

By: _____ Date: _____

Approved for execution:

By: _____ Date: _____

Risk Management

Corporation Counsel

*Approved as to funds available per
Wisconsin Statutes Section 59.255(2)(e):*

Approved:

By: _____ Date: _____
Comptroller

By: _____ Date: _____
County Executive

Approved as compliant under sec. 59.42(2)(b)5, Stats.:

By: _____ Date: _____
Corporation Counsel

Exhibit 2: Terms from The LEGO Group

These terms were written by The LEGO Group, which is not a party to this relationship. It is expressly understood that The LEGO Group may change these terms from time to time, which is out of the control of Sean and Show Host. Sean agrees to send updates to Show Host and Show Host agrees to comply with any future updates to these terms.

General LEGO trademark usage

“We at LEGO appreciate your help in protecting our valued trademarks. The following rules will help you use our trademarks correctly.

1. The word LEGO and our major brand names: LEGO, LEGO DUPLO®, LEGO TECHNIC®, LEGO MINDSTORMS® NXT, and BIONICLE®, must be written in all CAPITAL letters.
2. Please use our trademarks as adjectives, not as nouns. For example, refer to our products as “LEGO toys,” “LEGO DUPLO sets” or “LEGO MINDSTORMS NXT robots.” LEGO products should not be referred to in a generic way, such as “LEGOS” or “legos,” or as plural or possessive words like, “LEGO’s.”
3. The first time one of our registered trademarks appears in copy (especially in a headline or title), it should be accompanied by the appropriate registration symbol (either ®, if the trademark is registered in all of the countries in which it is being used, or TM, if registration is limited or pending). Registration symbols are NOT needed when writing our company names (i.e., LEGO System A/S, The LEGO Group).
4. Please do not set any of our trademarks in a special typeface or lettering so that the word takes on the appearance of a new logo or design (e.g., LEGO toys, NOT LEGO toys (Italics)).
5. Our trademarks that contain two or more words should never be split/separated on different lines of printed materials. “