

LEASE AND MANAGEMENT AGREEMENT

THIS LEASE AND MANAGEMENT AGREEMENT (this “Agreement”) is made as of the XX day of XXXX, 2013, by and between **MILWAUKEE COUNTY, WISCONSIN**, a political subdivision of the State of Wisconsin (the “County”), and **MILWAUKEE PUBLIC MUSEUM, INC.**, a Wisconsin nonstock, nonprofit corporation (the “Milwaukee Public Museum”) and replaces all preceding agreements and amendments between the County and the Milwaukee Public Museum.

W I T N E S S E T H:

WHEREAS, the County owns and operates a natural history museum in Milwaukee County, Wisconsin, known as the Milwaukee Public Museum (the “Museum”);

WHEREAS, the County owns the Museum’s real property, including a building and fixtures attached thereto (the “Current Building”), situated on a site located at 800 West Wells Street in the City of Milwaukee, Milwaukee County, Wisconsin, and more particularly described on Exhibit attached hereto and hereby incorporated herein (the “Current Site”);

WHEREAS, there are currently located in or around the Current Building, or at other locations on temporary loan from the Museum, numerous artifacts, exhibits and other items and materials of historical or scientific value or significance owned or held by the County and used or intended to be used for exhibition, display, education or research in connection with or as a part of the activities and operations of the Museum (collectively the “Current Artifacts”);

WHEREAS, there is currently located in or around the Current Building various tangible personal property, other than the Current Artifacts, owned by the County for use in connection with the Museum, including, without limitation, equipment, chairs, tables, desks, furnishings, computers, office supplies, and materials used for the storage, handling or display of the Current Artifacts (collectively the “Current Personal Property”);

WHEREAS, it is in the best interests of the Museum, the residents of the County and the public at large, that the County lease the Current Site, the Current Building, the Current Personal Property and the Current Artifacts to the Milwaukee Public Museum and that the Milwaukee Public Museum undertake primary responsibility for managing and operating the Museum as provided herein;

WHEREAS, the County was initially authorized to negotiate an Agreement by Resolution No. 91-755 adopted by its County Board of Supervisors on November 12, 1991 and subsequent amendments were added over the last 22 years;

WHEREAS, this Agreement replaces and supersedes the original Agreement and subsequent amendments;

WHEREAS, the County and the Milwaukee Public Museum desire to set forth herein their current agreements and understandings with respect to the Museum and other matters related thereto; and

WHEREAS, as used herein, the following terms shall have the following meanings:

“Artifacts” means, at any point in time, the Current Artifacts, plus all additional artifacts of historical or scientific value or significance hereafter acquired or held by the County or the Milwaukee Public Museum to be used or intended to be used for exhibition, display, education or research in connection with or as a part of the activities and operations of the Museum, less any of the foregoing which shall be sold, transferred or otherwise disposed of in accordance with this Agreement. The term “artifacts” refers only to objects of or showing human workmanship and does not include specimens of naturally occurring objects.

“Improvements” means at any point in time, the Theater Complex, plus all additions, extensions, improvements, betterments, replacements and fixtures constructed on or attached to the Theater Complex Parcel, plus all rights, privileges, licenses, easements, tenements, hereditaments and appurtenances belonging or appertaining to the foregoing, less any of the foregoing which shall be sold, transferred or otherwise disposed of in accordance with this Lease, and less the IMAX equipment.

“Loaned Artifacts” means Artifacts which are held or possessed by the County or the Milwaukee Public Museum, but which are owned by others.

“Milwaukee Public Museum” means the Milwaukee Public Museum, Inc.

“Owned Artifacts” means Artifacts which are owned by the County or the Milwaukee Public Museum.

“Personal Property” means, at any point in time, the Current Personal Property, plus all tangible personal property (other than Artifacts) hereafter acquired by the County or the Milwaukee Public Museum for use in connection with the Museum, plus all tangible personal property used in connection with the Theater, less any of the foregoing which shall be sold, transferred or otherwise disposed of in accordance with this Agreement.

“Real Estate” means, at any point in time, the Current Site and the Current Building plus any additional sites and real property interests in Milwaukee County, Wisconsin, hereafter made subject to this Agreement by the terms hereof or by mutual agreement of the County and the Milwaukee Public Museum, plus all additions, extensions, improvements, betterments and replacements hereafter constructed on the Current Site or any such additional site, plus all rights, privileges, licenses, easements, tenements, hereditaments and appurtenances belonging or appertaining to the foregoing, plus the real property on which the Theater Complex is located, less any of the foregoing which shall be sold, transferred or otherwise disposed of in accordance with this Agreement.

WHEREAS, the County has been authorized to enter into this Agreement by Resolution No. XX-XXX adopted by its County Board of Supervisors on XXX, 2013.

NOW, THEREFORE, in consideration of Ten Dollars, the premises, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt

and sufficiency of which are hereby acknowledged by the parties hereto, such parties hereby agree as follows:

**ARTICLE I
DEMISE AND OTHER PROPERTY TRANSFERS**

Section 1.1 Demise of Real Estate, Personal Property and Artifacts.

The County does hereby lease, let and demise unto the Milwaukee Public Museum, and the Milwaukee Public Museum does hereby lease and rent from the County, all right, title and interest of the county, now owned or hereafter acquired, in the Real Estate, the Current Personal Property and the Current Artifacts on the terms and conditions set forth herein.

Section 1.2 Assignment of Rights in Loaned Artifacts.

The County does hereby assign to the Milwaukee Public Museum, and the Milwaukee Public Museum hereby accepts from the County, all right, title and interest of the County in the Loaned Artifacts on the terms and conditions set forth herein.

**ARTICLE II
TERM; RENT; USE**

Section 2.1 Initial Term.

This Agreement shall be for an initial term commencing on XXXX, 2013, and expiring at 11:59 p.m. on XXXX, 2022, (the "Initial Term"), unless sooner terminated as provided herein.

Section 2.2 Extended Terms.

The Initial Term shall automatically extend for four (4) successive periods of five (5) years each (each such extended term is an "Extended Term", and collectively such extended terms are the "Extended Terms".) (The Extended Terms and the Initial Term are collectively the "Term".) (The term preceding any Extended Term is the "Preceding Term".) Each Extended Term shall commence upon the expiration of the Preceding Term, except that any Extended Term shall not so commence if (a) the Milwaukee Public Museum gives the County notice not less than six (6) months prior to the expiration of any Preceding Term that the Milwaukee Public Museum elects not to extend such Preceding Term, in which case this Agreement shall terminate upon the expiration of such Preceding Term, or (b) the County gives the Milwaukee Public Museum notice not less than six (6) months prior to the expiration of any Preceding Term that the County elects not to extend such Preceding Term, in which case this Agreement shall terminate upon the expiration of such Preceding Term. During any and all of the Extended Terms, all of the terms, covenants and conditions of this Agreement shall remain in full force and effect except for the base level funding of operations (section 5.3), which shall be renegotiated by the parties.

Section 2.3 Rent.

During the Term hereof, the Milwaukee Public Museum shall, as rent for the use and occupancy of the Real Estate, the Personal Property and the Artifacts, pay the County an annual rent of Ten Dollars (\$10), payable in advance, on or before the 15th day of April of each and every calendar year during the Term hereof.

Section 2.4 Use of the Property.

The Milwaukee Public Museum may use the property described in Article I for the purposes of a natural history museum and ancillary and related uses, from time to time, in a manner not substantially unlike the then contemporary uses of property by the major natural history museums in the United States. The Milwaukee Public Museum shall have the right to use the Real Estate for purposes of managing and operating the Theater Complex for showing motion pictures produced in a high-speed, high-resolution format, and/or in furtherance of other charitable, scientific and educational purposes of the Milwaukee Public Museum.

**ARTICLE III
TAXES; UTILITIES; REPAIRS; INSURANCE**

Section 3.1 Property Taxes.

The Milwaukee Public Museum agrees to pay directly to the appropriate taxing authority, when due, all general real property taxes, if any, levied against the Real Estate during the Term of this Agreement (on a prorated basis if the Milwaukee Public Museum has not occupied the Real Estate for the whole period for which such taxes are levied). If, during the Term of this Agreement, any special assessment or other similar charge is levied against the Real Estate, the County shall be responsible for payment thereof. Nothing herein contained shall prevent the Milwaukee Public Museum or the County from protesting the validity or amount of any such taxes or assessments or from taking such action as may be required or permitted by law for enforcing and effecting such protest. In this connection, the Milwaukee Public Museum or the County may withhold the payment of any such protested taxes or assessments provided that the Milwaukee Public Museum or the County, as the case may be, proceeds with such protest in good faith and according to statute.

Section 3.2 Utilities.

At all times during the Term of this Agreement, the County shall cause the Real Estate to receive such separately metered utility services as are necessary, or if requested by the Milwaukee Public Museum useful, for the use and operation of the Real Estate by the Milwaukee Public Museum. The Milwaukee Public Museum agrees to pay, when due, all charges and costs for water, gas, heat, air conditioning, electricity, telephone and any and all other utilities furnished to or consumed by the Milwaukee Public Museum in or upon the Real Estate during the Term hereof.

Section 3.3 Repairs and Maintenance.

The Milwaukee Public Museum covenants and agrees that, at its expense, it will keep the interior of the Real Estate buildings in a good, clean, and sanitary condition, and to that end shall perform all necessary day-to-day repairs, replacements and maintenance to the interior of the Real Estate buildings. Subject to the limitations set forth in Section 5.3, unless mutually agreed otherwise, the County, at its expense, shall maintain and make all: (a) structural repairs and replacements to the building envelope, all mechanical and electrical systems supporting the heating, ventilating and cooling systems and building fire protection and security systems, the elevators and escalators and any related repairs and replacements due to removal or containment of asbestos or other hazardous materials, repairs to and replacements of the Real Estate or any part thereof; (b) repairs or replacements which are necessitated by the willful or negligent act or omission of the County, its agents, employees, contractors, invitees or representatives; (c) repairs or replacements which are necessitated by reason of fire or other casualty; (d) repairs or replacements which are necessitated by reason of a defect in the condition of the Current Site or Current Building which existed prior to the date of this Agreement; and (e) repairs or replacements which are necessitated by reason of a breach of any warranty or representation of the County contained in this Agreement or by reason of the County's failure to perform or observe any term, covenant or condition to be performed or observed by the County pursuant to this Agreement. The County agrees to perform all repairs, maintenance and replacements of the type enumerated in subparagraphs (a) through (e) of this Section 3.3 to the extent necessary to make the Real Estate suitable for housing the operations of a first class, natural history museum.

Section 3.4 Hazard Insurance.

Throughout the Term hereof, the County shall obtain and maintain in force insurance covering (a) the Current Building for replacement value thereof against loss or damage by fire or other hazards insurable by an extended coverage endorsement to standard fire insurance policies; and (b) the Personal Property and Artifacts against loss or damage by fire, other hazards, theft and other risks in such manner and with such policy limits as are usual and customary for museums of the type and character of the Museum. All such insurance shall be carried for the benefit of the County and the Milwaukee Public Museum as their interests appear.

Section 3.5 Public Liability Insurance and Workers Compensation.

Throughout the Term hereof, the Milwaukee Public Museum 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. Milwaukee County shall be named as additional insured. Workers Compensation coverage shall be at statutory limits with a waiver of subrogation in favor of Milwaukee County. A Certificate of Insurance indicating the public liability insurance and workers compensation insurance shall be submitted to the County's Risk Manager for review and approval.

**ARTICLE IV
ADDITIONS, IMPROVEMENTS AND ALTERATIONS**

Section 4.1 Real Estate.

Subject to County Board approval which shall not be unreasonably withheld, the Milwaukee Public Museum may make whatever improvements and additions to the Real Estate and construct whatever additional improvements on the Real Estate as the Milwaukee Public Museum deems necessary or desirable in the best interests of the Museum. County Board approval shall not be required for non-structural modifications or additions to the interiors of existing buildings on the Real Estate. All such real property improvements and additions, regardless, of how funded, shall be deemed to be part of the Real Estate and shall be subject to the terms of this Agreement.

Section 4.2 Personal Property.

The Milwaukee Public Museum may furnish, install and maintain on the Real Estate any and all personal property which the Milwaukee Public Museum deems necessary or desirable in connection with the operation of the Museum. All tangible personal property, other than Artifacts, acquired by the Milwaukee Public Museum and installed in or located on the Real Estate for use in connection with the Museum, regardless of how funded, shall be deemed to be part of the Personal Property and shall be subject to the terms of this Agreement. The Milwaukee Public Museum may alter, rehabilitate and improve Personal Property in such manner as it deems necessary or desirable in the best interests of the Museum.

Section 4.3 Artifacts.

The Milwaukee Public Museum may acquire whatever artifacts, exhibits and other items of historical or scientific value or significance it deems necessary or desirable in connection with the operation of the Museum. All such items, regardless of how funded, shall be deemed to be Artifacts and shall be subject to the terms of this Agreement. The Milwaukee Public Museum may alter, rehabilitate, restore and improve Artifacts in such manner as it deems necessary or desirable in the best interests of the Museum.

**ARTICLE V
MANAGEMENT OF THE MUSEUM**

Section 5.1 General Management.

Subject only to limitations expressly set forth in this Agreement and any other agreements to which the Milwaukee Public Museum and the County both are parties, the Milwaukee Public Museum shall have, and hereby agrees to undertake and assume, full and complete control and discretion in the management and operation of the Museum and of the Access and Circulation Areas, including the common ticketing area therein, during the Term of this Agreement. Without limiting the generality of the foregoing, but subject to such limitations, the Milwaukee Public Museum shall have the following rights and duties with respect to the management and operation of the Museum:

- a) to employ, pay, supervise and discharge all employees and personnel, including a chief executive officer, as shall be deemed necessary or desirable by the Milwaukee Public Museum for the operation of the Museum;
- b) to determine and carry out the labor policies of the Museum relating to, among other things, compensation, hours and conditions of employment, retirement and benefit plans, and the hiring and discharge of employees;
- c) to contract for such goods and services as shall be deemed necessary or desirable by the Milwaukee Public Museum for the operation of the Museum;
- d) to determine and carry out all policies relating to the exhibition and display of Artifacts in the Museum;
- e) to determine and carry out all policies relating to the acquisition, maintenance, loan, exchange, lease, sale, disposal, accession and deaccession of Artifacts;
- f) to determine and carry out the scientific, educational and research policies, programs and activities of the Museum;
- g) to keep and maintain the books and records of the Museum;
- h) to determine and carry out the budgetary and fiscal policies of the Museum, including the establishment of admission fees and fees and charges for other services;
- i) to determine and carry out the building and maintenance policies for the properties of the Museum, including the Real Estate and the Personal Property;
- j) to determine and carry out policies relating to ancillary activities and services offered at the Museum, including, without limitation, food concessions and gift shops;
- k) to determine and carry out policies relating to the promotion and publicity of the Museum; and
- l) to properly keep and maintain all collection inventory records, accession records and deaccession records Exhibit, including a policy on the inventory of artifacts. A record of the inventory of artifacts shall be made available to the County with proper notice.
- m) to determine and carry out all policies relating to the selection and purchase of the motion pictures;
- n) to determine and carry out the charitable and educational policies, programs and activities of the Theater and Planetarium.
- o) To keep records of the trust and endowment funds of the Milwaukee Public Museum, and keep those records so as to maintain compliance with the stipulations of any agreements related to the donation of said funds. In addition, the Milwaukee Public

Museum will maintain an investment policy regarding the investment of trust and endowment funds.

In performing its duties under this Section 5.1, the Milwaukee Public Museum shall exercise the same degree of care and skill exercised by nonprofit corporate owners and managers of major natural history museums in the United States and shall comply in all material respects with all laws applicable to the conduct of its business and the use and operation of the Museum.

The Milwaukee Public Museum is an independent contractor for the management and operation of the Museum, and nothing herein is intended to create or shall be deemed to create a partnership or joint venture between the Milwaukee Public Museum and the County or a fiduciary obligation by the Milwaukee Public Museum to the County.

Section 5.2 Milwaukee Public Museum Pension and Retiree Medical Obligations of Former Milwaukee County Employees.

Prior to August 31, 2013, the County will provide a total of \$3,000,000 to the Milwaukee Public Museum which it shall immediately transfer to the Defined Benefit Plan of the Milwaukee Public Museum Pension Plan (“Pension Plan”) for the former Milwaukee County employees, provided the Milwaukee Public Museum has secured prior to August 31, 2013 at least \$3,000,000 in donor commitments for the elimination of the Milwaukee Public Museum’s existing bank debt of approximately \$4,500,000.

a) Milwaukee Public Museum will be responsible for current and future obligations related to the retiree medical obligations for former Milwaukee County employees.

b) Milwaukee Public Museum will be responsible for future obligations related to the Pension Plan once the payment of \$3.0 million has been made to them.

(i) The Milwaukee Public Museum will submit the annual actuarial report of the Pension Plan, and financial statements of the Pension Plan to the County.

Section 5.3 Base Level Funding of Operations.

During the Initial Term of this Agreement, and subject to the following paragraphs in this section, the County shall pay the Milwaukee Public Museum the following amounts as Base Level Funding for the management and operation of the Museum and Theater Complex:

Milwaukee Public Museum Calendar Year	Funding
2014	\$3,500,000
2015	\$3,500,000
2016	\$3,500,000
2017	\$3,500,000
2018	\$3,350,000
2019	\$3,350,000

2020	\$3,200,000
2021	\$3,200,000
2022	\$3,000,000

If the Milwaukee Public Museum has received at least \$5.0 Million in cash and donor commitments for capital spending related to the Real Estate by December 31, 2017, the Base Level Funding will increase to a total of \$3,500,000 each year from 2018 through 2022.

The Base Level Funding is predicated on Milwaukee Public Museum meeting or exceeding certain contingencies and operating goals. The Milwaukee Public Museum’s annual financial reports are based on a year end of August 31st which shall also be the date of determining compliance with the conditions. The external auditor for the Milwaukee Public Museum shall prepare a schedule showing each of these conditions, and the status as of the most recent year end date, and submit such report to the County. Any non-compliance will reduce the payment for the subsequent calendar year. In the event the Milwaukee Public Museum fails to meet or exceed any one of the following conditions, the County may reduce the Base Level Funding set forth above or in the preceding paragraph by \$250,000 for any subsequent year:

- a) Milwaukee Public Museum will obtain donor commitments for any remaining Milwaukee Public Museum bank debt, estimated to be approximately \$1,500,000, by December 15, 2015.
- b) Annual attendance of the Museum, its theater/planetarium and special exhibits, events and programs exceeds 400,000 during the preceding fiscal year;
- c) Milwaukee Public Museum generates positive unrestricted operating earnings as defined by the change in unrestricted net income plus depreciation is greater than zero;
- d) Total Milwaukee Public Museum Endowment net assets are a minimum of \$2,000,000 in unrestricted net assets.
- e) Milwaukee Public Museum’s Total Net Assets continue to exceed the value as of fiscal yearend 2013 audited results excluding gains associated with pension contribution and gift commitments for debt elimination.
- f) Any new debt, except for working capital, collateralized debt by donor pledges or personal assets, is approved by the County Executive or designee.

The base level funding in respect of each particular Milwaukee Public Museum calendar year shall be paid in equal quarterly installments due on or before the first day of each January, April, July and October. In the event any of these dates is on a non-banking day, such as a holiday or weekend, then the payment will be made on the first business day after the first of the month noted.

The Base Level Funding may be further reduced by the County for any obligations under this Agreement that the Milwaukee Public Museum fails to perform, including, but not limited to, any obligations under Article III.

Section 5.4 Museum to be Operated as a Public Museum.

The Museum shall be operated as a facility open to the general public, subject to such reasonable rules and regulations as the Milwaukee Public Museum may promulgate in its discretion from time to time regarding matters such as, but not limited to: admission fees; days and hours of operation; the safety of employees and the general public; the safety, protection and security of Artifacts; the anonymity of donors who desire anonymity; and, to the extent permitted by law, the confidentiality of employee records and business records.

Notwithstanding the foregoing, throughout the Term hereof admission to the Museum shall be according to the following admission policy:

1. Milwaukee Public Museum will provide free admission to Milwaukee County pre-registered public and private school group visitors any day of the week between September 1st and November 30th each year. This includes pre-registered students, teachers and chaperones.
2. Milwaukee Public Museum will provide a \$2.00 discount for any non-member admission by Milwaukee County residents anytime with proof of residency.
3. Milwaukee Public Museum will provide 12“Free Days” annually for Milwaukee County Residents with proof of residency. The specific days will be determined each year by the museum and announced by January 1st.

Section 5.5 Accession and Deaccession of Artifacts.

The Milwaukee Public Museum shall adopt a formal written policy regarding the accession and deaccession of Artifacts in compliance with Federal and State law. Upon its adoption and upon any amendment thereof, a copy of such policy or amended policy, as the case may be, shall be submitted to the County Board of Supervisors for approval, which shall not be unreasonably withheld.

The Milwaukee Public Museum may implement its accession and deaccession policy with regard to particular Artifacts. The deaccessioning of any County Owned Artifact shall be in conformance with the Milwaukee Public Museum collection policy as approved by the Milwaukee Public Museum Board of Directors except for Native American Graves Protection and Repatriation Act (NAGPRA) related artifacts requiring prior Milwaukee County Board of Supervisors approval. Upon request of the Milwaukee Public Museum, the County shall execute and deliver such bills of sale or other instruments of transfer as the Milwaukee Public Museum may reasonably deem necessary or desirable to evidence, perfect or give legal effect to any such sale, exchange or other disposition by the Milwaukee Public Museum of deaccessioned Artifacts pursuant to this Section 5.5.

The Milwaukee Public Museum shall maintain an inventory record of all newly accessioned Artifacts according to generally accepted museum inventory practices.

Section 5.6 Dispositions of Personal Property.

The Milwaukee Public Museum shall have the right to sell, lease (as lessee), transfer or otherwise dispose of Personal Property as it deems necessary or desirable in the best interests of the Museum. Upon request of the Milwaukee Public Museum, the County shall, without the necessity of approving action by its county Board of Supervisors, execute and deliver such bills of sale or other instruments of transfer as the Milwaukee Public Museum may reasonably deem necessary or desirable to evidence, perfect or give legal effect to any such sale, lease, transfer or other disposition. The benefit of any sale or transfer of personal property will be to the Milwaukee Public Museum. A listing of personal property sales shall be available for inspection by the County.

Section 5.7 Grants and Releases of Interests in Real Estate.

The Milwaukee Public Museum shall have the right to sublease portions of the Real Estate and to grant and release easements, licenses and property interests in the nature of subleases, easements or licenses in respect of the Real Estate to third parties as it deems necessary or desirable in the best interests of the Museum for any of the following purposes,

- a) in the case of subleases and property interests in the nature of subleases, to facilitate the exhibition or display of Artifacts or the provision of ancillary services or activities, such as the provision of food concessions or gift shops; provided, however, that any such sublease shall provide that it shall terminate contemporaneously with the expiration or earlier termination of this Agreement; and
- b) in the case of easements, licenses and property interests in the nature of easements or licenses, to facilitate the provision of utility or transportation services to the Museum;

In the event that to be effective for its intended purpose any such grant or release of a property interest in the Real Estate must be joined in or approved by the owner of the fee interest, the County agrees that, upon request of the Milwaukee Public Museum, it shall, with approval by the County Board of Supervisors, execute and deliver such conveyance or approval instruments as the Milwaukee Public Museum may reasonably deem necessary or desirable to accomplish such authorized purpose.

Section 5.8 Funds of the Milwaukee Public Museum.

All funds of the Milwaukee Public Museum, whether derived from the County, from operations, from loans, from or in respect of the disposition of property, from insurance or condemnation proceeds, from gifts, grants or bequests, or from other sources, shall be held and used by the Milwaukee Public Museum solely for the management, operation, maintenance, repair, expansion or betterment of the Museum. Funds which are received and accepted by the Milwaukee Public Museum subject to restrictions shall be held and used in accordance with such restrictions. By resolution of its Board of Directors, the Milwaukee Public Museum shall adopt a formal written policy regarding the investment of funds held by the Milwaukee Public Museum. Upon its adoption and upon any amendment thereof, a copy of such policy or amended policy, as the case may be, shall be delivered to the County Clerk and the County Executive of the County

for retention in the records of the County. The Milwaukee Public Museum shall invest its funds only in accordance with such policy.

Section 5.9 Accounting System; Financial and Insurance Reporting; Inspections.

The Milwaukee Public Museum shall employ a system of accounting in accordance with generally accepted accounting principles applicable to a corporation of its type and character. The Milwaukee Public Museum shall close its fiscal year and shall make the following periodic filings with the County Clerk and the County Executive for retention in the County's records:

a) Budget: In accord with the Milwaukee County's schedule for its budget preparation -- an operating and capital expenditure budget for the next fiscal year;

b) Quarterly Financials: Within 60 days following the close of each fiscal quarter of the Milwaukee Public Museum -- unaudited statements of revenues, expenses and cash flows of the Milwaukee Public Museum for such quarter and a balance sheet of the Milwaukee Public Museum as of the close of such fiscal quarter, certified by the chief accounting officer of the Milwaukee Public Museum to be true, correct and, subject to annual audit adjustments, in accordance with generally accepted accounting principles;

c) Annual Audit: Within 180 days following the close of each fiscal year of the Milwaukee Public Museum -- statements of revenues, expenses and cash flows of the Milwaukee Public Museum and its trust and endowment funds for such fiscal year and a balance sheet of the Milwaukee Public Museum as of the close of such fiscal year prepared in accordance with generally accepted accounting principles, together with a report and opinion thereon made and given by independent certified public accountants in accordance with generally accepted auditing standards; and

d) Annual Insurance Summary: Within 120 days following the close of each fiscal year of the Museum Corporation -- a written summary of the insurance policies carried by the Museum Corporation, including the limits of coverages afforded thereby, the expiration dates thereof and the insurers thereon.

The Milwaukee Public Museum shall permit the County and its duly authorized agents to inspect the Real Estate, the Personal Property and the Artifacts and to examine the books and records of the Milwaukee Public Museum at any reasonable time, upon at least twenty-four (24) hours prior written notice, for the purpose of determining the compliance by the Milwaukee Public Museum with the provisions of this Agreement. The Milwaukee Public Museum shall also cooperate with the County Departments and the County Board staff in their monitoring and review of the financial and programmatic progress of the Museum.

Section 5.10 County Funding of Capital Expenditures.

The County agrees that any request of the Milwaukee Public Museum for the funding of capital improvements or additions to the Real Estate or Personal Property which are included in the Milwaukee Public Museum's capital expenditure budget furnished pursuant to

Section 5.9(a) hereof and which the County is not otherwise obligated to fund pursuant to this Agreement will be brought before the full County Board of Supervisors for consideration and action as part of the County's annual budget process.

a) The County agrees to authorize and expend up to \$4,000,000.00 in funding of capital improvement projects under section 3.3 during the 4-year period ending XXXX, 2017. The County will provide the Milwaukee Public Museum with annual reports showing the expenditures by project.

ARTICLE VI DAMAGE; CONDEMNATION

Section 6.1 Damage or Destruction.

If, during the Term of this Agreement, there is damage or destruction to the Real Estate or such portion thereof as to render the remaining portion thereof unsuitable for the continued operation of a first-class natural history museum, the Milwaukee Public Museum thereafter, by giving written notice to the County within ninety (90) days following such damage or destruction, may terminate this Agreement. If the Milwaukee Public Museum does not elect to terminate this Agreement or if the damage or destruction to the Real Estate does not render the remaining portion thereof unsuitable for the continued conduct of the Milwaukee Public Museum's activities thereon, then this Agreement shall continue in full force and effect and the County shall promptly commence and pursue diligently to completion whatever repairs to the Real Estate are necessary to restore the Real Estate to substantially the same condition that it was in prior to such damage or destruction. All such repairs shall be performed promptly and in a good and workmanlike manner in accordance with all statutes, laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Real Estate. In the event that this Agreement shall terminate, the rental, management compensation and all other amounts payable hereunder shall be prorated to the date of the damage or destruction. In the event that this Agreement shall not terminate, then commencing on the date of such damage or destruction and continuing during the period in which the County is repairing and restoring the Real Estate pursuant to this Section 6.1, the rental and all other amounts payable by the Milwaukee Public Museum shall abate in proportion to the floor area of the building of which the Milwaukee Public Museum is deprived for the period in which the Milwaukee Public Museum is deprived of such area.

Section 6.2 Condemnation.

If, during the Term of this Agreement, the entire Real Estate shall be taken by any public or quasi-public authority under its power of condemnation or eminent domain (or is conveyed under threat thereof), this Agreement shall terminate and be of no further force and effect as of the earlier of the date possession shall be taken by the acquiring authority or the date of conveyance. If any part of the Real Estate shall be so taken as to render the remainder thereof unsuitable for the continued operation of a first-class natural history museum, the Milwaukee Public Museum shall have the right to terminate this Agreement by giving written notice to the County of such termination within the period of ninety (90) days after the date of such taking. In the event that this Agreement shall terminate, the rental, management compensation and all other

amounts payable hereunder shall be prorated to the earlier of the date possession is taken by the acquiring authority or the date of conveyance. In the event a part of the Real Estate is taken and the Milwaukee Public Museum does not terminate this Agreement, the rental payable by the Milwaukee Public Museum shall abate in proportion to the square footage of the building of which the Milwaukee Public Museum is deprived for the period in which the Milwaukee Public Museum is deprived of such area. Notwithstanding the preceding, any award or other compensation, whether pursuant to judgment or by agreement or otherwise, with respect to any such taking applicable to any portion of the Access and Circulation Areas, shall be deposited, in trust, with an independent third party satisfactory to the County and the Milwaukee Public Museum, to be held for disbursement in payment or reimbursement of the costs of repair, restoration or rebuilding of that part of the Access and Circulation Areas which were the subject of the taking as may be required pursuant to the Development Agreement or the agreements required thereunder. Any award or other compensation paid or distributed to the County and to the Milwaukee Public Museum in connection with any taking applicable to the Access and Circulation Areas shall be divided between the County and the Milwaukee Public Museum proportionately according to the amount of the original cost to construct the Access and Circulation Areas, which has been borne by each of the County and the Milwaukee Public Museum as of the date of such taking.

ARTICLE VII WARRANTIES OF COUNTY

Section 7.1 Warranty of Title; Quiet Environment.

The County hereby represents and warrants that it has good, valid and marketable title (in fee simple, as to the Real Estate) to the Real Estate, the owned Artifacts and the Owned Personal Property, free of all liens, charges and encumbrances except encumbrances of public record and those which are set forth on Exhibit attached hereto and hereby incorporated herein (as to the Current Site and Current Building), Exhibit attached hereto and hereby incorporated herein (as to the Owned Artifacts) and Exhibit attached hereto and hereby incorporated herein (as to the Current Personal Property). The County represents that Exhibit contains a complete identification of the Loaned Artifacts and the terms under which the County is in possession thereof. The County covenants and agrees that, so long as the Milwaukee Public Museum shall duly and punctually perform and observe all of its obligations under this Agreement (taking into consideration the grace periods granted herein), the Milwaukee Public Museum shall peaceably and quietly have, hold and enjoy the Real Estate, the Personal Property and owned Artifacts without any hindrance or molestation.

Section 7.2 Condition of Property; Compliance of Property with Law.

The County hereby represents and warrants to the Milwaukee Public Museum that, as of the date of this Agreement, the County has no knowledge of any material defect in the condition of the Real Estate, the Personal Property or the Artifacts which will or might impair the Milwaukee Public Museum's occupancy or use thereof, as the case may be. The County also hereby represents and warrants that all plumbing, electrical, heating, air conditioning and other mechanical systems are in good working condition; and that each of the Real Estate, the Personal Property and the Artifacts is in compliance with all building, zoning and other laws, rules,

regulations and ordinances of any nature, of federal, state and other governmental authorities and agencies having applicable jurisdiction, and there are no outstanding orders against any of the Real Estate, the Personal Property or the Artifacts.

Section 7.3 Default Under Other Agreements.

With respect to the Museum, the County hereby represents and warrants that it is not in default under any contract to which it is a party or obligation owed by it, nor has any event occurred which, through the passage of time or the giving of notice (or both) would constitute a default thereunder, or cause the acceleration of any obligation of the County, or result in the creation of any lien, charge or encumbrance whatsoever upon any of the Real Estate, the Personal Property or the Artifacts.

Section 7.4 No Breach of Statute or Contract.

The County hereby warrants and represents that it has full right and authority to enter into this Agreement. The County also hereby warrants and represents that neither the execution and delivery of this Agreement by the County, nor compliance with the terms and provisions of this Agreement by the County will cause the County to breach any statute, ordinance or regulation of any governmental authority, or will conflict with or result in a breach, acceleration, termination or violation of any term, condition or provision of any agreement or instrument to which the County is a party, or by which the County or its assets are or may be bound, or constitute a default thereunder, or constitute an event which through the passage of time or the giving of notice (or both) would constitute a default thereunder, or result in the creation of any lien, charge or encumbrance of any nature whatsoever on, or give to others any interest or rights in, or with respect to, any of the Real Estate, the Personal Property or the Owned Artifacts. The County further warrants and represents that the use and operation of the Real Estate, the Personal Property and the Artifacts by the Milwaukee Public Museum pursuant to this Agreement will not breach or violate any of the foregoing.

Section 7.5 No Litigation or Adverse Events.

The County hereby warrants and represents that, except as set forth in Exhibit _ hereto, with respect to the Museum, no suit, action or legal, administrative, arbitration or other proceeding, or investigation by any governmental agency, including, but not limited to, matters involving environmental, safety or health standards, is pending or has been threatened, nor do any facts exist which might lead to any such proceedings. With respect to the Museum, the County further warrants and represents that it is not in violation of, nor has it been in violation of, any federal, state, county or local statutes, ordinances, rules or regulations, including but not limited to, those relating to environmental, safety, building or health standards.

**ARTICLE VIII
TERMINATION**

Section 8.1 Default of the Milwaukee Public Museum.

The County may terminate this Agreement, upon written notice to the Milwaukee Public Museum: (i) if any default by the Milwaukee Public Museum occurs in case of

nonpayment of rent for more than ten (10) days after written notice of such default from the County; or (ii) if any default by the Milwaukee Public Museum other than nonpayment of rent continues for more than ninety (90) days after written notice to the Milwaukee Public Museum from the County specifying such default and demanding that it be corrected (or, if such default is not of a type which can be reasonably corrected within ninety (90) days, then if the Milwaukee Public Museum fails to commence promptly and to proceed with due diligence to correct such default). In the event that the County terminates this Agreement as provided in this section, the County may re-enter the Real Estate or any part thereof with judicial process and expel and remove the Milwaukee Public Museum or any person or persons occupying the same and again repossess and enjoy the Real Estate, the Personal Property and the Artifacts.

Section 8.2 Special Right of County to Terminate Early During Initial Term.

Notwithstanding anything contained herein to the contrary, at any time during the Initial Term, and upon at least one (1) year prior written notice (the "Termination Notice") from the County Board of the County in the form of a resolution duly adopted by the County Board and delivered to the Milwaukee Public Museum, the County shall have the right to terminate this Agreement on the date set forth in the Termination Notice (the "Termination Date"). The Termination Notice shall be irrevocable, unless if with the Milwaukee Public Museum's prior written consent, the County Board gives the Milwaukee Public Museum prior to the Termination Date notice in the form of a resolution duly adopted by the County Board and delivered to the Milwaukee Public Museum which revokes the Termination Notice. The provisions of this section shall also apply during any Extended Terms.

Section 8.3 Special Right of Termination for Invalidity, etc.

Any party may terminate this Agreement if this Agreement is determined to be invalid by operation of law or by any court or tribunal of competent jurisdiction, or if compliance with or enforcement of this Agreement or any part hereof is restrained by any court or tribunal of competent jurisdiction or if it is determined that any party lacks the legal capacity or authority to execute or perform under this Agreement or that such execution or performance would violate any collective bargaining agreement or any other agreement by that which any such party is bound. If this Agreement is so terminated the parties shall fully and completely cooperate each with the other to effectuate and comply with any court order or judgment as may be applicable and shall further negotiate in good faith to resolve equitably any matters that require resolution in connection with such termination.

**ARTICLE IX
PRESCRIBED AND PROSCRIBED PRACTICES**

Section 9.1 Nondiscrimination, Equal Employment Opportunity and Affirmative Action Programs.

In the operation of the Museum as contemplated by this Agreement, the Milwaukee Public Museum shall not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap.

Section 9.2 Prohibited Practices.

a) During the Term of this Agreement, the Milwaukee Public Museum shall not hire, retain or utilize for compensation any member, officer, or employee of the County or any person who, to the actual knowledge (without inquiry) of the principle officers of the Milwaukee Public Museum, has a conflict of interest.

b) The Milwaukee Public Museum hereby states that it is familiar with Milwaukee County's Code of Ethics, which states in part: "No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family may solicit or receive anything of value pursuant to an understanding that such officers or employees vote, official actions or judgment would be influenced thereby."

Section 9.3 Cultural Awareness.

a) The Milwaukee Public Museum and its Board of Directors shall portray cultural groups in existing and newly created exhibits in an accurate and respectful manner.

b) The Milwaukee Public Museum and its Board of Directors shall follow, as a matter of policy, the federal Native American Graves Protection and Repatriation Act, and all other relevant federal acts concerning artifacts, whether the Museum receives federal funds or not.

Section 9.4 Meetings and Records.

The Milwaukee Public Museum shall comply with the provisions of the Wisconsin Public Records and Open Meetings Laws, except to the extent appropriate to protect the privacy of donors to the Museum and to protect the privacy of information related to transactions under negotiation.

**ARTICLE X
SURRENDER OF PROPERTY; HOLDOVER**

Section 10.1 Surrender of Real Estate, Personal Property and Artifacts.

Upon expiration or termination of this Agreement, by lapse of time or otherwise, the Milwaukee Public Museum agrees to peaceably surrender the Real Estate, the Personal Property and the Artifacts to the County. In addition, upon such expiration or termination, the Milwaukee Public Museum shall execute and deliver to the County such quit-claim deeds, bills of sale and other instruments as the County may reasonably request to evidence, perfect or give legal effect to the relinquishment by the Milwaukee Public Museum of all of its right, title and interest in and to the Real Estate, Personal Property and Artifacts to the extent the Milwaukee Public Museum is not prohibited from doing so by the terms of the Milwaukee Public Museum's acquisition of such property (including without limitation, donation restrictions and purchase money financing restrictions).

Section 10.2 Holdover.

If the Milwaukee Public Museum remains in possession of Real Estate, Personal Property or Artifacts after the termination of the Term of this Agreement and without the execution of a new agreement, the Milwaukee Public Museum shall be deemed to be occupying or possessing such Real Estate, Personal Property and Artifacts as a tenant from month-to-month, subject to all of the applicable terms, covenants and conditions of this Agreement, including without limitation Article V hereof.

ARTICLE XI

BUILDING TRANSFER

Section 11. 1 Agreement to Negotiate Real Estate Transfer

If the Milwaukee Public Museum has received at least \$4 Million in cash and donor commitments for capital spending related to the Real Estate by June 30, 2017, the parties agree to enter into good faith negotiations to transfer the Current Building and/or the Current Site and for a Memorandum of Understanding to replace this Agreement consistent with such a transfer. Any such transfer and new memorandum of understanding or amended agreement is subject to the approval of the County Board of Supervisors. Any such negotiations shall include, but not be limited to, the following conditions:

- a) The County's ability to confirm clear title to the Real Estate;
- b) The use of the Real Estate will be restricted for education, scientific or academic purposes and the normal outside rental use of such a facility;
- c) The parties reaching agreement on the commitments and obligations with respect to any outstanding deferred maintenance items and any future liabilities related to the Real Estate;
- d) Subject to applicable law and to the extent permissible under law, the County will commit dollar for dollar for any commitment made by the Milwaukee Public Museum, up to an additional \$4,000,000 from the County, for capital expenditures related to the Real Estate between 2018 and 2022, provided the Real Estate is deeded to the Milwaukee Public Museum no later than December 31, 2017;
- e) The parties reaching agreement that addresses the County Owned Artifacts.

**ARTICLE XII
MISCELLANEOUS**

Section 12.1 Amendment to the By-laws of the Milwaukee Public Museum.

a) Number, Term; Appointment or Election

(i) The number of the Directors, including appointments by County Executive and County Board Chair, of the Milwaukee Public Museum shall be forty-five (45).

(ii) Appointments by County Executive and County Board Chair. Five (5) Directors shall be appointed by the County Executive of Milwaukee County and four (4) Directors shall be appointed by the Chair of the Board of Supervisors of Milwaukee County. Each such appointment shall be submitted by the appointing County official to the Board of Supervisors of Milwaukee County for confirmation and, if confirmed, the County Clerk of Milwaukee County shall deliver certification of such appointment to the Secretary of the Milwaukee Public Museum at least seven (7) days prior to the meeting at which the appointee is to be seated on the Board of Directors. Appointees shall be selected with consideration to the ethnic diversity of Milwaukee County, including but not limited to the American Indian, African American, Hispanic and Polish communities and be subject to the same non-financial governance expectations of elected Board Directors. One-third (1/3) of the Directors appointed by the County officials (or a number as nearly equal to one-third as practicable) shall be appointed each year. Each appointee shall hold office for a term of three (3) years commencing with the Annual Meeting of the Board of Directors of the Milwaukee Public Museum immediately following his or her appointment and until his or her successor shall be appointed as herein provided.

Section 12.2 No Liens.

Without in each instance the prior written consent of the other party, neither party hereto shall directly or indirectly create or permit to be created or to remain any lien, encumbrance, or charge on, or pledge of (collectively, "encumbrances") any of the Real Estate, Personal Property or the Artifacts, except as follows:

a) with respect to Real Estate, the encumbrances described in Exhibit hereto;

b) with respect to Personal Property, Exhibit any encumbrances in the nature of purchase money security interests or title retention arrangements in connection with the acquisition or leasing of Personal Property provided that the encumbrance is limited to the Personal Property so acquired or leased; and

b) with respect to Loaned Artifacts, Exhibit the rights of the owners thereof, and with respect to Artifacts, any encumbrances in the nature of purchase money security interests or title retention arrangements in connection with the acquisition or leasing of Artifacts provided that the encumbrance is limited to the Artifacts so acquired or leased.

Section 12.3 Notices.

Whenever in this Agreement it is required or permitted that notice be given by any party hereto, such notice shall be given by certified or registered mail, and any notice so sent shall be deemed to have been given on the date that the same is deposited in the United States mail, postage prepaid. Notices shall be addressed to the County at 901 North 9th Street, Milwaukee, Wisconsin 53233, Attention: County Clerk, and to the Milwaukee Public Museum at 800 West Wells Street, Milwaukee, Wisconsin 53233, Attention: President, or at such other address as either party may from time to time specify in writing in lieu thereof.

Section 12.4 Choice of Law.

This Agreement shall be construed by and enforced in accordance with the laws of the State of Wisconsin.

Section 12.5 Benefit.

This Agreement and all of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 12.6 Entire Agreement; Severability, Interpretation.

This Agreement contains all of the agreements of the parties hereto with respect to the subject matter hereof and supersedes all previous negotiations. There have been no representations made by or understandings made between the parties with respect to the subject matter hereof other than those set forth in this Agreement. This Agreement may not be modified except by a written instrument duly executed by the party against whom enforcement is sought. If any provision of this Agreement shall be held or declared to be invalid, illegal or unenforceable under any applicable law, that provision shall be deemed deleted from this Agreement without impairing or prejudicing the validity, legality and enforceability of the remaining provisions hereof. The headings contained herein are for convenience only, and shall not be used in any manner in construing the meaning or intent of this Agreement. The doctrine that a document is to be construed against its draftsman shall not be applied to this Agreement.

Section 12.7 Relationship of County and Milwaukee Public Museum.

Nothing contained herein or in any other instrument or agreement between the County and the Milwaukee Public Museum shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, of partnership, or of joint venture, or of a fiduciary between the County and the Milwaukee Public Museum. Wherever in this Agreement it is provided that an action of the Milwaukee Public Museum requires prior approval by the County or the County Board of Supervisors, such approval shall be conclusively presumed to have been so granted if the County or the County Board shall not have notified the Milwaukee Public Museums of an objection thereto in writing, within the lesser of ninety (90) days or three (3) Board of Supervisors meeting cycles following receipt of written notice of the proposed action from the Milwaukee Public Museum.

Section 12.8 Notice to County of Amendments to Articles and By-Laws.

Amendments to the Articles of Incorporation or By-Laws of the Milwaukee Public Museum approved by the Museum Board of Directors and not prohibited by section 12.1 above, shall be provided in writing to the County upon execution.

Section 12.9 Warranties Survive.

The warranties and representations contained herein shall survive the Term of this Agreement.

IN WITNESS WHEREOF, the County and the Milwaukee Public Museum have executed this Agreement as of the day, month and year first above written.

MILWAUKEE COUNTY, WISCONSIN

MILWAUKEE PUBLIC MUSEUM, INC.

By: _____
Printed Name: _____
County Executive

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
County Clerk

Attest: _____
Printed Name: _____
Title: _____

[SEAL]

[SEAL]

Approved by Corporation Counsel.

By: _____
Printed Name: _____
Corporation Counsel

EXHIBITS TO FOLLOW