

CAPITAL FACILITY DEVELOPMENT, LEASE AND OPERATING AGREEMENT

This **CAPITAL FACILITY DEVELOPMENT, LEASE AND OPERATING AGREEMENT** (this “**Agreement**”) by and between **THE COUNTY OF PEORIA**, an Illinois municipal corporation (the “**County**”), and **PEORIA RIVERFRONT MUSEUM**, an Illinois not-for-profit corporation (“**Tenant**”, which together with the County are sometimes singularly referred to as a “**Party**” and collectively as the “**Parties**”), is entered into on and dated this _____ day of _____, 2010 (the “**Commencement Date**”).

PREAMBLE

The County, Tenant and other parties entered into an Amended and Restated Redevelopment Agreement dated _____, 2010 (the “**Redevelopment Agreement**”), pursuant to which *inter alia* the County received from the City of Peoria title to the Land (defined herein), and agreed to lease the Land and the County Museum Facility (defined herein) to Tenant, to develop the Parking Garage (defined herein) and to make the County Contribution (defined herein), and Tenant agreed to lease the Premises (defined herein), to develop and construct the County Museum Facility on behalf of the County and to operate the Museum (defined herein) in the Premises.

The County and Tenant, for themselves, their legal representatives, successors and permitted assigns, hereby agree as follows:

ARTICLE 1. DEFINED TERMS; RULES OF INTERPRETATION

1.01 Defined Terms. Terms used in this Agreement which are not defined in a section of this Agreement shall have the meanings specified in Schedule A.

1.02 Rules of Interpretation. References to Articles and Sections shall be to Articles and Sections of this Agreement unless otherwise specified, and all section references shall include all subsections subsidiary to the referenced section. Article and Section headings herein have been inserted for convenience of reference only, are not a part of this Agreement and shall not be used in interpreting this Agreement. Unless the context of this Agreement otherwise requires, (a) words using the singular or plural number also include the plural or singular number, respectively, (b) this Agreement includes all exhibits and schedules attached hereto, all of which are incorporated herein by this reference, (c) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to the entire Agreement, (d) the masculine gender shall include the feminine and neuter, (e) references to persons shall include natural persons, corporations, partnerships, limited liability companies, unincorporated associations and similar entities and bodies, (f) any reference to a law, an agreement or a document shall be deemed to also refer to any amendment, supplement or replacement thereof, and (g) whenever this Agreement refers to a number of days, the number shall refer to calendar days.

ARTICLE 2.
GRANT, CONDITION OF PREMISES AND EXTENSION OF TERM

2.01 The County, for and in consideration of the Rent reserved and of the covenants and agreements contained in this Agreement on the part of Tenant to be performed, leases to Tenant, and Tenant leases from the County, the Premises for the Term. The lease of the Premises includes the right, together with the public, to use the Parking Garage as set forth in ARTICLE 5.

2.02 The County leases the Premises to Tenant in its present condition, subject only to the County's obligation to construct the Parking Garage as set forth in ARTICLE 5. Tenant is satisfied that the Premises is suitable for the Permitted Use and Tenant accepts the Premises "as is", "where is" and "with all faults". The County makes no representation or warranty, express or implied, about the Premises or its value, location, use, description, design, merchantability, fitness for use for a particular purpose, condition or durability, or as to quality of the material or workmanship therein or environmental condition thereof. Tenant shall bear all risks incidental to the Premises, except as expressly set forth in this Agreement. The County shall not have any responsibility or liability for any defect or deficiency of any nature in the Premises, whether patent or latent and the County shall not have any responsibility or liability for any direct or indirect damage to persons or property resulting therefrom or for Tenant's loss of use of the Premises or for any interruption in Tenant's business caused by Tenant's inability to use the Premises for any reason whatsoever. The County and Tenant have negotiated the provisions of this Section. They are intended to be a complete exclusion and negation by the County of, and the County disclaims and Tenant waives, all rights, claims, representations or warranties by the County, express or implied, about the Premises, whether arising under the Uniform Commercial Code or any other Legal Requirement. Except as otherwise expressly provided in this Agreement, (a) Tenant has full responsibility for the condition, alteration, maintenance, management, repair and replacement of the Premises, (b) except as otherwise expressly provided in this Agreement, the County has no obligation whatsoever to perform any work or make any repairs with respect to the Premises, to furnish any services with respect to the Premises, or to incur any expenses with respect to the Premises, and (c) the County has no responsibility with respect to the condition of the Premises (including any latent defects). Tenant expressly acknowledges and agrees that the County has not made and is not making, and Tenant, in executing and delivering this Agreement, is not relying upon, any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Agreement. Without limiting the generality of the preceding provisions, Tenant, by taking possession of the Premises or any portion thereof, shall conclusively be deemed to have agreed that the Premises were in satisfactory condition as of the Commencement Date.

2.03 Tenant shall have two options (each an "**Extension Option**") to extend the Term for additional five years (the "**Extension Terms**") commencing upon the day immediately after the original Expiration Date (or the extended Expiration Date if the first Extension Option is exercised), subject to the remaining provisions of this Section. First, Tenant shall give the County written notice of its election to exercise the Extension Option not later than one year prior to the then current Expiration Date. Failure to exercise the first Extension Option shall constitute a waiver of the second Extension Option. Second, Tenant must not be in default either on the date Tenant exercises the Extension Option, or, unless waived in writing by the County,

on the Expiration Date of the initial Term (or the then expiring Extension Term, as the case may be).

**ARTICLE 3.
RENT**

3.01 During the Term, Tenant shall pay the County the Base Rent on the Commencement Date (or the first day of any Extension Term, as the case may be). By execution of this Agreement, the County acknowledges receipt of payment of the Base Rent for the Term.

3.02 Tenant shall pay all Additional Rent that is payable to the County within 15 days after Tenant is billed for such amount, unless a different time period is specified in this Agreement. The County shall have the same rights and remedies with respect to non-payment of Additional Rent as the County has with respect to Base Rent.

3.03 Tenant shall pay Rent to the County at the County's Address in lawful money of the United States of America by good check or, at the County's request, by wire transfer. Tenant shall pay all Rent without notice, demand, deduction, abatement or setoff, except as otherwise expressly provided in this Agreement. A bill for Rent payable to the County sent by first class mail to the address to which notices are to be given under this Agreement shall be deemed a proper demand for the payment of the amounts set forth therein, but nothing contained herein shall be deemed to require the County to send a Rent bill or otherwise make any demand for the payment of Rent except where such notice or demand is expressly required by the terms of this Agreement.

3.04 This is an absolute net lease. Accordingly, the County shall receive a net return from the Premises equal to the Base Rent, without deduction for any expense or charge for the Premises (except as otherwise expressly provided in this Agreement). Tenant shall pay as Additional Rent all expenses, of every kind and nature, relating to or arising from the Premises, including Impositions and expenses arising from the leasing, management, operation, maintenance, repair, use, or occupancy of the Premises and all construction relating to the Premises, except as otherwise expressly provided in this Agreement.

3.05 The County's delay in rendering, or failure to render, any statement or bill for Additional Rent for any period shall not waive the County's right to render a statement or collect such Additional Rent for that or any subsequent period. If the County delivers to Tenant an incorrect statement with respect to any Rent, the County shall have the right to give Tenant a corrected statement for the period covered by the incorrect statement and to collect the correct amount of the Rent.

3.06 If at any time during the Term the Rent is not fully collectible by reason of any Law, Tenant shall enter into such agreements and take such other action as the County reasonably requests and which is not prohibited by any Law, to permit the County to collect the maximum permissible Rent (but not in excess of the Rent). If such Law terminates prior to the Expiration Date (a) the Rent shall be paid in accordance with this Agreement, and (b) Tenant shall pay to the County, if not prohibited by any Law, the Rent which would have been paid but

for such Law, less the actual amount of Rent paid by Tenant to the County during the period of such Law.

3.07 If any Additional Rent is not paid within ten days of the date due under this Agreement, Tenant shall pay the County, as Additional Rent, interest on the overdue amount at the Interest Rate. Such overdue Rent shall bear interest from the date first due (without regard to any grace period) until the date such Rent is paid. Such interest shall be in addition to, and not in lieu of, any other remedy the County may have.

ARTICLE 4. PAYMENT OF IMPOSITIONS

4.01 Throughout the Term, Tenant will pay, or cause to be paid, all Impositions as and when the same shall become due and payable, provided that if any Imposition may by Law be paid in installments, Tenant may pay such Imposition in installments as permitted by Law.

4.02 If any of the Impositions are paid, levied or assessed on a fiscal year basis, and if the Commencement Date occurs on a day other than the first day of such fiscal year or the Expiration Date occurs on a day other than the last day of such fiscal year, such Impositions shall be apportioned between the County and Tenant on a per diem basis as of the Commencement Date and/or Expiration Date, as the case may be. To the extent any assessments payable in installments affect the Premises at the Commencement Date or Expiration Date, (a) installments payable prior to the Commencement Date and after the Expiration Date shall be payable by the County, (b) installments payable on or after the Commencement Date and on or before the Expiration Date shall be payable by Tenant, and (c) any installment payable with respect to a fiscal period in which the Commencement Date or Expiration Date occurs shall be apportioned between the County and Tenant on a per diem basis.

4.03 Notwithstanding the foregoing, but subject to Section 4.02, Tenant shall not be responsible for (a) any Impositions that accrued prior to the Commencement Date, or (b) any fines, fees, charges, penalties, or interest imposed by any Governmental Authority with respect to periods prior to the Commencement Date or with respect to any notice of violation of Law issued and outstanding as of the Commencement Date.

4.04 Tenant shall pay, or shall cause to be paid, all Impositions directly to the Governmental Authority charged with the collection thereof. Tenant shall deliver to the County, promptly upon request, photostatic copies of the receipted bills or other evidence reasonably satisfactory to the County showing the payment of such Impositions.

4.05 Subject to the Redevelopment Agreement, Tenant may, at Tenant's sole cost and expense, endeavor from time to time to reduce the assessed valuation of the Premises for the purpose of reducing the Impositions payable by Tenant. Notwithstanding the foregoing, Tenant shall timely pay all Impositions. The County agrees to offer no objection to such contest or proceeding and, at the request of Tenant, to reasonably cooperate with Tenant in pursuing such contest or proceeding, but without expense to the County. Any such contest or proceeding shall be brought in Tenant's name unless otherwise required by Law, in which case the contest

or proceeding may be brought in the County's name. Tenant agrees to indemnify and hold the County harmless from all Liabilities arising by reason of or in connection with any such proceeding. If Tenant does not intend to institute proceedings in any real estate tax fiscal year to reduce the assessed valuation of the Premises, Tenant shall give the County notice thereof no later than the date 30 days before the last date by which such proceedings may be filed, and the County then may, at its option, and at the County's expense, institute such proceedings. If the County initiates one or more such proceedings, the expenses of such proceeding(s) shall be paid by the County, but Tenant shall reimburse the County for such expenses, as Additional Rent, out of (a) any refund of Impositions received by Tenant, and/or (b) any reduction in Impositions realized by Tenant as a result of such proceeding(s), but in each case only to the extent such refund, reduction or savings are realized or received by Tenant.

4.06 If all or any part of an Imposition is refunded to either Party (whether through cash payment or credit against Impositions), the Party which paid the Imposition to which the refund relates shall be entitled to such refund to the extent such refund relates to any Imposition paid by such Party. If either Party receives a refund (whether by cash payment or credit) to which the other Party is entitled, the receiving Party shall promptly pay the amount of such refund or credit to the entitled Party, less the receiving Party's expenses, if any, in obtaining such refund or credit.

4.07 Notwithstanding the foregoing provisions of this ARTICLE 4, the County agrees it shall promptly apply to exempt the Premises (including the Land, the County Museum Facility and the Parking Garage) from Impositions under applicable Law, and Tenant agrees to cooperate with such exemption application. If as a result of the County's exemption, Tenant's interest in this Agreement is assessed under Section 9-195 of the Property Tax Code (35 ILCS 200/9-195), Tenant shall apply for and diligently prosecute exemption of such leasehold tax parcel. Pending the outcome of such applications, Tenant shall timely pay all Impositions as set forth in this ARTICLE 4.

ARTICLE 5. THE COUNTY'S WORK

5.01 The County agrees to furnish, without cost to Tenant, all of the material, labor and equipment for the construction of (a) the Parking Garage and (b) Associated Infrastructure Improvements (as defined in the Redevelopment Agreement) in accordance with this Agreement and the Redevelopment Agreement. The work referred to in subparts (a) and (b) shall collectively be referred to as the "**County's Work.**"

5.02 The County shall cause to be constructed the County's Work in a good and workmanlike manner in accordance with the Requirements and substantially in accordance with the plans and specifications described in the attached **Exhibit 5.02** (collectively, the "**County's Final Plans**"). The County's Final Plans shall, as necessary, be revised, and the County's Work shall be modified, to incorporate any revisions required by any Governmental Authority having jurisdiction over the County's Work or in response to field conditions. The County, at its option, may substitute for items or materials provided for in the County's Final Plans, as revised from time to time, other items or materials of comparable kind and quality if, in County's reasonable judgment, the use of the items or materials provided for in the County's Final Plans would not

cause delay in the completion of construction; provided, however, that any such substitutions must not materially and adversely affect the performance or service life of the County's Work. The County shall furnish Tenant with a copy of the County's Final Plans and any revisions thereto.

5.03 Upon receipt of all governmental approvals necessary for the County's Work, the County shall promptly commence and diligently proceed with construction of the County's Work, subject to Unavoidable Delays. The County shall keep Tenant informed of the progress of the County's Work and shall furnish Tenant with written notice ten days prior to the date on which the County expects to have attained "**Construction Ready Condition**", which shall mean the stage of completion of construction of the Parking Garage necessary for Tenant to commence construction of the County Museum Facility.

5.04 Tenant shall not commence construction of the County Museum Facility prior to the date the County achieves Construction Ready Condition, except if the County furnishes Tenant with written permission, which the County may give in its sole discretion. If the County furnishes its written permission, Tenant shall have the right to commence construction of preliminary site work and utilities work prior to the date the County delivers the Parking Garage in a Construction Ready Condition, subject to this Section 5.04. Tenant agrees that if the County grants Tenant permission for early entry under this Section 5.04, then (a) Tenant and Tenant's Contractors and their activities in the Premises will not interfere with or delay the completion of the County's Work and (b) the County, its contractors and subcontractors and their agents and employees shall have priority over Tenant and Tenant's Contractors in performing work within the Premises, including, without limitation, the use of hoists, utilities and staging areas. The County shall have the right to withdraw its early entry permission given under this Section 5.04 upon written notice to Tenant if the County determines in its sole discretion that any interference or delay in prosecution of the County's Work has been or may be caused. Tenant agrees that any such entry shall be at Tenant's own risk, and the County shall not be liable in any way for any injury, loss or damage which may occur to any of Tenant's property or installations made in the Premises.

5.05 The County shall complete the County's Work and shall open the Parking Garage on or before the opening for business of the County Museum Facility. The County shall maintain the Parking Garage in good condition and repair without charge to Tenant. Use of the Parking Garage will be subject to rules and regulations established by the County from time to time during the Term, provided such rules and regulations do not conflict with the terms of this Agreement. The County shall reserve for the use of Tenant's employees, staff and visitors an adequate number of parking spaces in the Parking Garage to meet Tenant's needs during its Hours of Operation (plus 30 minutes before opening and 30 minutes after closing) (the "**Allocated Parking Spaces**"). The County shall initially determine the Allocated Parking Spaces within 60 days after Tenant opens the Museum to the public based on the Parking Garage's usage by Tenant, its staff, employees, patrons and guests, by Caterpillar, its employees, patrons and guests and by the general public and thereafter shall have the right to reallocate the Allocated Parking Spaces based on changes in such usage occurring over the Term. The County reserves the right, in its sole discretion, to relocate the Allocated Parking Spaces within the Parking Garage from time-to-time upon no less than 30 days' prior written notice to Tenant. At times other than the Hours of Operation, Tenant, its staff, employees, patrons and guests shall

have no right to use the Parking Garage, except as a member of the general public, provided, however, that the County may, in its discretion, make all or a portion of the Parking Garage available to Tenant its staff, employees, patrons and guests for non-reoccurring special events that Tenant conducts or sponsors at times other than its Hours of Operation, subject to availability and scheduling with other events, in accordance with the County's rules or regulations. The County shall have no liability to Tenant for any temporary or permanent cessation in the provision of same the Parking Garage. The County reserves the right to determine whether the Parking Garage is becoming unmanageable or disorderly and, as a result, to take appropriate action to correct the situation, including, but not limited to, ticketing and towing. If, despite such corrective action, Tenant, its employees, agents, guests, or invitees continue to persistently violate the terms of this Section 5.05, then the County may, after 30 days' prior written notice and attempting to resolve with Tenant such persistent violations, suspend or terminate irrevocably the right of Tenant, its staff, employees, patrons and guests to park in the Allocated Parking Spaces and such suspension or termination shall not be deemed an eviction or violation of this Agreement.

5.06 Except as expressly set forth in this ARTICLE 5, the County has no agreement with Tenant and has no obligation to do any other work with respect to the Premises.

ARTICLE 6. DEVELOPMENT OF THE COUNTY MUSEUM FACILITY

6.01 Tenant shall construct, in accordance with the requirements of this Agreement, the County Museum Facility meeting the requirements set out in the attached **Exhibit 6.01**. The County shall own the County Museum Facility, the cost of development and construction of which shall be paid for through the Construction Escrow. The Parties shall deposit the Initial Construction Deposit into the Construction Escrow as the Commencement Date. Other than the County's Work set forth in ARTICLE 5, the County shall have no obligation or responsibility for any cost or expense in connection with the development and construction of the Premises in excess of the County Contribution. Tenant shall be solely responsible for all costs and expenses for the development and construction of the County Museum Facility in excess of the County Contribution and shall discharge such expenses prior to their becoming delinquent.

6.02 Anything in this Agreement contained to the contrary notwithstanding, Tenant expressly understands and agrees that the Construction Security must, at all times, be In Balance (as hereinafter defined). The Construction Security shall be deemed to be "In Balance" only if the total of the funds then deposited in the Construction Escrow shall in the County's sole and absolute judgment equal or exceed the aggregate of (a) the amounts to be paid as retainage to persons who have supplied labor or materials to the Tenant's Initial Construction; (b) the amount required, in the County's sole and absolute judgment, for a contingency reserve; and (c) the amount necessary to pay for all unpaid costs incurred or to be incurred in the final completion of the construction and equipping of the Tenant's Initial Construction and operation of the Premises until the date Tenant opens for business from the Premises, including the cost of purchase and installation of all fixtures and equipment and all work required to finish or improve any portion of the Premises. Tenant agrees that if for any reason the

Construction Escrow is not In Balance, Tenant shall, within ten Business Days after Tenant's receipt of the request by the County, deposit into the Construction Escrow cash in an amount which will place the Construction Escrow In Balance, which deposit shall first be exhausted before any further disbursement of the County's Contribution shall be made. No interest shall be payable on such amounts. Tenant's failure to make such deposit shall be a default under this Agreement.

6.03 Tenant shall not commence Tenant's Initial Construction until Tenant has met all of the following conditions:

- (a) The County has approved in writing Tenant's Final Plans as set forth in Section 6.05; and
- (b) Tenant has delivered to the County (i) copies of all permits, approvals, and authorizations required by the Building Department and all other Governmental Authorities having jurisdiction over Tenant's Initial Construction, and (ii) copies of Tenant's Final Plans stamped approved by the Building Department; and
- (c) The County, Tenant and Chicago Title Insurance Company have executed the Construction Escrow agreement and (i) Tenant has deposited Tenant's Initial Contribution into the Construction Escrow and (ii) the County has deposited the County's Contribution into the Construction Escrow; and
- (d) Tenant has delivered to the County a certified copy of the fully executed and delivered construction contract with a general contractor, or a fully executed and delivered design-build contract, together with certified copies of the executed and delivered contracts for each of the Major Contractors, or a certified copy of the fully executed and delivered construction management contract together with certified copies of executed and delivered contracts for each of the Major Contractors (collectively, the "**Construction Contracts**"), for the construction of the County Museum Facility, meeting the requirements of this Agreement; and
- (e) Tenant has delivered to the County certified copies of fully executed and delivered agreements between Tenant and the architect and engineers engaged to design the County Museum Facility ("**Design Contracts**") meeting the requirements of this Agreement; and
- (f) Tenant has delivered to the County an assignment to the County of all of Tenant's right, title and interest in and to (i) the Construction Contracts and Design Contracts, (ii) all preliminary, final, and working plans, specifications, and drawings and construction documentation prepared in connection therewith, and (iii) all intellectual property rights in any of the foregoing, which assignment shall be in form reasonably satisfactory to the County (provided that the County shall not exercise its rights as assignee unless and until this Agreement has been terminated); and

- (g) Tenant has obtained, and has caused its general contractors, construction managers, architects, and subcontractors to obtain, the insurance required by ARTICLE 7 and has delivered to the County certificates (in form reasonably acceptable to the County) evidencing such insurance, except that, with respect to liability insurance the “Wrap Up” liability insurance shall have a limit of liability of \$ [REDACTED]; and
- (h) Tenant’s general contractor shall have furnished to the County the Bonds required by ARTICLE 7; and
- (i) Tenant’s design-builder, construction manager, contractors, and subcontractors shall have furnished to the County the indemnification agreement required by ARTICLE 7; and
- (j) Tenant has delivered to the County a construction schedule setting forth dates for commencement and completion of all phases of the Tenant’s Initial Construction, indicating the time for performance of the work to be accomplished under the Construction Contracts, including a statement from Tenant’s general contractor (or if applicable construction manager) that, in his best professional judgment, the construction schedule is realistic and can be adhered to in completing the Tenant’s Initial Construction in accordance with the plans and specifications approved by the County; and
- (k) Tenant has delivered to the County a sworn statement from Tenant and a sworn statement from Tenant’s general contractor setting forth a description of all contracts executed by Tenant or by the general contractor with respect to the Tenant’s Initial Construction, the names and addresses of the contractors under those Construction Contracts, the date of each such Construction Contract and of any supplements or amendments thereto, the nature and scope of the work covered thereby, and the aggregate amounts theretofore paid and thereafter to be paid to each contractor thereunder; and further stating whether said contracts embrace all of the work required to be done and all of the material necessary for completion of the Tenant’s Initial Construction in accordance with the plans and specifications approved by the County, and, if not, providing sufficient information to enable the County to estimate the cost of any work or materials not so covered; and
- (l) Tenant has delivered to the County evidence satisfactory to the County that: (i) all utility and municipal services required for the construction, occupancy and operation of the Premises are available for use and tap on at the Premises, subject only to payment of fees included in the Estimated Construction Cost, or will be available after construction thereof as provided in the Construction Contracts, subject only to payment of costs and fees included in the Estimated Construction Cost; and (ii) the storm and sanitary sewage disposal system, the water system and all mechanical systems serving the Premises do (or when constructed will) comply with all applicable environmental, pollution control and ecological laws, ordinances, rules and regulations, and the applicable environmental protection

agency, pollution control board and/or other governmental agencies having jurisdiction of the Premises have issued their permits for the construction and operation thereof; which evidence shall include a certificate of Tenant's architect; and

- (m) Tenant has delivered to the County a certificate ("**Architect's Certificate**") from Tenant's architect or other evidence satisfactory to the County, that: (i) the Final Plans are, and that the Tenant's Initial Construction will be when completed in accordance therewith, in full compliance with all applicable building, zoning and other laws and ordinances as well as Laws; (ii) the Tenant's Initial Construction, when completed in accordance with the Tenant's Final Plans, will not encroach upon any recorded or visible easement in effect with respect to the Premises; (iii) the Tenant's Final Plans are complete in all respects, containing all detail requisite for the Tenant's Initial Construction which, when built and equipped in accordance therewith, shall be ready for occupancy; (iv) in the aggregate, the Construction Contracts contain all detail necessary to provide for all labor, material and equipment required by the Tenant's Plans and Specifications (or noting all exceptions from such coverage); (v) all permits, licenses and governmental approvals necessary for construction of the Tenant's Initial Construction have been issued (or noting exceptions from such coverage); and (vi) adequate ingress and egress to and from the Premises over public streets and rights of way is and will be available during the period of construction of the Tenant's Initial Construction and thereafter; and
- (n) Tenant has delivered to the County such other papers and documents regarding Tenant or the Tenant's Initial Construction as the County may require.

6.04 Each of the Construction Contracts and Design Contracts shall include the following provisions, in form and substance reasonably satisfactory to the County in all respects:

- (a) As to the Design Contracts, a provision permitting the County to use the plans and specifications prepared pursuant to such Design Contracts, in connection with the construction, maintenance, operation, alteration of, and addition to the County Museum Facility;
- (b) As to the Construction Contracts, provisions regarding retainage, changes in Tenant's Final Plans, change orders, extras, bonds, construction schedule, and applications for payment, warranty and completion of work;
- (c) An acknowledgement by the architect, engineer, general contractor, design/builder, construction manager, and/or Major Contractor that the contract has been assigned to the County that such architect, engineer, general contractor, design/builder, construction manager, and/or Major Contractor consents to such assignment and will perform its obligations under such contract if all sums due under the contract are paid (provided that such assignment shall not be deemed an assumption of such contract by the County); and an agreement that such provisions may not be modified without the

County's consent. Notwithstanding the foregoing, the County shall not exercise any of its rights as assignee unless and until this Agreement has been terminated; and

- (d) An acknowledgement by each of the architect, engineer, general contractor, design/builder, construction manager, and Major Contractors that (i) the County Construction Requirements form a part of their respective agreements with Tenant and (ii) the County Construction Requirements shall be part of any agreements with third parties engaged in furnishing any services, labor or materials as part of the Tenant's Initial Construction.

If any of the Construction Contracts or Design Contracts are materially modified, Tenant shall deliver to the County a copy of such modification. Tenant shall not modify any such Construction Contract or Design Contract to limit or negate any of the requirements of this Agreement, including, but not limited to, this Section.

6.05 The County shall not unreasonably withhold, condition or delay its approval of the plans and specifications for the Tenant's Initial Construction. If the County fails to grant or deny any such request for the County's approval within 30 days after the County has received Tenant's request for such approval, three complete sets of plans and specifications, and all additional information reasonably requested by the County, such approval shall be deemed granted if (and only if) Tenant's consent request contains, on the front page of the request, in bold capitalized letters, a statement that the County's approval shall be deemed given pursuant to Section 6.05 if the County fails to deny or grant its approval within 30 days of receipt of the such request, plans and specifications, and any reasonably required additional information. Such approved plans and specifications may not be materially modified without the County's approval, such approval not to be unreasonably withheld, conditioned or delayed. If the County fails to grant or deny any such request for the County's approval to any material modification(s) to the approved plans and specifications within seven calendar days after the County has received Tenant's request for such approval, three complete sets of the plans and specifications reflecting such material modification(s), and all additional information reasonably requested by the County, such approval shall be deemed granted. No approval by the County, and no inspection by the County or its representatives of Tenant's Initial Construction, shall be deemed an assurance or representation by the County that any aspect of Tenant's Initial Construction, or the plans and specifications therefor, comply with Legal Requirements or with the requirements of this Agreement. The plans and specifications for the Tenant's Initial Construction approved in accordance with this Section 6.05 shall be referred to as the "**Tenant's Final Plans.**"

6.06 Tenant shall construct the County Museum Facility in accordance with the following timetable (the "**Timetable**"):

- (a) On or before _____, 2010, Tenant shall complete and submit to the County the final plans and specifications for the County Museum Facility.
- (b) On or before [_____, 2010], Tenant shall submit to the County a certification by Tenant's architect and by Tenant of the

reasonably estimated cost of constructing the County Museum Facility, including, but not limited to, the costs of labor and materials, professional fees, any interest on borrowed funds during the construction period and all other construction financing costs, all Impositions and insurance premiums attributable to the construction period, and all costs and expenses of compliance with all Requirements (the “**Estimated Construction Cost**”).

- (c) If Tenant is financing all or part of the Tenant’s Initial Construction, then on or before the date _____ months after the Commencement Date, Tenant shall obtain a commitment from one or more Lenders for (i) a construction loan to fund the construction of the County Museum Facility, in an amount at least equal to ___% of the Estimated Construction Cost, but in no event less than \$_____, and (ii) permanent financing in an amount at least equal to the principal amount of such construction loan (collectively, the “**Financing Commitment**”) and deliver a copy of same to the County.
- (d) On or before ten days after the County has attained Construction Ready Condition, Tenant shall have commenced construction of the County Museum Facility.
- (e) On or before _____ months after Tenant’s commencement of construction of the County Museum Facility, Tenant shall have Substantially Completed the County Museum Facility. The date the County Museum Facility is Substantially Completed is the “**Construction Completion Date.**”

Tenant’s failure to comply with the requirements of the Timetable shall be deemed a material default under this Agreement. If Tenant fails to comply with the Timetable, Tenant shall have a period of 30 days to cure such default after the County gives Tenant notice of such default. Notwithstanding the foregoing, if Tenant fails to comply with the requirements of the Timetable by reason of any Unavoidable Delay, Tenant’s time to perform such obligation shall be extended for such period of time as may be reasonably necessary to perform such obligation. The County may, at its sole option, if Tenant fails to comply with the requirements of the Timetable and to cure such default within the applicable time period provided above, enter upon the Premises for any one or more of the following purposes: to complete construction of the County Museum Facility, to secure any partially completed construction on the Premises, and/or to take any measures the County deems necessary to safeguard and protect the Premises, the Improvements thereon, the materials stored thereon, the safety of the public, and the safety of buildings and improvements adjacent to the Premises. Tenant agrees to reimburse the County, as Additional Rent, for all costs and expenses of every kind and nature incurred by the County pursuant to the preceding sentence. If the County takes over the construction of the County Museum Facility, Tenant promptly shall remove its employees and such of its agents and contractors as the County shall specify from the Premises and shall refrain from interfering with the construction or protection of the County Museum Facility in any manner. The County’s rights under this Section 6.06 shall be in addition to, and not in lieu of, any other remedy the County may have.

6.07 No Affiliate of Tenant shall be engaged to act as (i) general contractor for the County Museum Facility, (ii) the construction manager of the County Museum Facility, (iii) design-builder, and/or (iv) a Major Contractor.

6.08 Disbursements from the Construction Escrow shall be made, and the conditions precedent to such disbursements shall be met, from time to time as construction progresses, but no more frequently than once in each calendar month. At least five Business Days prior to, and as a condition of, each “**Construction Disbursement**”, Tenant shall furnish to the County the following documents covering such disbursement:

- (a) Tenant’s disbursement request (“**Request For Payment**”) specifying the amount of the requested disbursement, certifying to the County, as of the date of the applicable request for disbursement, that: (i) the total amount of each request for disbursement represents the actual amount payable to the Contractor and/or Subcontractors who have performed work on the Tenant’s Initial Construction and indicating what payment requests, if any, have been received by Tenant from the Contractor or the Subcontractors but have not yet been approved by Tenant for payment; (ii) no Default, or condition or event which with the giving of notice or passage of time or both would constitute a Default, exists under this Agreement; (iii) Tenant has received no notice and has no knowledge of any liens or claims of lien either filed or threatened against the Premises or any interest of the Parties except those which are specifically identified in writing to the County; (iv) all amounts shown as previous payments on the current disbursement request have been paid to the parties entitled to such payment; (v) approval by Tenant of all work and materials for which a payment is then due and for which disbursement is thereby requested; (vi) all work and materials theretofore furnished for the Tenant’s Initial Construction conform with the Tenant’s Final Plans; (vii) copies of all Construction Contracts, as then in effect, have been delivered to the County; and (viii) the Construction Security is In Balance;
- (b) Contractor’s and Subcontractors’ sworn statements and waivers of lien, covering all work for which disbursement is to be made to a date specified therein, and covering all work done on the Premises, to a reasonably current date, otherwise paid for or to be paid for by Tenant or any other person, all in compliance with the Construction Requirements and Laws and with the requirements of the escrowee (for issuance of interim title endorsements covering such disbursement), together with such invoices, contracts, or other supporting data as the County or the escrowee may require;
- (c) Disclaimers from suppliers of fixtures and equipment of any vendor's lien or purchase money security interest therein and evidence satisfactory to the County that all fixtures and equipment are and will remain free of security interests of all kinds;
- (d) Endorsements to the Title Insurance Policy to cover the amount and date of the Construction Disbursement insuring against mechanics' lien claims for work performed prior to the date covered by such continuation; and

- (e) Such other papers and documents as the escrowee may require for the issuance of endorsements to the County's title insurance policy for each disbursement of Construction Security.

Prior to commencement of Tenant's Initial Construction, and from time to time thereafter, the County or the escrowee may forward to the Contractor and to any or all Subcontractors listed on the Owner's Sworn Statement a contract verification to confirm the terms and amount of the Contract or Subcontract for the Contractor and each Subcontractor. If there is any discrepancy between the terms and amounts as shown by the Construction Contracts, the sworn statements, and the verifications, the County may require, as a condition to further disbursements, that such discrepancies be eliminated to its satisfaction. The County may, in its discretion, make or cause to be made (through the Construction Escrow) payments for the cost of construction of Tenant's Initial Construction directly to any Contractor and/or Subcontractor or to any vendor of fixtures and equipment or jointly to Tenant and any of such parties.

6.09 If the Construction Security for the Tenant's Initial Construction is a Letter of Credit: [reserved].

6.10 The materials, fixtures, machinery and equipment to be installed in the County Museum Facility shall be of good or first rate quality and new. If required by the County, Tenant shall furnish evidence reasonably satisfactory to the County as to the kind and quality of materials, fixtures, machinery and equipment. All construction work associated with the County Museum Facility shall comply in all material respects with the requirements of the final plans and specifications approved by the County. All work in connection with the construction of the County Museum Facility shall be prosecuted with reasonable dispatch, subject to Unavoidable Delays and subject to the Timetable (to the extent applicable).

6.11 Tenant agrees that the Tenant's Initial Construction will be constructed and fully equipped in a good and workmanlike manner with materials of high quality, strictly in accordance with Tenant's Final Plans and applicable Requirements. Tenant further agrees that such construction and equipping of the Tenant's Initial Construction will be commenced, prosecuted with due diligence and will be fully completed all in accordance with the Timetable. If the County, the County's Architect or any of the County's consultants disapprove any portion of the construction or equipping of the Premises, Tenant shall, within 15 days after such disapproval, commence to correct the condition so disapproved, and thereafter will diligently complete such correction. Tenant agrees that all materials contracted or purchased for construction of the Tenant's Initial Construction and all labor hired or contracted for with respect to the Tenant's Initial Construction and paid for with Construction Security will be used and employed solely on the Tenant's Initial Construction and for no other purpose.

6.12 Tenant agrees that no changes will be made in the Tenant's Final Plans, no change will be made in any Construction Contract, and no extras will be allowed to any contractor, except upon the written approval of the same by the County; provided, however, Tenant may make changes in the Tenant's Final Plans or in the Construction Contracts, or allow such extras, without first obtaining such approval thereof, if (a) Tenant notifies the County in writing of such change within 24 hours thereafter; (b) Tenant obtains the approval of all parties to the Construction Contract proposed to be modified and all sureties whose approval is required;

(c) the structural integrity of Tenant's Initial Construction is not impaired; (d) no substantial change in architectural appearance is effected; (e) no default in any obligations to any other party, including any governmental authority, results from such changes; (f) the cost of or reduction resulting from no one such change or extra exceeds \$10,000 and the aggregate changes in cost of all such changes and extras does not exceed \$50,000; and (g) the Construction Security remains In Balance.

6.13 Except for a security interest granted to the County, Tenant agrees that all of the personal property, fixtures, attachments, furnishings and equipment delivered in connection with the construction, equipping or operation of the Tenant's Initial Construction will be kept free and clear of all chattel mortgages, vendor's liens, and all other liens, claims, encumbrances and security interests whatsoever, and that Tenant will be the absolute owner of said personal property, fixtures, attachments and equipment. Tenant will, on request, furnish the County with satisfactory evidence of such ownership, and of the terms of purchase and payment therefor.

6.14 If any proceedings are filed or are threatened to be filed seeking to (a) enjoin or otherwise prevent or declare invalid or unlawful the construction, occupancy, maintenance or operation of the Tenant's Initial Construction or any portion thereof; (b) adversely affect the County's title in the Premises; or (c) adversely affect the financial condition of Tenant or the ability of Tenant to complete the Tenant's Initial Construction, then Tenant will notify the County of such proceedings and within two Business Days following Tenant's notice of such proceedings, Tenant will cause such proceedings to be vigorously contested in good faith, and in the event of an adverse ruling or decision, prosecute all allowable appeals therefrom. Tenant will, without limiting the generality of the foregoing, resist the entry or seek the stay of any temporary or permanent injunction that may be entered, and use its best efforts to bring about a favorable and speedy disposition of all such proceedings.

6.15 Tenant will not suffer or permit any breach or default to occur in any of the obligations of Tenant under the Construction Contracts nor suffer or permit the same to terminate by reason of any failure of Tenant to meet any requirement thereof including those with respect to any time limitation within which the Tenant's Initial Construction is to be completed and available for occupancy; Tenant will keep the Construction Contracts in full force and effect and promptly notify the County of any default thereunder; and Tenant will comply with all conditions of the Construction Contracts and will execute all documents necessary for the consummation of the transactions contemplated thereby.

6.16 Tenant will: (a) cooperate with the County in arranging for inspections by representatives of the County of the progress of construction from time to time; (b) at the request of the County, furnish on a quarterly basis updated 12 month cash flow projections concerning such matters as the County may require prepared and certified by Tenant's chief financial officer; (c) promptly notify the County of any condition or event which constitutes (or which with the giving of notice or lapse of time or both would constitute) a Default, and of any material adverse change in the financial condition of Tenant; (d) maintain a standard and modern system of accounting in accordance with generally accepted accounting principles; (e) permit the County or any of its agents or representatives to have access to and to examine all books and records regarding the Premises at any time or times hereafter during business hours; and (f) permit the County to copy and make abstracts from any and all of said books and records.

6.17 If Tenant initially obtains a temporary certificate of occupancy for the County Museum Facility, Tenant shall keep such temporary certificate of occupancy in full force and effect until the date that a permanent certificate of occupancy is issued for the County Museum Facility, and Tenant shall obtain and deliver to the County a permanent certificate of occupancy for the County Museum Facility within [REDACTED] months after issuance of the initial temporary certificate of occupancy, subject to reasonable extension of such time period for Unavoidable Delays. Tenant shall open the Museum to the public as set forth in Section 8.05.

6.18 Tenant shall deliver the following documents to the County, promptly after the County Museum Facility is Substantially Completed: (i) copies of the “as built” plans for the County Museum Facility, including CAD drawings; (ii) a survey of the Premises showing the County Museum Facility and certified to the County by a licensed surveyor; (iii) all permits, certificates, and sign-offs required to be issued pursuant to Legal Requirements in connection with the construction of the County Museum Facility; (iv) when issued, any temporary or permanent certificate of occupancy issued with respect to the County Museum Facility; (v) two copies of all warranties, guaranties, manufacturer’s maintenance materials, commissioning reports and all other project close-out materials and information, bound and indexed; and (vi) if requested by the County, a bill of sale and/or quitclaim deed transferring all right, title and interest in and to the County Museum Facility to the County.

ARTICLE 7. ALTERATIONS

7.01 The provisions of this ARTICLE 7 shall apply to Tenant’s Initial Construction, except to the extent ARTICLE 6 may impose a higher standard, as well as all other Alterations.

7.02 Tenant may, at its sole cost and expense, make any additions, replacements, changes, alterations, installations, repairs or improvements to the Premises (the “Alterations”) that Tenant deems necessary or appropriate, subject to the County’s prior written consent, which consent the County shall not unreasonably withhold, condition or delay; except that Tenant shall not, without the County’s consent, which may be granted or denied in the County’s absolute discretion: (a) demolish all or any material part all of the County Museum Facility, (b) alter the County Museum Facility so as to reduce the aggregate building area of the County Museum Facility, (c) reduce the height of the County Museum Facility, (d) alter the County Museum Facility so as to adversely affect its structural integrity, or (e) alter the nature of the County Museum Facility from the nature of the County Museum Facility required to be constructed under Section 6.01. Notwithstanding the foregoing, the County’s consent shall not be unreasonably withheld or delayed to any of the Alterations described in clauses (a) – (d) if such Alterations result from a material casualty not caused by Tenant or from a condemnation.

7.03 Tenant shall make all Alterations in a good and workmanlike manner, and in compliance with all Requirements. Tenant’s Alterations shall conform in all material respects with the plans and specifications approved by the Building Department and, if applicable, the County. Tenant shall complete all Alterations with reasonable diligence and shall, promptly after completion of such Alterations, obtain all certificates, sign-offs, licenses, permits, and approvals required by Law to be obtained with respect to the Alterations and with respect to

all equipment, machinery and fixtures installed in connection with the Alterations. All materials, fixtures, machinery and equipment to be installed in the Improvements shall be of good quality and new. All Alterations shall be the County's property, without payment or other compensation to Tenant.

7.04 Tenant shall design and plan the staging of all work at the Premises, and perform all construction at the Premises, with the highest degree of care so as to ensure the safety of persons and property at and around the Premises. Tenant shall take appropriate action to ensure that all improvements owned by adjacent property owners shall not be damaged or disturbed.

7.05 Tenant shall not commence any Alterations until Tenant has met all of the following conditions:

- (a) Tenant has obtained all permits, approvals, and authorizations required by the Building Department and all other Governmental Authorities for the Alterations; and
- (b) With respect to Alterations made after Tenant's Initial Construction, (i) Tenant has caused its general contractors, construction managers, architects, engineers, and subcontractors to obtain the insurance described in **Exhibit 7.05(b)**, subject to the County's right to reasonably increase the limits of such insurance and to require such other and additional coverages as may be Customary, and (ii) Tenant has delivered to the County certificates (in form reasonably acceptable to the County) evidencing such required insurance; and
- (c) Tenant has obtained the insurance required by Section 7.06, and has delivered to the County certificates (in form and substance reasonably acceptable to the County) evidencing such insurance; and
- (d) Tenant's design-builder, construction manager, contractors, and subcontractors have furnished to the County the indemnification agreement described in the attached **Exhibit 7.05(d)**; and
- (e) If the County's consent is required for such Alterations, the County has consented to the final plans and specifications for the proposed Alterations; and
- (f) If the aggregate cost of the Alterations exceeds \$100,000, Tenant has delivered to the County the Alteration Construction Security described in Section 7.07.

7.06 Tenant shall maintain during any period that Tenant is engaged in performing Alterations, and shall deliver to the County prior to commencing the Alterations, the following insurance and bonds:

- (a) At all times during construction, (x) owner's contingent or protective liability insurance covering claims not covered by the Liability Policy described in ARTICLE 12, and (y) if the Property Damage Policy provided in

ARTICLE 12 does not provide protection, builder's risk insurance insuring against "all risks" (including terrorism and bioterrorism) to the Improvements and Personal Property, with (i) an agreed amount endorsement waiving coinsurance provisions, and (ii) engineer's and architect's errors and omissions insurance with a general aggregate limit of at least \$1,000,000. Such builder's risk insurance shall include coverage against collapse, those coverages available under the so-called Installation Floater, damage or destruction of the Alterations (including the Facility while under construction), machinery, tools and/or equipment at the construction site, and damage or destruction to materials and supplies to be used or incorporated in the construction that are at or near the Premises. Such builder's risk insurance shall be written on a completed value basis (non-reporting full coverage), be in an amount not less than the total value of all Alterations under construction, have a deductible no greater than \$25,000, permit partial or full occupancy of the Premises, include waiver of subrogation in favor of the County, and shall be in form, with companies, for periods and in amounts reasonably required by the County.

- (b) If the reasonably estimated cost of the Alterations exceeds an amount equal to the product of \$ _____ and the CPI Fraction, Tenant shall maintain at all times during the construction "Wrap-Up" liability insurance with a general aggregate limit of not less than an amount equal to the product of \$10,000,000 and the CPI Fraction, covering all construction managers, general contractors, Major Contractors, and subcontractors. Such coverage shall be in lieu of requiring separate liability policies from each of the foregoing Persons.
- (c) Payment and performance bonds ("**Bonds**") on Construction Contracts as may be designated by the County complying in all respects with the County Construction Requirements and Laws, in the form, amounts and terms satisfactory to the County and issued by sureties satisfactory to the County, having a Best's Insurance Rating of or better and having a Treasury limit as published in the Federal Register in an amount not less than the amount of the Bonds to be issued by that surety.

The County and such persons indicated by the County shall be named as additional insured on all liability policies required to be obtained by Tenant, its contractors, construction managers, design-builders, and Major Contractors, including any "Wrap-Up" insurance. Waiver of subrogation in favor of the County shall be provided in all insurance required under this ARTICLE 7 and ARTICLE 12.

7.07 If the aggregate cost of the proposed Alterations, as reasonably estimated, exceeds \$100,000, Tenant shall deliver to the County Alteration Construction Security reasonably acceptable to the County prior to the commencement of the Alterations. The following shall apply to such Alteration Construction Security:

- (a) *Construction Completion Guaranty.* A Construction Completion Guaranty in the form attached as **Exhibit 7.07(a)** shall be acceptable Alteration Construction Security if all of the following conditions are met: (i) the guarantor

is approved by the County, which consent shall not be unreasonably withheld or delayed, and (ii) such guarantor has a tangible net worth in excess of \$_____, which net worth is evidenced by proof delivered to the County that is reasonably acceptable to the County.

(b) *Letter of Credit.* If the Alteration Construction Security for the Alterations is a letter of credit, the following shall apply:

(1) The letter of credit (the “**Alterations Letter of Credit**”) shall be a clean, irrevocable, standby letter of credit issued in favor of the County and shall meet all of the following requirements: Such letter of credit shall be in an amount (the “**Alterations LC Amount**”) equal to 125% of the reasonably estimated cost of constructing the Alterations, including but not limited to the costs of labor and materials, interest on any funds borrowed to finance such construction (if any), all other financing costs, professional fees, and expenses of complying with all Legal Requirements; shall be issued by a Bank at which the letter of credit may be presented for payment; shall be transferable one or more times without payment of any fee; shall be payable in whole or in partial drawings; shall be payable upon presentation of the original letter of credit and a sight draft in form reasonably acceptable to the County, with the form of sight draft annexed to the letter of credit; shall have an initial term that shall expire not less than six months after the reasonably estimated date of completion of the Alterations, and shall automatically renew without amendment for consecutive periods equal in duration to the initial term unless the Bank gives the County notice of non-renewal (a “**Non-Renewal Notice**”) by certified or registered mail, return receipt requested, at least 60 days before the then expiration date of the letter of credit; shall be governed by ISP 98; and shall be otherwise in form and substance reasonably satisfactory to the County. The final expiration date of the Alterations Letter of Credit shall be the later of (a) one year after issuance of such letter of credit, and (b) one year following the reasonably estimated completion date of the Alterations. Tenant shall furnish to the County, together with the draft Alterations Letter of Credit, evidence of the reasonably estimated cost of construction.

(2) The County may draw on such Alterations Letter of Credit if (i) this Agreement is terminated by reason of Tenant’s default; or (ii) any mechanics lien is filed against the Premises that is not discharged within 30 days after Tenant is given notice thereof, or (iii) Tenant fails to complete the Alterations in accordance with the provisions of this Agreement, or (iv) the County receives notice from the Bank that it is not renewing the Alterations Letter of Credit and the conditions described in Subsection (4) below have not been met. All costs incurred by the County in seeking to draw on the Alterations Letter of Credit, including reasonable attorneys’ fees in connection with any litigation relating to the Alterations Letter of Credit, shall be payable by Tenant

to the County as Additional Rent. The proceeds of the Alterations Letter of Credit may be applied against (x) any Rent due the County and (y) any damages incurred by the County by reason of Tenant's breach of this Agreement, and (z) the cost of completing the Alterations.

- (3) If the County, at any time or from time to time, reasonably requests an amendment of the Alterations Letter of Credit (for example, to change the County's address for notices), Tenant promptly shall cause the Alterations Letter of Credit to be so amended. If the Alterations Letter of Credit is lost, stolen, or mutilated, Tenant shall cooperate with the County, promptly upon the County's request, to replace such Alterations Letter of Credit. If the County draws on the Alterations Letter of Credit, Tenant shall, within five days after demand by the County, deliver to the County an additional letter of credit meeting the requirements of this Section 7.07 or amend the existing Alterations Letter of Credit so that, at all times, the amount of the Alterations Letter of Credit held by the County, together with any Alterations Letter of Credit proceeds held by the County not yet applied to any default by Tenant, equals the Alterations LC Amount.
- (4) Upon Tenant's request, the County shall return the Alterations Letter of Credit to Tenant for cancellation or termination (as the case may be), and shall reasonably cooperate with Tenant to effect such cancellation or termination, after all of the following conditions have been met: (i) the Alterations have been Substantially Completed, and (ii) no mechanics liens have been filed against the Premises that have not been discharged of record, and (iii) Tenant is not in default of this Agreement.

If the County sells or otherwise transfers the Land and the County's interest in this Agreement, the County may transfer the Construction Security to the vendee or transferee. Upon such transfer, the County shall be released by Tenant from all liability for the return of the Construction Security, and Tenant shall look solely to the new landlord for the return of the Construction Security.

7.08 To the extent reasonably necessary, and without violating any Law, the County shall, at no out-of-pocket expense to the County, cooperate with Tenant in Tenant's efforts to obtain the required permits, approvals, and authorizations for the construction of the Alterations and the operation of the Improvements in accordance with the provisions of this Agreement, including by joining in applications for building permits, subdivision plat approvals, certificates of dedication, public works or other agreements, utility easements, permits for sewer, water and other utility services, and the dedication to the applicable governmental authorities of such title to or easements for utility, roadway and slope or storm drainage areas or facilities as are reasonably necessary or desirable.

7.09 Tenant shall deliver to the County, upon request, copies of the "as built" plans for the County Museum Facility, constructed on the Premises and all material Alterations (including replacements of or material Alterations to building systems, structural alterations to the

structural elements, and additions), including CAD drawings, and any temporary or permanent certificate of occupancy issued with respect to Alterations.

7.10 The County, its architects, engineers and representatives shall have the right to inspect the Land and the Improvements (to the extent then constructed) from time to time during the construction of the County Museum Facility and any Alterations.

7.11 Tenant shall keep the Premises, this Agreement and any funds or interest of the County free from any lien or other encumbrance filed or recorded in favor of any mechanic, materialman, architect or engineer and free from any similar lien or encumbrance with respect to work, material or services alleged to have been performed for Tenant. If any such lien or encumbrance is filed or recorded, Tenant shall discharge any such lien or encumbrance by bond or otherwise within 30 days after Tenant receives notice of such lien or encumbrance. If Tenant fails to discharge such lien or encumbrance within such 30 day period, the County may pay the amount reflected on such lien or encumbrance (or any portion thereof) and any costs, interest, and/or penalties imposed in connection therewith or take such other action as the County deems necessary or desirable to remove such lien or encumbrance, without being responsible for investigating the validity thereof and without regard to any objection by Tenant. The amount so paid and costs incurred by the County shall be deemed Additional Rent under this Agreement payable within 30 days after Tenant is billed therefor. Nothing in this Agreement shall be deemed in any way to: (a) constitute the County's consent or request, express or implied, that any contractor, subcontractor, laborer or materialman provide any labor or materials for any alteration, addition, improvement or repair of the Premises; or (b) evidence the County's agreement to subject the Premises to any such lien.

7.12 The Parties acknowledge that the development of the County Museum Facility is intended to permit development of additional free standing improvements to the Land and that such future development is contemplated as set forth in Section 1.8 of the Redevelopment Agreement (the "**Additional Facilities**"). If Tenant proposes to construct such Additional Facilities on the Land, Tenant shall furnish all information the County requests in order to evaluate the proposed Additional Facilities as set forth in the Redevelopment Agreement. Depending on the nature of the Additional Facilities, as may be approved by the County, the County may require that this Agreement be amended, supplemented or, as to that portion of the Land to be subject to the Additional Facilities, terminated and replaced with a new lease as to such Additional Facilities, having such terms as the County and Tenant may agree.

ARTICLE 8.

PERMITTED USE OF PREMISES; COVENANT TO OPEN AND OPERATE AND OTHER AFFIRMATIVE AND NEGATIVE OPERATING COVENANTS

8.01 Subject to and limited by the other provisions of this Agreement, Tenant shall use the Premises for the Permitted Use and for no other purpose.

8.02 Tenant shall obtain and maintain, at Tenant's sole cost and expense, all licenses, approvals, and permits necessary for the Permitted Use. Tenant shall obtain, at its sole cost and expense, and prominently display in a location approved by County, all permits and licenses for

the Permitted Use as may be required by all governing bodies having jurisdiction over Tenant's operation. None of the other provisions of this ARTICLE 8 shall be deemed to expand the Permitted Use by implication.

8.03 Tenant covenants to operate the Museum exclusively under the name "Peoria Riverfront Museum" and no other without the prior written consent of the County. Tenant further covenants: (a) to abide by, and comply with its Articles of Incorporation and its Bylaws, and all amendments to each; (b) not to amend its Articles of Incorporation or its Bylaws without the prior written consent of the County, which consent the County shall not unreasonably withhold, delay or condition; (c) not later than 60 days prior to the beginning of each fiscal year of Tenant, to prepare and submit to the County for its review and comment a business plan for Tenant's upcoming fiscal year; (d) not later than 30 days prior to the proposed effective date of a proposed amendment to Tenant's approved business plan, submit to the County for its review and comment the proposed amendment; (e) not later than 60 days prior to the beginning of each fiscal year of Tenant, to prepare and submit to the County for its review and comment the capital and operating budgets of Tenant for Tenant's upcoming fiscal year; (f) not later than 30 days prior to the proposed effective date of a proposed change to Tenant's approved capital or operating budget, submit to the County for its review and comment the proposed change; (g) not to incur or guarantee any indebtedness for borrowed money if the principal amount of the debt to be incurred exceeds \$500,000 or such other amount agreed to by the Parties from time to time, without the prior written consent of the County; (h) not later than 90 days after the end of each fiscal year of Tenant, to prepare and submit to the County for its review and comment Tenant's Annual Statement of Community Benefit (i.e., a report specifying the manner in which Tenant fulfilled its purposes and mission in its fiscal year just ended); (i) not later than 30 days prior to Tenant's proposed submission of its Form 990 to the Internal Revenue Service, to submit to the County for its review and comment Tenant's Form 990; (j) not later than 120 days after the end of each fiscal year of Tenant, to cause to be prepared and submitted to the County for its review and comment, audited financial statements of Tenant for the just ended fiscal year of Tenant; (k) to promptly remove from office a member of the Board of Directors of Tenant if the County delivers to Tenant a written demand for his or her removal in which the County includes reliable and substantiating evidence that the subject director willfully engaged in conduct demonstrably and materially injurious to Tenant or to the achievement of its purposes or mission, committed an illegal, unethical or dishonest act in connection with his or her office, or willfully and repeatedly failed to fulfill his or her fiduciary duties of care, loyalty, confidentiality or obedience to mission to Tenant; (l) at the request of the County, to require the President and Chief Executive Officer of Tenant (the "**President**") to attend meetings of the County Board and its committees, and to respond to questions of the County board and its committees, orally or in writing; (m) not to organize an affiliate or a subsidiary of Tenant or of an affiliate or a subsidiary of a Tenant affiliate or subsidiary without the prior written consent of the County; (n) not to transfer or distribute funds or assets to another entity without the prior written consent of the County; (o) to permit the County (or its designee) to inspect and audit Tenant's books and records (including Tenant's books and records used to prepare Tenant's audited financial statements); (p) to periodically prepare and submit to the County for its review and comment a description of Tenant's proposed fundraising activities and events, their purposes and goals, and their timetables and budgets; (q) not to enter into agreements with concessionaires, or amendments thereto, without the prior written consent of the County, which consent the County shall not unreasonably withhold, delay or condition; (r) not to enter into agreements with licensees, or

amendments thereto, without the prior written consent of the County, which consent the County shall not unreasonably withhold, delay or condition; and (s) not to enter into a naming agreement of any kind, or amendments thereto, without the prior written consent of the County, which consent the County shall not unreasonably withhold, delay or condition.

In addition, Tenant covenants: (a) not to permit any illegal practice to be carried on or committed in the Premises; (b) not to make, use or allow the Premises to be used or occupied for any purposes other than is expressly permitted or in any manner that might invalidate or make inoperative any policy of insurance of any kind whatsoever at any time carried on the Premises; (c) not to keep, use or permit to be kept or used in the Premises any inflammable fluids or explosives without the prior written permission of the County or engage in hazardous activities, except as set forth in ARTICLE 11; (d) not to use the Premises for any purpose whatsoever which might create a nuisance or injure the reputation of the Premises; (e) not to deface or injure the Premises; (f) not to overload the floors; (g) not to commit or suffer any waste; and (h) not to install any electrical equipment that overloads lines unless Tenant obtains the County’s prior written consent and Tenant pays the cost of modifying the electric service to accommodate such equipment.

8.04 Tenant shall at all times install in the Premises fixtures, furnishings, fittings and equipment (collectively, “**FF&E**”), in accordance with this Section, consistent with a first-class Museum, properly laid out to sustain Tenant’s operations in the execution of the Permitted Use. The weight of FF&E shall not exceed the safe loads for the Premises determined by County. All FF&E installed or used by Tenant in the Premises shall be properly installed and, where necessary, with adequate electrical wiring in conformity with the recommendations of the manufacturers thereof and with all applicable codes and ordinances. Tenant shall, at its own cost, obtain and maintain in force during the Term of this Agreement, maintenance contracts with reputable contractors with respect to FF&E where recommended by its manufacturer. Within ten days after Tenant's execution of any maintenance contracts, or upon County's request therefor, Tenant shall furnish to County a copy of such contract and evidence of payment for services thereunder. Tenant shall at all times maintain in good condition and repair all FF&E and shall replace outmoded or inefficient equipment with new equipment in accordance with the terms of this Agreement.

8.05 Tenant acknowledges that the continued operation of the Premises is of the utmost importance to the County. Accordingly, (a) Tenant shall open the Museum at the Premises no later than [redacted] days after the date on which the County Museum Facility is Substantially Complete (the “**Opening Date**”) and (b) after the Opening Date, Tenant, throughout the Term, shall continuously occupy, use and operate the entire Premises and shall be open to accept Museum visitors on each day during the Term during the following hours:

Day of Week	Hours of Operation
Monday	
Tuesday	
Wednesday	
Thursday	
Friday	
Saturday	

Sunday	
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(collectively, the “**Hours of Operation**”), except that this covenant shall not apply if Tenant is prevented from operating at the Premises due to an Unavoidable Delay. In addition, Tenant can otherwise close during holidays recognized by Law. The Parties shall annually evaluate the Hours of Operation and may adjust the Hours of Operation by written agreement.

Prior to opening the Museum to the public, Tenant shall adopt, subject to review by the County, a written policy for admission and all other user fees and/or charges and shall adopt an annual schedule of admission and other fees and changes.

Notwithstanding said provisions, Tenant may levy fees and charges at any time for special services and for admission to special facilities within the Museum for the education, entertainment or convenience of visitors. The proceeds of such admission fees and charges for special services and special facilities shall be reasonably related to the costs of such special services and/or facilities.

Tenant acknowledges that failure on its part to comply with the provisions of this Section 8.05 would cause the County substantial damages which might be difficult or insusceptible to exact proof. Accordingly, the Parties have agreed that if Tenant fails to comply with the provisions of this Section 8.05, then the County shall have the right to obtain specific performance of Tenant’s obligations to conduct business continuously in the manner specified in this Agreement or to recover any other provable monetary damages or to pursue any other remedies as provided in this Agreement.

**ARTICLE 9.
UTILITIES AND SERVICES**

9.01 The County shall not be required to provide services to Tenant or for the benefit of the Premises, it being understood and agreed that Tenant shall purchase all utility and building services, including, but not limited to, fuel, water, electricity, natural gas, sewerage, waste hauling and disposal, janitorial, and security, from the utility or service provider, and shall pay for such services when such payments are due. The provisions of this Section 9.01 shall include, but shall not be limited to, any charges or fees for present or future water or sewer capacity to serve the Premises, any charges for the underground installation of gas or other utilities or services, and other charges relating to the extension of or change in the facilities necessary to provide the Premises with adequate utility services. The inability of Tenant to obtain, or any stoppage of, the utility services referred to in this Section 9.01 resulting from any cause shall not make the County liable in any respect for damages to any person, property or business, or entitle Tenant to any abatement of Rent or other relief from any of Tenant’s obligations under this Agreement.

9.02 Tenant agrees to cooperate fully, at all times, with the County in abiding by all reasonable regulations and requirements which the County may prescribe for the proper functioning and protection of all utilities and services reasonably necessary for the operation of the Premises. Throughout the Term, the County and its contractors shall have free access to any and all portions of the Premises and its building systems.

ARTICLE 10.
CONDITION AND CARE OF PREMISES

10.01 At its sole cost and expense and without reimbursement or contribution from the County, Tenant shall keep, repair, and maintain the entire exterior and interior of the Premises, specifically including the heating, ventilating and air conditioning system, electrical system, plumbing system, fire suppression and life safety system, the roof, windows, and plate glass, in good condition and repair. Each and every obligation of Tenant to keep, maintain and repair shall include all ordinary and extraordinary structural and nonstructural repairs and replacements. As to any repairs costing in excess of \$20,000, and as to any replacements whatsoever, Tenant shall, in connection therewith, comply with the requirements of ARTICLE 7. Tenant shall, to the extent possible, keep the Premises from falling temporarily out of repair or deteriorating. Tenant shall further keep, repair and maintain the improvements at any time situated upon the Premises and all sidewalks and areas adjacent thereto (excluding, however, the Parking Garage), and all landscaped areas adjacent thereto, safe, secure, clean and sanitary (including, without limitation, snow and ice clearance, planting and replacing flowers and landscaping, and necessary interior painting and carpet cleaning at least once each year), and in full compliance with Requirements. The County may, but shall have no obligation to, elect to make any or all repairs on Tenant's behalf at Tenant's sole cost or, upon Tenant's request, perform any such repairs at Tenant's sole cost. In either case, Tenant shall pay the cost thereof, and, in addition, Tenant shall pay to the County an amount equal to ten percent of such cost as an overhead and supervision fee. If Tenant does not make repairs promptly and adequately when required to do so (the County having not previously elected to do so), the County may, but need not, make such repairs and replacements, and Tenant shall pay the County, on written demand, the cost thereof and an amount equal to ten percent of such cost as an overhead and supervision fee.

10.02 The County shall have no obligation for repairs, replacements, or maintenance of the Premises or any portion.

10.03 Without limiting Tenant's obligations under Section 10.01, Tenant shall, at all times during the Term of this Agreement, have and keep in force a maintenance contract, in form and with a contractor satisfactory to the County, providing for seasonal inspection of the heating, ventilating and air conditioning equipment, and providing for necessary maintenance and repairs. Said contract shall provide that it will not be cancelable by either party thereto except upon 30 days' prior written notice to the County.

10.04 When used in this Article, "repairs" shall include all necessary replacements, renewals, alterations, additions and betterments. All repairs made by Tenant shall be at least equal in quality and cost to the original work performed in constructing the Premises and shall be made by Tenant in accordance with all Requirements. The necessity for or adequacy of maintenance and repairs shall be measured by the standards which are appropriate for improvements of similar construction and class, provided that Tenant in any event shall make all repairs necessary to avoid any structural damage or other damage or injury to the Premises and to keep the Premises in compliance with all Requirements.

ARTICLE 11.
COMPLIANCE WITH LAW; ADA; ENVIRONMENTAL LAWS; CONTEST

11.01 Tenant, at Tenant's expense, shall comply, and shall cause the Subtenants to comply, in all material respects at all times, with all Laws, the occupancy of the Premises, any Alterations, and/or any property on or activities at the Premises. Without limiting the foregoing, Tenant shall promptly cure all violations of Law as to which a notice of violation has been issued or as to which a directive or order has been issued by any public officer or other person having authority, promptly discharge of record any such notice of violation, promptly comply with any such order or directive, and pay all fines, penalties, interest and other costs imposed by any Governmental Authority in connection with any violation or requirement of Law.

11.02 In addition to and not in limitation of Section 11.01, the Parties acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively, the "**ADA**") establish requirements under Title III of the ADA ("**Title III**") pertaining to business operations, accessibility and barrier removal, and that such requirements may be unclear and may or may not apply to the Premises depending on, among other things: (a) whether Tenant's business operations are deemed a "place of public accommodation" or a "commercial facility," (b) whether compliance with such requirements is "readily achievable" or "technically infeasible," and (c) whether a given alteration affects a "primary function area" or triggers so-called "path of travel" requirements. The Parties acknowledge and agree that Tenant has been provided an opportunity to inspect the Premises sufficient to determine whether or not the Premises in their condition current as of the date hereof deviate in any manner from the ADA Accessibility Guidelines ("**ADAAG**") or any other requirements under the ADA pertaining to the accessibility of the Premises. Tenant further acknowledges and agrees that except as may otherwise be specifically provided herein, Tenant accepts the Premises in "as-is" condition and agrees that the County makes no representation or warranty as to whether the Premises conform to the requirements of the ADAAG or any other requirements under the ADA pertaining to the accessibility of the Premises. Tenant has prepared or reviewed the plans and specifications for the Tenant's Initial Construction and has independently determined that such plans and specifications are in conformance with the ADAAG and any other requirements of the ADA. Tenant further acknowledges and agrees that to the extent that the County prepared, reviewed or approved any of those plans and specifications, such action shall in no event be deemed any representation or warranty that the same comply with any requirements of the ADA. Notwithstanding anything to the contrary in this Agreement, the Parties hereby agree to allocate responsibility for Title III compliance as follows: (a) Tenant shall be responsible for all Title III compliance and costs in connection with the Premises, including structural work, if any, and including any leasehold improvements or other work to be performed in the Premises under or in connection with this Agreement, and (b) Tenant shall perform, at its cost and expense, any so-called Title III "path of travel" requirements triggered by any construction activities or alterations in the Premises. Tenant shall be solely responsible for all other requirements under the ADA relating to the Tenant or any Affiliates, operations of the Tenant or Affiliates, or the Premises, including, without limitation, requirements under Title I of the ADA pertaining to Tenant's employees.

11.03 Without limiting the foregoing:

- (a) Subject to subsection (b) below, Tenant, at Tenant's expense, shall comply, and shall cause its Subtenants to comply, in all material respects at all times,

with all Environmental Laws. Such compliance includes Tenant's obligation, at its expense, to take Remedial Action when required by Law (in accordance with applicable Law and this Agreement) and to pay all fines, penalties, interest and other costs imposed by any Governmental Authority in connection with any violation or requirement of Law.

- (b) Tenant shall notify the County promptly if (i) Tenant becomes aware of the presence or Release of any Hazardous Substance at, on, under, within, emanating from or migrating to the Premises in any quantity or manner, which could reasonably be expected to violate in any material respect any Environmental Law or give rise to any Material liability or the obligation to take Remedial Action or other material obligations under any Environmental Law, or (ii) Tenant receives any written notice, claim, demand, request for information or other communication from a Governmental Authority, or a third party, regarding the presence or Release of any Hazardous Substance at, on, under, within, emanating from or migrating to the Premises or related to the Premises which could reasonably be expected to violate in any material respect any Environmental Law or give rise to any Material liability or obligation to take Remedial Action or other material obligations under any Environmental Law.
- (c) Tenant shall take and complete any Remedial Action with respect to the Premises in full compliance with all Laws and shall, when such Remedial Action is completed, submit to the County written confirmation from the applicable Governmental Authorities that no further Remedial Action is required to be taken ("**Final Governmental Approval**"). In connection with any Material Remedial Action, (i) Tenant shall promptly submit to the County its plan of Remedial Action and all material modifications thereof, (ii) Tenant shall use an environmental consultant reasonably acceptable to the County, and (iii) Tenant shall apprise the County, on a quarterly basis (or more frequently if reasonably requested by the County), of the status of such remediation plan and provide the County with copies of all correspondence, plans, proposals, contracts and other documents relating to such plan or proposed plan. If Tenant's environmental consultant determines that there is not a reasonable likelihood of obtaining Final Governmental Approval prior to the third anniversary of the date on which the remediation plan is first submitted to the County, a certificate to that effect shall be provided to the County by such environmental consultant on behalf of Tenant, which certificate shall also state, to the reasonable satisfaction of the County, the status of the Remedial Action and the schedule for completion of the Remedial Action, the reasons why such Final Governmental Approval is not likely to be obtained within such time period and that all Remedial Actions to date have been completed in accordance with all Environmental Laws.

11.04 Tenant shall have the right to contest, at its sole cost, by appropriate legal proceedings, the amount or validity of any fine, charge or penalty imposed in connection with an alleged violation of Law, the validity of any Law to the Premises, the validity of any application

of any Law to the Premises, the existence of any violation of Law, and/or the validity of any issued notice of violation of Law (the “**Contested Obligation**”). Tenant may defer payment and/or performance of the Contested Obligation to the extent that and so long as Tenant is diligently contesting, at its expense, by appropriate legal proceedings the existence, amount or validity of the Contested Obligation, provided that all of the following conditions are met:

- (a) There is no outstanding Event of Default.
- (b) Such contest is made and prosecuted in good faith.
- (c) Such proceeding shall operate during the pendency thereof to prevent (i) the sale, forfeiture or loss of the County’s fee estate in the Premises, and (ii) the forfeiture or loss of Rent, and (iii) any interference with the use or occupancy of the Premises, and (v) the cancellation of any insurance policy required to be maintained by Tenant pursuant to ARTICLE 12. In addition, such proceeding shall not create a material risk that any of the foregoing will occur.
- (d) If the reasonably estimated cost of curing or discharging the Contested Obligation and of satisfying any potential civil and/or criminal penalties if judgment is not in favor of Tenant exceeds \$100,000, Tenant shall have furnished to the County a bond or other security reasonably acceptable to the County, to secure Tenant’s obligations under this ARTICLE 11, in an amount equal to 125% of the reasonably estimated cost of curing or discharging the Contested Obligation plus the reasonably estimated penalties.
- (e) Tenant is not contesting a criminal liability, penalty, or sanction.
- (f) Tenant reimburses the County, within ten days of being billed therefor, for all Liabilities incurred by the County in connection with such contest.
- (g) The County is not exposed to any risk of criminal liability, penalty, or sanction.
- (h) Tenant shall, promptly upon the County’s request, apprise the County of the status of the contest and provide the County with copies of all documentation relating to such contest.
- (i) Tenant promptly and diligently prosecutes such contest to final conclusion by appropriate legal proceeding, but Tenant shall have the right to attempt to settle or compromise such contest, subject to receipt of the County’s consent, which shall not be unreasonably withheld, if the settlement or compromise will in the County’s reasonable judgment have a material impact on the use and occupancy of the Premises.

Tenant shall indemnify and save the County harmless against any and all Liabilities incurred by the County in connection with any such contest or the Contested Obligation. Tenant shall, promptly after the final determination of such contest, comply with the requirements of such determination and pay all amounts levied, assessed, charged or imposed on any of the County

Parties, Tenant, the Premises or any part thereof, in connection therewith, together with all fines, penalties, interest, costs and Liabilities.

ARTICLE 12.
INSURANCE; COMPLIANCE WITH INSURANCE REQUIREMENTS

12.01 Tenant, at Tenant's sole expense, shall maintain at all times during the Term (except as otherwise specifically provided below), and after the Term for so long as Tenant, or any Person holding through or under Tenant, remains in possession of the Premises, the following insurance:

Liability Insurance. Tenant shall maintain a policy of commercial general liability insurance in Customary form (the "**Liability Policy**") protecting Tenant against claims of third parties for bodily injury, death, personal injury, and property damage (including personal injury liability covering libel, slander, false arrest and malicious prosecution, and fire and water damage legal liability) occurring in, upon, or about the Premises and any appurtenances thereto. (As used herein, a "**Customary**" form of policy or amount of coverage or endorsement or other aspect of insurance is that form of policy, amount of coverage, endorsement or other aspect that is then customarily required by the County or other comparable unit of local government for similar properties in the vicinity of the Premises (the "**Comparison Area**"). The Liability Policy shall include contractual liability coverage covering Tenant's indemnification obligations under this Agreement with respect to covered claims. Subject to the County's right (as set forth below) to require Tenant to increase coverage limits, such policy shall have a per occurrence combined single limit of at least \$ [REDACTED] annually and per location.

Property Insurance. Effective on and after the Construction Completion Date, Tenant shall maintain property insurance covering the Improvements and Personal Property insuring against (a) all risks, including fire, other risks and losses caused by explosion of boilers and other pressurized equipment, insured under the then Customary form of policy (as of the Commencement Date, the required form of policy shall be Causes of Loss -- Special Form) and shall cover increases in costs incurred by reason of changes in ordinances or laws, and (b) loss of rents in an amount at least equal to gross receipts from all sources of income from the Premises, as reasonably estimated, for a period of at least 24 months (but in no event in an amount less than Base Rent and all regularly recurring Additional Rent payments for a period of at least 24 months, as reasonably estimated) notwithstanding that the policy may expire prior to the end of such period, and which coverage shall contain an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired or restored, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss or the expiration of 12 months from the date that the Improvements are repaired or replaced and operations are resumed, whichever first occurs, notwithstanding that the policy may expire prior to the end of such period; and (c) losses due to disruption of utility services originating away from the Improvements (the "**Property Damage Policy**"). With respect to losses to property,

such policy shall be in an amount equal to 100% of the Full Replacement Cost (hereinafter defined) of the Improvements and Personal Property, but such coverage shall be, in any event, at least sufficient to avoid the effect of the co-insurance provisions of the applicable policy or policies. **“Full Replacement Cost”** shall mean the actual replacement cost of the Improvements and Personal Property, including the cost of demolition and debris removal and without deduction for depreciation and excluding the cost of excavation, foundations and footings. Such policy shall not exclude losses caused by flood, mold, fungus or acts of terrorism (including bioterrorism). With respect to losses covered by the insurance described in clause (b), the amount of the rental loss or business income insurance, as applicable, shall be determined initially upon Substantial Completion of the Improvements and at least once each year thereafter based on Tenant’s reasonable estimate of the gross income from the Premises for the succeeding period of coverage.

Workers Compensation. Tenant shall maintain workers compensation insurance as required by law and which shall include employer’s liability insurance for all employees of Tenant, in accordance with the statutory limits required by Law.

Automobile Insurance. Tenant shall maintain a policy of Automobile Liability insurance on owned, non-owned and hired motor vehicles used in connection with the operation of the Improvements with a combined single limit for bodily injury and property damage of not less than \$_____.

No insurance coverage obtained by Tenant pursuant to this Article shall contain a deductible or self-insured retention in excess of \$_____ without the prior written consent of the County; provided that such maximum deductible or self-insured retention may be increased on the tenth anniversary of the Commencement Date, and every tenth-year anniversary thereafter, to equal the product of \$_____ and the CPI Fraction.

Whenever, in the County’s reasonable judgment, good business practice and changing conditions indicate a need for additional liability limits or different types of insurance coverage, Tenant shall, within 20 days after the County’s request, obtain such insurance coverage, at Tenant’s expense; provided that the requested amounts and types of coverage are Customary and provided that the County shall not require any increase in the limits of coverage of the Liability Policy more than once every three years.

12.02 All policies required by this ARTICLE 12 shall be issued by insurance companies licensed to do business in the State of Illinois. All such insurers shall have a claims paying ability rating of no less than “_____” and a financial class category rating of at least “_____” by A.M. Best Company (or any successor rating agency or entity reasonably selected by the County if A.M. Best Company discontinues publishing ratings of insurance companies or if the rating system is changed). If it is commercially impracticable to obtain insurance from an insurer with an “_____” rating and a financial size category of at least “_____” because of changes in the insurance industry or conditions in the Comparison Area, Tenant’s insurers shall have a policy holder’s rating that is at least equal to the Customarily required rating.

12.03 All policies required by this ARTICLE 12 may be carried under a blanket policy covering the Premises and other locations of Tenant and Tenant's Affiliates, if such blanket policy contains an endorsement that guarantees a minimum limit available for the Premises equal to the minimum limits required by this ARTICLE 12 and that the minimum limits shall not be reduced for claims made with respect to other properties, and otherwise complies with this ARTICLE 12.

12.04 The Liability Policy shall name Tenant as insured and shall include as additional insureds the County.

12.05 The Property Damage Policy shall name the County as loss payee as its interest may appear and shall expressly provide that (a) any losses thereunder shall be adjusted with the County and Tenant and (b) all proceeds paid under such policies shall be applied in accordance with the requirements of this Agreement.

12.06 All insurance policies required by this ARTICLE 12 shall (a) contain endorsements that such insurance may not be canceled or amended, except upon not less than 30 days prior written notice to the County, and (b) be written as primary policies not contributing to or in excess of any policies carried by the County, and (c) each contain a Waiver of Subrogation endorsement, in form and substance reasonably satisfactory to the County, in favor of the County.

12.07 Concurrently with execution of this Agreement and thereafter at least 15 days prior to the expiration of any policy, Tenant shall deliver to the County a binding certificate or certificates evidencing the insurance required by this ARTICLE 12 in form and content reasonably satisfactory to the County, together with evidence of payment of the annual premium for each policy; except that the initial certificate evidencing the Property Damage Policy shall be first delivered on or before the Construction Completion Date. In addition, Tenant shall at any time and from time to time during the Term, promptly upon the County's request, furnish the County with a copy of the then current paid-up policy, appropriately authenticated by the insurer or, at the County's option, the Declarations page of such policy evidencing the required insurance.

12.08 If Tenant fails to maintain the insurance required by the foregoing provisions of this ARTICLE 12 or to timely furnish to the County the required evidence of such insurance and payment of the insurance premiums, Tenant shall be responsible for all Liabilities incurred by the County with respect to such default, including any Liabilities that would have been covered by the insurance Tenant is required to maintain. If Tenant fails to maintain any of the insurance required by this ARTICLE 12, the County may, at its option, in addition to exercising any other remedies available to it under this Agreement or at law, obtain the insurance described in this ARTICLE 12, in which event Tenant shall reimburse the County, as Additional Rent, within ten days of being billed therefor, for the costs incurred by the County to obtain such insurance.

12.09 Tenant also shall require the Persons described below to carry the following insurance:

Subtenants. Tenant shall require all of its Subtenants to:

- (a) maintain Customary insurance required of tenants in similar properties, and
- (b) include the County as additional insured on their commercial general liability policies (or equivalent policies); and
- (c) obtain a waiver of subrogation endorsement in all policies in favor of the County.

Contractors, Subcontractors, Etc. Tenant shall require all of its Subtenants' contractors, subcontractors, design-builders, construction managers, consultants, and other entities providing services, materials or labor to all or any portion of the Premises to:

- (d) include as additional insured in their commercial general liability policies the County; and
- (e) obtain a waiver of subrogation endorsement in all policies in favor of the County,

in each case to the same extent Tenant requires such contractors, subcontractors, construction managers, design-builders, consultants, and other entities to include Tenant as additional insured and/or to obtain a waiver of subrogation endorsement in favor of Tenant.

Property Manager. Tenant shall cause the company engaged to manage all or substantially all of the Improvements (the "**Manager**") to maintain at all times during the term of its management agreement, and thereafter for so long as Manager continues to manage the Improvements:

Workers compensation insurance as required by Law and which shall include employer's liability insurance for all employees of Manager; and

Liability Insurance with a per occurrence combined single limit of at least \$ _____ (annually and per location) including the County as additional insured; and

Fidelity insurance with a coverage limit of at least \$ _____; and

Automobile liability insurance on owned, non-owned and hired motor vehicles used in connection with the operation of the Improvements with a combined single limit for bodily injury and property damage of not less than \$ _____; and

Professional liability (Errors & Omissions a/k/a malpractice) insurance coverage having a policy limit of not less than \$ _____ per claim occurrence and \$ _____ in the aggregate.

Each of the required coverages, excluding the professional liability insurance, fidelity insurance, and automobile liability insurance, shall contain a Waiver of Subrogation endorsement, in form and substance reasonably satisfactory to the County, in favor of the County.

12.10 Tenant, at Tenant's expense, shall comply, and shall cause its Subtenants to comply, in all material respects at all times, with all Insurance Requirements.

**ARTICLE 13.
INDEMNITY**

13.01 Tenant shall indemnify and hold harmless the County Parties from and against any and all Liabilities arising from or in connection with all of the following: (a) the Premises and/or any operations or activities thereon during the Term and after the Term for so long as Tenant, or any Person holding through or under Tenant, remains in possession of the Premises, except to the extent such Liabilities arise out of the County's negligence or misconduct; (b) any act, omission, negligence, or misconduct of Tenant and/or any of Tenant's officers, directors, employees, partners, members, agents, contractors, invitees, or Subtenants; (c) any accident, injury or damage (including death) occurring in, at or about the Premises during the Term and after the Term for so long as Tenant, or any Person holding through or under Tenant, remains in possession of the Premises, except to the extent such Liabilities arise out of the County's negligence or misconduct; (d) any breach or default by Tenant under this Agreement; (e) any claims made by Subtenants during or after the Term (including claims for return of security deposits and prepaid rent), except to the extent such claims arise out of the County's negligence or misconduct; and (f) any holdover by Tenant, or by any Person(s) holding through Tenant, after the Expiration Date. If any action or proceeding is brought against the County and/or any the County Party by reason of any such claim(s), Tenant, upon notice from the County or such the County Party, shall resist and defend such action or proceeding by counsel reasonably satisfactory to the County or such the County Party.

**ARTICLE 14.
CASUALTY DAMAGE AND DESTRUCTION**

14.01 If the Premises are damaged or destroyed by fire or other cause (ordinary or extraordinary), Tenant shall give the County prompt notice of such event and, except as provided in Section 14.03, shall repair such damage and restore the Premises to the condition existing prior to such damage or destruction and to a standard and quality no less than the construction of the original Improvements (the "**Restoration**"). Such Restoration shall be effected with reasonable diligence, subject to reasonable delays for adjustment of the insurance loss. Subject to Section 14.03, such obligation shall survive any termination of this Agreement. Rent (including Impositions) shall not be abated by reason of any such damage or destruction and Tenant's obligations under this Agreement shall not be affected by reason of such damage or destruction. Except as provided in Section 14.03, this Agreement shall not terminate solely by reason of such damage or destruction.

14.02 Unless Tenant terminates this Agreement pursuant to Section 14.03, the proceeds of any Property Damage Policy shall be disbursed as follows:

- (a) If the reasonably estimated cost of the Restoration is less than \$100,000, all proceeds of the Property Damage Policy shall be paid to Tenant, to be used for the repair and restoration of the Premises.

- (b) If the reasonably estimated cost of the Restoration equals or exceeds \$100,000, the proceeds of the Property Damage Policy shall be paid to a commercial bank or trust company selected by the County that is subject to supervision and regulation by state or federal Governmental Authority and that has capital, surplus, and undivided profits in an amount at least equal to the product of \$1,000,000,000 and the CPI Fraction (the “**Depository**”), to be disbursed to Tenant in reimbursement of Tenant’s Restoration costs in accordance with the following provisions:
- (1) No disbursements shall be made unless and until the following conditions have been met:
 - (A) Tenant delivers to the County and Depository a final and complete set of plans and specifications for the Restoration and a certification of the estimated cost of the Restoration by an architect or cost estimator approved by the County, such approval not to be unreasonably withheld or delayed.
 - (B) If the net insurance proceeds available for the Restoration are less than the reasonably estimated cost of Restoration, Tenant shall deliver to the Depository sufficient funds to make up the deficiency.
 - (C) Tenant delivers to the County and the Depository copies of all permits, approvals, and authorizations required by the Building Department and all other Governmental Authorities for the Restoration.
 - (2) Once the foregoing conditions have been met Depository shall disburse the insurance proceeds to Tenant, subject to a 10% retainage, from time to time as the Restoration progresses in accordance with Depository’s customary construction loan advance procedures, provided:
 - (A) There is no Event of Default under this Agreement.
 - (B) With respect to each disbursement, Tenant delivers to Depository and the County (i) a certification of Tenant’s architect that the sums requested have been earned and are due, the Restoration is being completed substantially in accordance with the plans and specifications given to the County, and the amounts requested are then due and payable, and (ii) releases and waivers of mechanic’s lien, in form and substance reasonably satisfactory to Depository, executed by each of (A) the Major Contractors and (B) as applicable, the general contractor, construction manager, and/or design-builder, in each case for periods prior to and covered by the disbursement then requested.

- (C) If at any time the County reasonably determines that the funds then held by the Depository are insufficient to fund the balance of the Restoration, progress payments shall cease until Tenant delivers to the Depository sufficient funds to make up the deficiency.
 - (D) No mechanic's lien or similar lien or other encumbrance, has been filed against the Premises, and no stop notices have been issued by any Governmental Authority to the County or Tenant, that have not been discharged by bonding or otherwise.
 - (E) The final disbursement of the insurance proceeds and Tenant's funds shall not be made until (y) Restoration is Substantially Completed, and (z) Tenant has complied with Depository's other customary construction loan advance procedures.
- (3) Tenant shall pay all of the Depository's fees and all out-of-pocket costs incurred by the County in connection with such Restoration, including any out-of-pocket fees incurred by Depository and the County for architectural and engineering review and/or revisions of Tenant's plans and specifications and inspection of the work site and the Restoration. All such fees and costs shall be paid to the County and Depository within 20 days after Tenant is billed for same. No such review or inspection shall be deemed a warranty or representation that such plans and specifications or the Restoration complies with applicable Legal Requirements or with the provisions of this Agreement.

14.03 Notwithstanding the foregoing, if the Premises are damaged or destroyed by fire or other cause during the last year of the Term and such damage or destruction was not caused by the misconduct of Tenant and the cost to restore the Premises, as reasonably estimated, would equal or exceed 50% of the Full Replacement Cost of the Improvements, Tenant may, at its option, terminate this Agreement by notice given to the County no later than 30 days after such fire or other causal event, provided all of the following conditions are met:

- (a) Tenant is not in default of this Agreement, which default is not cured within the applicable cure period (if any), and
- (b) Tenant has paid all Rent then due, and
- (c) Tenant has maintained in full force and effect any insurance required by Section 12.01 and the insurance maintained by Tenant fully covers the damage, and
- (d) Tenant pays the County an amount equal to such policy's deductible, and
- (e) Tenant assigns to the County all of its right, title and interest in the proceeds of any insurance covering the loss and reasonably cooperates with the County's efforts to obtain such insurance proceeds (which obligation to assign and cooperate shall survive any termination of this Agreement), and

- (f) Tenant has completed the Casualty Termination Work (hereinafter defined) in a good and workmanlike manner and in compliance with all Laws, and
- (g) There are no Subtenants whose leases or occupancy agreements have not been validly terminated by reason of such damage or destruction; and
- (h) all insurance proceeds covering the loss are paid to the County.

If such notice is given, this Agreement shall cease and come to an end as of the later of the date 45 days after the date the County receives such notice and the date all of the foregoing conditions are met. Subject to the requirements of Section 14.04, Tenant shall not be required to repair such damage or destruction if the foregoing conditions are met. Tenant shall continue to pay all Rent including Impositions, until all insurance proceeds covering the Loss are paid to the County. If, for any reason, all insurance proceeds are not paid to the County or if the insurance company refuses to pay the insurance proceeds to the County, Tenant's termination notice shall be void and this Agreement shall be deemed in full force and effect.

14.04 If Tenant exercises its option to terminate this Agreement pursuant to Section 14.03 of this Agreement, Tenant, at Tenant's sole expense, shall demolish the Improvements (except as otherwise directed in writing by the County, which direction shall be given to Tenant within 30 days after the County receives Tenant's notice of termination pursuant to Section 14.03), remove all debris, grade the Land, and adequately secure the site during such remediation work (collectively, the "**Casualty Termination Work**").

ARTICLE 15. CONDEMNATION

15.01 The County and Tenant shall each notify the other if it becomes aware of a threatened or possible Taking (including any letter of interest from the condemning authority or its designee), or the commencement of any proceedings or negotiations which might result in a Taking. The County and Tenant shall have the right to appear in such proceedings, as their interests may appear, and be represented by their respective counsel.

15.02 If there is a Taking of the entire Premises or of more than % of the rentable area of the County Museum Facility (a "**Substantial Taking**"), the Term of this Agreement shall cease and terminate on the date of the Taking as fully and completely as if such date were the originally stated Expiration Date of this Agreement. In the event of a Substantial Taking, the entire Award shall be paid to and retained by the County. Tenant shall have the right to file a separate claim for damage to Tenant's Personal Property within the Premises, provided that such claim does not interfere with or diminish the value of the County's claim.

15.03 If all or any portion of the Premises is taken temporarily (a "**Temporary Taking**"), the following shall apply. If (i) the Temporary Taking (whether or not a Substantial Taking) ends prior to the then Expiration Date or (ii) a portion of the Premises is Taken for a period that will end after the then Expiration Date but such Taking is not a Substantial Taking, then:

- (a) This Agreement shall remain in full force and effect, including as to the portion Taken and there shall be no change in Tenant's obligations under this Agreement; and
- (b) There shall be no reduction in Rent; and
- (c) If clause (i) applies, the entire Award shall be paid to Tenant; and
- (d) If clause (ii) applies, the portion of the Award allocable to the period prior to the Expiration Date shall be paid to Tenant and the portion of the Award allocable to the period after the Expiration Date shall be paid to the County.

If, however, the Temporary Taking involves a Substantial Taking and the term of the Temporary Taking extends beyond the then Expiration Date, Tenant may, at its option, terminate this Agreement as of the date of the Taking, by notice given prior to the date of the Taking, in which event this Agreement shall be terminated as of the date of the Taking as fully and completely as if such date were the stated Expiration Date of this Agreement and the County shall be entitled to the entire Award. If Tenant does not so elect to terminate this Agreement, this Agreement shall remain in full force and effect, there shall be no reduction in Rent and clause (d) above shall govern the distribution of the Award.

15.04 If the Taking is not a Substantial Taking or a Temporary Taking (a **"Partial Taking"**), this Agreement shall remain in full force and effect; provided, however, that on the date of such Taking this Agreement shall terminate as to the portion of the Premises taken, which portion shall no longer be deemed part of the Premises. From and after the date of such Partial Taking, the Rent shall not be reduced. Whether or not the Award is sufficient to restore the Improvements, Tenant shall promptly restore the Improvements, to the extent reasonably practicable given the nature and scope of the Taking and Requirements, to their condition immediately prior to such Partial Taking in accordance with the provisions of this Agreement and to a standard and quality no less than the construction of the original Improvements (the **"Condemnation Restoration"**). The Award for the Partial Taking shall be allocated as follows: if the Partial Taking includes any of the Improvements (including any parking area), the Award shall first be applied to effect the Condemnation Restoration. The balance of the Award (if any) shall be the County's sole property. If the cost of the Condemnation Restoration, as reasonably estimated, is less than \$100,000, the portion of the Award needed to effect the Condemnation Restoration shall be paid to Tenant, who shall effect the Condemnation Restoration, and if the cost of effecting the Condemnation Restoration is equal to or greater than \$100,000, the portion of the Award needed for restoration of the Improvements shall be paid to a Depository, which shall distribute such portion of the Award to Tenant as the Restoration progresses in the same manner as provided in Section 14.02 with respect to insurance proceeds and subject to the same conditions. If the Partial Taking does not include any portion of the Improvements, the entire Award shall be paid to the County.

15.05 If this Agreement terminates pursuant to this Article, the County, within ten Business Days after this Agreement terminates, shall retain all Rent previously paid that is attributable to the period after such termination. The termination of this Agreement shall not

affect those obligations and liabilities of Tenant under this Agreement that accrued before the termination of this Agreement or that relate to periods before such termination, which obligations shall survive termination.

15.06 Nothing in this Article is included for the benefit of the condemning authority, the intent being only to set out the rights of the parties *vis`a vis* one another.

ARTICLE 16. ESTOPPEL CERTIFICATES

16.01 The County and Tenant shall, at any time and from time to time, within ten Business Days following receipt of written request from the other Party, execute, acknowledge and deliver a written statement certifying: that this Agreement is in full force and effect and unmodified (or, if modified, stating the nature and date of such modification); the Commencement Date; the then Expiration Date; whether any Extension Options have been exercised and describing the Extension Term(s) to which such option(s) relate; the dates to which the Rent reserved hereunder has been paid and the amount of such Rent; whether or not, to the best knowledge of the signer, the other Party is in default in performance of any of its obligations under this Agreement (and, if so, specifying each such default of which the signer shall have knowledge); if the signer is the Tenant, that Tenant is not in default of any of its obligations under this Agreement; and as to such other matters regarding this Agreement as may reasonably be requested. Failure to deliver such statement within said ten Business Days' period shall be conclusive as to the facts stated in the requested certification and binding upon the Party which failed to deliver such certification.

ARTICLE 17. ASSIGNMENT AND SUBLETTING

17.01 Tenant shall not, without the prior written consent of the County in each instance as provided in this ARTICLE 17, (a) assign, transfer, mortgage, pledge, hypothecate or encumber, or subject to or permit to exist upon or be subjected to any lien or charge, this Agreement or any interest under it; (b) allow to exist or occur any transfer of or lien upon this Agreement or Tenant's interest herein by operation of law; (c) sublet the Premises or any part thereof; (d) permit the use or occupancy of the Premises for any purpose other than the Permitted Use or by anyone other than Tenant and Tenant's employees; or (e) cause, suffer or permit to occur any "Change of Control" (defined below). The County's consent to any proffered assignment or sublet shall not be unreasonably withheld and shall be objectively based. In no event shall this Agreement be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, and in no event shall this Agreement or any rights or privileges hereunder be an asset of Tenant under any bankruptcy, insolvency or reorganization proceedings.

17.02 Consent by the County to any assignment, subletting, use, occupancy or transfer shall not operate to relieve Tenant from any covenant or obligation under this Agreement except to the extent, if any, expressly provided for in such consent, or be deemed to be a consent to or relieve Tenant from obtaining the County's consent to any subsequent assignment, transfer, lien, charge, subletting, use or occupancy. Tenant shall pay all of the County's costs, charges and expenses, including attorneys' fees, incurred in connection with any assignment, transfer, lien,

charge, subletting, use or occupancy made or requested by Tenant. Tenant agrees that the County must approve all advertising by Tenant or on Tenant's behalf with respect to the assignment of this Agreement or subletting of space in writing prior to publication.

17.03 The County shall not unreasonably withhold its consent to Tenant's assignment of this Agreement or subletting the space covered by its notice. The County shall not be deemed to have unreasonably withheld its consent to a sublease of all or part of the Premises or an assignment of this Agreement if its consent is withheld because: (a) Tenant is then in default hereunder; (b) any notice of termination of this Agreement or termination of Tenant's possession shall have been given under ARTICLE 21; (c) the portion of the Premises which Tenant proposes to sublease, including the means of ingress to and egress from and the proposed use thereof, and the remaining portion of the Premises will violate any Requirements; (d) the proposed use of the Premises by the subtenant or assignee does not conform with the Permitted Use; (e) the proposed assignee or subtenant is not an organization determined by the Internal Revenue Service to be exempt under Section 501(c)(3); or (f) in the County's reasonable discretion, the proposed subtenant or assignee is of a character or is engaged in a business which would be deleterious to the reputation of the Premises, or the subtenant or assignee is not sufficiently financially responsible to perform its obligations under the proposed sublease or assignment; provided, however, that the foregoing are merely examples of reasons for which the County may withhold its consent and shall not be deemed exclusive of any permitted reasons for reasonably withholding consent, whether similar to or dissimilar from the foregoing examples.

17.04 If Tenant, having first obtained County's consent to a sublease of the entirety of the Premises or assignment of this Agreement, or if Tenant or a trustee in bankruptcy for Tenant pursuant to the Bankruptcy Code, shall assign this Agreement or sublet the entirety of the Premises, at a rental or for other consideration in excess of the Rent due and payable by Tenant under this Agreement, then Tenant shall pay to County as additional rent (a) in the case of an assignment, any such excess rent or other monetary consideration immediately upon receipt thereof, or (b) in the case of a sublease of the entirety of the Premises, (i) on the first day of each month during the term of any such sublease, the excess of all rent and other consideration due from the subtenant for such month over the Rent then payable to County pursuant to the provisions of this Agreement for said month, and (ii) immediately upon receipt thereof, any other consideration realized by Tenant from such subletting; it being agreed, however, that the County shall not be responsible for any deficiency if Tenant shall assign this Agreement or sublet the entirety of the Premises at a rental less than that provided for herein.

17.05 If Tenant shall assign this Agreement as permitted herein, the assignee shall expressly assume all of the obligations of Tenant hereunder in a written instrument satisfactory to County and furnished to County not later than 15 days prior to the effective date of the assignment. If Tenant shall sublease the Premises as permitted herein, Tenant shall obtain and furnish to the County, not later than 15 days prior to the effective date of such sublease and in form satisfactory to the County, the written agreement of such subtenant stating that the subtenant will attorn to the County, at the County's option and written request, in the event this Agreement terminates before the expiration of the sublease.

17.06 **Change of Control.**

ARTICLE 18. MORTGAGES

18.01 The County may mortgage its fee interest in the Premises in favor of a Fee Lender, as provided in this ARTICLE 18. Tenant shall be prohibited from granting a mortgage lien or any other interest to any Person and any attempt to do so shall be void. Should any prospective Fee Lender require a modification or modifications of this Agreement, which modification or modifications will not cause an increased cost or expense to Tenant or in any other way materially change the rights and obligations of Tenant hereunder, Tenant agrees that this Agreement may be so modified and agrees to execute whatever documents are required therefor and deliver the same to the County within 30 days following the request therefor.

18.02 If requested by a Fee Lender, Tenant will either (a) subordinate its interest in this Agreement to the Fee Mortgage and to any and all advances made thereunder and to the interest thereon, and to all renewals, replacements, supplements, amendments, modifications and extensions thereof, or (b) make certain of Tenant's rights and interest in this Agreement superior thereto; and Tenant will promptly execute and deliver such agreement or agreements as may be reasonably required by such mortgagee or trustee under any Fee Mortgage. Tenant covenants it will not subordinate this Agreement to any mortgage or trust deed other than a Fee Mortgage without the prior written consent of the Fee Lender.

18.03 It is further agreed that (a) if any Fee Mortgage shall be foreclosed, (i) the Fee Lender, ground lessor (or their respective grantees) or purchaser at any foreclosure sale (or grantee in a deed in lieu of foreclosure), as the case may be, shall not be (x) liable for any act or omission of any prior landlord (including the County), (y) subject to any offsets or counterclaims which Tenant may have against a prior landlord (including the County), or (z) bound by any prepayment of Rent (other than Base Rent) which Tenant may have made in excess of the amounts then due for the next succeeding month; (ii) the liability of the Fee Lender or the purchaser at such foreclosure sale or the liability of a ground lessor or a subsequent owner designated as the County under this Agreement shall exist only so long as such trustee, mortgagee, purchaser or owner is the owner of the Premises, and such liability shall not continue or survive after further transfer of ownership; (iii) upon request of the Fee Lender, if the Fee Mortgage shall be foreclosed, Tenant will attorn, as Tenant under this Agreement, to the purchaser at any foreclosure sale under any Fee Mortgage, and Tenant will execute such instruments as may be necessary or appropriate to evidence such attornment; and (b) this Agreement may not be modified or amended so as to reduce the Rent or shorten the Term provided hereunder or so as to adversely affect in any other respect to any material extent the rights of County, nor shall this Agreement be cancelled or surrendered, without the prior written consent, in each instance, of the ground lessor and the Fee Lender.

18.04 Tenant agrees to give any Fee Lender, by registered or certified mail, a copy of any notice or claim of Default served upon the County by Tenant, provided that prior to such notice Tenant has been notified in writing (by way of service on Tenant of a copy of an assignment of the County's interests in leases, or otherwise) of the address of such Fee Lender. Tenant further agrees that if the County shall have failed to cure such Default within 30 days after such notice to the County (or if such Default cannot be cured or corrected within that time, then such additional time as may be necessary if the County has commenced within such 30 days

and is diligently pursuing the remedies or steps necessary to cure or correct such Default), then the Fee Lender shall have an additional 30 days within which to cure or correct such Default (or if such Default cannot be cured or corrected within that time, then such additional time as may be necessary if such Fee Lender has commenced within such 30 days and is diligently pursuing the remedies or steps necessary to cure or correct such Default, including the time necessary to obtain possession if possession is necessary to cure or correct such Default).

ARTICLE 19. END OF TERM

19.01 On the Expiration Date or such earlier date that this Agreement terminates or expires, Tenant shall peaceably and quietly surrender the Premises to the County vacant, broom clean, in good order, condition and repair excepting reasonable wear and tear and damage that is not Tenant's obligation to repair, free and clear of all Subleases, liens, and other encumbrances (except for liens and encumbrances caused or expressly consented to by the County), and with all Personal Property acquired (or leased) by Tenant or Tenant's Affiliates and all personal property of Subtenants removed. Tenant shall deliver to the County, on or before the Expiration Date or such earlier date that this Agreement terminates or expires, upon the County's request, all licenses, permits, warranties, and guaranties then in effect for the Premises (and shall assign same to the County upon the County's request) and all books and records reasonably requested by the County. Tenant shall cooperate with the County to achieve an orderly transition of the Premises to the County's control. The County and Tenant shall, prior to the Expiration Date, (a) adjust for Impositions and all other appropriate expenses and income of the Premises, and (b) if a Memorandum of Lease has been recorded, execute a document in recordable form evidencing the termination of this Agreement and all amendments thereto.

19.02 All Alterations and Improvements, temporary or permanent, except movable furniture, trade fixtures and equipment belonging to Tenant, in or upon the Premises, whether placed there by Tenant or the County, shall be the County's property and shall remain upon the Premises, all without compensation, allowance or credit to Tenant; provided, however, that if prior to such termination the County so directs by notice, Tenant, at Tenant's sole cost and expense, shall promptly remove such of the Alterations and Improvements placed in the Premises by Tenant as are designated in such notice and repair any damage to the Premises caused by such removal, failing which County may remove the same and repair the Premises, and Tenant shall pay the cost thereof to County on demand.

19.03 Any Personal Property of Tenant or any Subtenant which shall remain on the Premises after the Expiration Date or such earlier date that this Agreement terminates or expires, may, at the option of the County, be deemed to have been abandoned and either may be retained by the County as its property or be disposed of, without accountability, in such manner as the County may see fit. Tenant shall reimburse the County, as Additional Rent, for all costs and expenses incurred by the County in connection with disposing of such property.

19.04 If the Premises are not vacated and surrendered in accordance with this Agreement on the Expiration Date or sooner termination of this Agreement, Tenant shall be liable to the County for (a) all Liabilities incurred by the County in connection with such holdover, including Liabilities incurred in connection with any summary proceedings, action or

proceeding to recover possession of the Premises from Tenant and any Subtenants, and (b) per diem use and occupancy in respect of the Premises equal to twice the fair rental value of the Premises, and (c) all damages incurred by the County in connection with such holdover, including any lost opportunity damages incurred by the County. If only a portion of the Premises is timely vacated and surrendered, Tenant shall nevertheless remain liable for per diem use and occupancy with respect to the entire Premises, but any reletting proceeds received by the County during the period of Tenant's holdover shall be credited against Tenant's liability for use and occupancy for the entire Premises. In no event shall this Section be construed as permitting Tenant (or other occupants) to remain in possession of the Premises after the Expiration Date or sooner termination of this Agreement. Tenant shall indemnify, defend and hold harmless the County against all claims made by any succeeding tenants to the extent such claims arise by reason of the failure of Tenant (and all other occupants) timely to vacate and surrender the Premises (or any portion thereof) in accordance with this Agreement. the County may recover amounts due it under this Section in any summary proceeding and/or any separate action or proceeding.

19.05 No act or thing done by the County or the County's agents (including receipt of keys) during the Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing signed by the County. Acceptance by the County of Rent after such termination shall not of itself constitute a renewal. Nothing contained in this ARTICLE 19 shall be construed or operate as a waiver of County's right of reentry or any other right or remedy of County.

ARTICLE 20.
DEFAULT; INSOLVENCY EVENTS; AND CONDITIONS OF LIMITATION

20.01 This Agreement and the term and estate thereof is subject to the conditional limitation set forth below. If any of the following events occur (each, an **"Event of Default"**):

- (a) If Tenant fails to pay Rent to the County when the same is due and payable under the terms of this Agreement and such failure continues for a period of ten Business Days after written notice thereof is given to Tenant, or
- (b) Tenant fails to timely perform its obligations under the Timetable; or
- (c) Tenant's failure to timely deposit any cash required pursuant to Section 6.02
- (d) Tenant's failure to observe or perform any of the covenants in respect of Section 8.01, Section 8.03, Section 8.05, or ARTICLE 17; or
- (e) Tenant fails to discharge any mechanic's or other lien that is its obligation to discharge under the terms of this Agreement within the applicable time period provided in this Agreement; or
- (f) Tenant, whether by action or inaction, fails to timely perform or observe any of the other terms, covenants or conditions of this Agreement and such default is not remedied within 30 days after written notice thereof is given to Tenant, provided that if such default cannot, with reasonable diligence, be fully remedied

within such 30-day period, Tenant shall have as long as is reasonably necessary to cure such default, but in no event longer than three months after the date such default notice is given to Tenant, provided Tenant commences compliance within such 30-day period (or as promptly as reasonably possible in an emergency) and thereafter pursues compliance to completion with reasonable diligence; or

- (g) Tenant deserts or abandons the Premises for 30 or more consecutive days; or
- (h) A receiver is appointed for Tenant or any property of Tenant in any action, suit, or proceeding by or against Tenant and such appointment is not vacated or annulled within 120 days, or
- (i) The interest of Tenant in this Agreement or the rents from the Premises is sold under execution or other legal process;

then the County may, at any time during the continuance of such Event of Default, give Tenant notice of termination of this Agreement and, upon the date five days after service of such notice, this Agreement and the Term and estate thereof shall terminate and end with the same force and effect as if that day were the day herein definitely fixed for the end and expiration of this Agreement, but Tenant shall remain liable for damages as provided in this Agreement and the County may resort to and enforce any of the remedies provided in ARTICLE 21.

20.02 This Agreement and the term and estate thereof is subject to the further conditional limitation that if any of the following events occur (“**Insolvency Events**”):

- (a) Tenant makes an assignment for the benefit of its creditors, or
- (b) If an involuntary petition is filed against Tenant under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import, and such petition is not dismissed within 120 days after the date filed; or
- (c) Tenant shall file a voluntary petition under any bankruptcy or insolvency law, or whenever any court of competent jurisdiction shall approve a petition filed by Tenant under the reorganization provisions of the United States Bankruptcy Act or under the provisions of any law of like import, or whenever a petition shall be filed by Tenant under the arrangement provisions of the United States Bankruptcy Act or under the provisions of any law of like import; or
- (d) Any guarantor of some or all of Tenant’s obligations under this Agreement, during the period that the guaranty is in effect, dies or becomes incapacitated, is dissolved or liquidated, makes an assignment for the benefit of his/her/its creditors, is the debtor named in a voluntary petition in bankruptcy, is the debtor named in an involuntary petition in bankruptcy which petition is not discharged within 120 days, has a receiver appointed for his/her/its assets which receivership is not vacated or annulled within 120 days, or

is the subject of any other insolvency proceeding and such insolvency proceeding is not dismissed within 120 days;

then the County may, at any time during the continuance of such Insolvency Event, give Tenant notice of termination of this Agreement and, upon the date five days after service of such notice, this Agreement and the term and estate thereof (whether or not the Commencement Date shall have occurred) shall terminate and end with the same force and effect as if that day were the day herein definitely fixed for the end and expiration of this Agreement, but Tenant shall remain liable for damages as provided in this Agreement and the County may resort to and enforce any of the remedies provided in ARTICLE 21.

ARTICLE 21. REMEDIES

21.01 If (a) this Agreement is terminated pursuant to ARTICLE 20, or (b) the County reenters or obtains possession of the Premises by summary proceedings or any other action or proceeding, or (c) the County reenters or obtains possession by any other legal act (which the County may do without further notice and without liability or obligation to Tenant or any occupant of the Premises if this Agreement is terminated pursuant to ARTICLE 20), all of the provisions of this Section shall apply (in addition to any other applicable provisions of this Agreement):

- (a) Tenant shall immediately vacate the Premises and surrender the Premises to the County in good order, condition and repair, excepting reasonable wear and tear and damage that is not Tenant's obligation to repair; and, if Tenant fails to surrender the Premises in such condition, Tenant shall reimburse the County for all costs incurred by the County to restore the Premises to such condition.
- (b) The County, at the County's option, may (i) relet the Premises, or any portion of the Premises, from time to time, in the name of the County, Tenant or otherwise, as determined by the County, to any person and on any terms, but the County shall have no obligation to relet the Premises, or any portion of the Premises, or to collect any rent (and the failure to relet the Premises, or any portion of the Premises, or to collect any rent shall not impose any liability or obligation on the County or relieve Tenant of any obligation or liability under this Agreement), and (ii) make any changes to the Premises as the County, in the County's judgment, considers advisable or necessary in connection with a reletting, without imposing any liability or obligation on the County or relieving Tenant of any obligation or liability under this Agreement.
- (c) Tenant shall pay the County the following amounts:
 - (1) All Rent payable to the date on which this Agreement is terminated or the County reenters or obtains possession of the Premises; and
 - (2) Any deficiency between (i) the aggregate Rent for the period which otherwise would have constituted the unexpired portion of the Term (conclusively presuming the periodic Additional Rent for each year

thereof to be the same as was payable for the 12 month period immediately preceding the termination, re-entry or obtaining of possession); and (ii) the rents, if any, applicable to that period collected under any reletting of any portion of the Premises; and Tenant shall pay any such deficiency in monthly installments on the days specified in this Agreement for payment of installments of the Base Rent, and the County shall be entitled to recover from Tenant each monthly deficiency as the same arises. No suit to collect the deficiency for any month shall prejudice the County's right to collect the deficiency for any subsequent month. Tenant shall not be entitled to any rents payable (whether or not collected) under any reletting, whether or not those rents exceed the Rent. In lieu of any further deficiency pursuant to this subsection (2), the County may recover from Tenant, and Tenant shall pay the County, on request, as liquidated damages for such further deficiency, the amount by which (i) the unpaid Rent for the period which otherwise would have constituted the unexpired portion of the Term (conclusively presuming the Additional Rent for each year thereof to be the same as was payable for the 12-month period immediately preceding the termination, re-entry or obtaining of possession) exceeds (ii) the then fair market rental value of the Premises, including the Additional Rent for the same period, both discounted to present value at the annual rate of 5%.

- (3) Any costs and expenses incurred by the County in connection with the termination, reentry or obtaining of possession, and the reletting of the Premises, including all repossession costs, brokerage commissions, reasonable attorneys' fees and disbursements, alteration costs and other expenses of preparing the Premises for reletting.
- (d) Tenant shall deliver to the County all sums held by Tenant with respect to Subtenants of the Premises, including prepaid rents, estimated prepayments relating to real estate taxes, operating expenses, and other expenses; all security deposits; and all guaranties of Subtenant obligations (whether full or partial guaranties); and shall transfer to the County at Tenant's expense any letters of credit, bonds and other security instruments issued to Tenant on behalf of such Subtenants in accordance with the requirements of the issuer thereof.
- (e) Nothing contained in this Agreement shall be considered to limit or preclude the recovery by the County from Tenant of the maximum amount allowed to be obtained as damages or otherwise by any Law.

21.02 Tenant hereby waives (a) the service of any notice of intention to re-enter or obtain possession of the Premises or to institute any legal action in connection therewith, and (b) on its own behalf and on behalf of all persons claiming under Tenant, including all creditors, any rights Tenant and all such persons might otherwise have under any Law to redeem the Premises, to re-enter or repossess the Premises, or to restore this Agreement, after (i) Tenant is dispossessed pursuant to any Law or by any Authority, (ii) the County reenters or obtains

possession of the Premises pursuant to any legal act, action or proceeding, or (iii) the date of termination of this Agreement, whether by operation of law or pursuant to this Agreement.

21.03 Either Party may seek to enjoin any breach or threatened breach of any provision of this Agreement. The right of any party to exercise any particular remedy available under this Agreement, at law or in equity, shall not preclude such party from exercising any other remedy it might have pursuant to this Agreement, in law or in equity. Each right and remedy specified in this Agreement and each other right or remedy that may exist at law, in equity or otherwise upon breach of any provision in this Agreement, shall be deemed distinct, separate and cumulative; and no right or remedy, whether exercised or not, shall be deemed to be in exclusion of any other unless otherwise expressly provided in this Agreement.

21.04 If the County commences any summary proceeding against Tenant, Tenant shall not interpose any counterclaim in that proceeding (unless the failure to impose the counterclaim would preclude Tenant from asserting in a separate legal action the claim which is the subject of the counterclaim), and shall not seek to consolidate the proceeding with any other legal action.

21.05 If (a) there is then an Event of Default, or (b) if Tenant fails to comply with any obligation under this Agreement which in the County's reasonable opinion creates an emergency, the County may, but is not obligated to, cure the default. Tenant shall reimburse the County, as Additional Rent, for all Liabilities incurred by the County in connection therewith, within ten (10) days after Tenant is billed for such Liabilities.

21.06 Tenant shall reimburse the County, as Additional Rent, for all costs and expenses incurred by the County in connection with any default by Tenant in the performance or observance of any of the terms, covenants or conditions on Tenant's part to be observed or performed under this Agreement, including all costs and expenses incurred in interpreting and enforcing the County's rights and in instituting, prosecuting or defending any legal action by or against Tenant, including summary proceedings, or in connection with any dispute under this Agreement. Such amounts shall be paid to the County within ten days after Tenant is billed for such costs and expenses.

21.07 No payment by Tenant or receipt by the County of a lesser amount than the Rent shall be considered other than on account of the Rent. No endorsement or statement on any check or letter accompanying any check or payment shall prevent the County from cashing the check or otherwise accepting the payment, without prejudice to the County's right to recover the balance of the Rent or pursue any other remedy.

21.08 Tenant waives Tenant's right, if any, to designate the items against which any Rent payments made by Tenant pursuant to this Agreement are to be credited and Tenant agrees that the County may apply any payments made by Tenant to any Rent items the County sees fit irrespective of and notwithstanding any designation or request by Tenant as to the items against which any such payments shall be credited.

21.09 All legal actions relating to this Agreement shall be adjudicated in the circuit court for Peoria County, Illinois. Tenant irrevocably consents to the personal and subject matter jurisdiction of those courts in any legal action relating to this Agreement and waives any claim that any legal action relating to this Agreement brought in any such court has been brought in an inconvenient forum. This consent to jurisdiction is self-operative and no further instrument or legal action, other than service of process in any manner permitted by Law or this Section, is necessary in order to confer jurisdiction upon the person of Tenant and the subject matter in question in any such court.

21.10 The words “re-enter,” “re-entry” and “re-entered” as used in this Agreement shall not be considered to be restricted to their technical legal meanings.

ARTICLE 22. RIGHTS RESERVED TO THE COUNTY

22.01 The County reserves the following rights, exercisable without notice and without liability to Tenant for damage or injury to property, person or business and without effecting an eviction or disturbance of Tenant's use or possession or giving rise to any claim for setoff or abatement of Rent or affecting any of Tenant's obligations under this Agreement:

- (a) to name the Premises;
- (b) to install and maintain signs on the exterior of the Premises;
- (c) to retain at all times, and to use in appropriate instances, pass keys and security codes to the Premises;
- (d) to exhibit the Premises at reasonable hours, and to decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy at any time after Tenant vacates or abandons the Premises;
- (e) to enter the Premises at reasonable hours for reasonable purposes, including inspection;
- (f) in case of fire, invasion, insurrection, mob, riot, civil disorder, public excitement or other commotion, or threat thereof, to limit or prevent access to the Premises during the continuance of the same, shut down elevator service, activate elevator emergency controls, or otherwise take such action or preventive measures deemed necessary by the County for the safety or security of the occupants of the Premises or the protection of the Premises. Tenant agrees to cooperate in any reasonable safety or security program developed by the County;
- (g) from time to time to make and adopt such reasonable rules and regulations for the protection and welfare of the Premises and its occupants, as the County may determine, and Tenant agrees to abide by and comply with all such rules and regulations, provided the County furnishes Tenant with written notice thereof and none of such rules and regulations conflict with the terms of this Agreement. Tenant agrees to comply with such rules and regulations as may be adopted by

County. Any violation by Tenant of any of the rules and regulations may be restrained; but, whether or not so restrained, Tenant acknowledges and agrees that it shall be and remain liable for all damages, loss, costs and expenses resulting from any violation by Tenant of any of said rules and regulations.

22.02 The County specifically excepts and reserves to itself all rights to the improvements and air rights above the Premises.

ARTICLE 23. MEMORANDUM OF LEASE; QUIET ENJOYMENT

23.01 Concurrently with the execution of this Agreement, the County and Tenant shall execute and deliver to the other, a memorandum of this Agreement, in the form attached hereto as **Exhibit 23.01**, together with such transfer tax returns and other documents as are required to record such memorandum in the office of the Peoria County Recorder's Office. Tenant, at Tenant's expense, may record such memorandum. The Parties shall modify such memorandum to reflect any requirements of the recording office. If this Agreement is amended, the County and Tenant shall, promptly upon the request of either Party, execute and deliver an amendment of such memorandum giving notice of such amendment. The Party requesting such amendment shall pay the recording fees imposed in connection therewith. At the expiration or sooner termination of this Agreement, each Party shall, at the request of the other Party, execute and deliver an instrument evidencing the termination of this Agreement and the County may, at its sole cost and expense, record such instrument; but the failure of either Party to execute and deliver such instrument shall not prevent or affect the termination of this Agreement or serve to reinstate this Agreement.

23.02 The County covenants that if and so long as Tenant observes and performs each and every covenant, agreement, term, provision and condition of this Agreement on the part of Tenant to be observed and performed, Tenant shall quietly enjoy the Premises without hindrance or molestation of the County or any Person acting through the County, subject to the covenants, agreements, terms, provisions and conditions of this Agreement.

ARTICLE 24. MISCELLANEOUS

24.01 Each provision of this Agreement shall extend to and shall bind and inure to the benefit not only of the County and Tenant, but also their respective heirs, legal representatives, successors and assigns, but this provision shall not operate to permit any transfer, assignment, mortgage, encumbrance, lien, charge or subletting contrary to the provisions of this Agreement.

24.02 Tenant represents that Tenant has dealt with no broker, finder, leasing agent or other person in connection with this Agreement, and Tenant agrees to indemnify and hold the County harmless from all damages, liability and expense (including reasonable attorneys' fees) arising from any claims or demands of any other broker or brokers or finders for any commission alleged to be due such broker or brokers or finders in connection with its having introduced Tenant to the Premises or participating in the negotiation with Tenant of this Agreement.

24.03 No modification, waiver or amendment of this Agreement or of any of its conditions or provisions shall be binding upon County unless in writing signed by County.

24.04 Submission of this instrument for examination shall not constitute a reservation of or option for the Premises or in any manner bind the County, and no lease or obligation of County shall arise until this instrument is signed and delivered by the County and Tenant; provided, however, the execution and delivery by Tenant of this Agreement to the County shall constitute an irrevocable offer by Tenant to lease the Premises on the terms and conditions herein contained, which offer may not be revoked for ten days after such delivery.

24.05 The word "Tenant" whenever used herein shall be construed to mean Tenants or any one or more of them in all cases where there is more than one Tenant; and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other organizations, partnerships or other entities, or individuals, shall in all cases be assumed as though in each case fully expressed herein. In all cases where there is more than one Tenant, the liability of each shall be joint and several.

24.06 The headings of Articles and Sections are for convenience only and do not limit, expand or construe the contents of the Sections.

24.07 Each covenant, agreement, obligation or other provision of this Agreement on Tenant's part to be performed, shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Agreement.

24.08 This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

24.09 Time is of the essence of this Agreement and of all provisions hereof.

24.10 All amounts (including Rent) owed by Tenant to the County pursuant to any provision of this Agreement shall bear interest from the date due until paid at the Interest Rate.

24.11 This Agreement is governed by and shall be construed and enforced in accordance with the laws of the State of Illinois, without regard to principles of conflicts of law. The invalidity of any provision of this Agreement shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Agreement.

24.12 . All understandings and agreements, oral or written, made between the Parties are merged in this Agreement, which alone fully and completely expresses the agreement between the County and Tenant.

24.13 It is mutually agreed by and between the County and Tenant that the respective Parties shall, and they hereby do, waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties against the other on any matter whatsoever arising out of or in any way connected with this Agreement, the relationship of County and Tenant, Tenant's use of or occupancy of the Premises or any claim of injury or damage and any emergency statutory or any other statutory remedy.

24.14 No waiver of any condition expressed in this Agreement shall be implied by any neglect of the County to enforce any remedy on account of the violation of such condition whether or not such violation be continued or repeated subsequently, and no express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated. Without limiting the County's rights under this Agreement, it is agreed that no receipt of moneys by the County from Tenant after the termination in any way of the Term or of Tenant's right of possession or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given to Tenant prior to the receipt of such moneys. It is also agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Premises, the County may receive and collect any moneys due, and the payment of said moneys shall not waive or affect said notice, suit or judgment.

24.15 Consent of the County to any act or matter must be in writing and shall apply only with respect to the particular act or matter to which such consent is given and shall not relieve Tenant from the obligation wherever required under this Agreement to obtain the consent of the County to any other act or matter. If Tenant requests the County's consent or approval and the County fails or refuses to give such consent or approval, Tenant shall not be entitled to any damages for any withholding by the County of its consent or approval, it being intended that Tenant's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases where the County has expressly agreed in writing not to unreasonably withhold or delay its consent or where as a matter of law the County may not unreasonably withhold its consent.

24.16 Upon the expiration of the Term of this Agreement, neither Party shall have any further obligation or liability to the other except as otherwise provided in this Agreement and except for (a) such obligations as by their nature or under the circumstances can only be, or by the provisions of this Agreement may be, performed after such expiration, and (b) any liability for Rent, and (c) any liability for acts or omissions occurring during the Term.

24.17 Each Party represents and warrants (a) that this Agreement has been duly authorized, executed and delivered by such Party and constitutes the legal, valid and binding obligation of such Party, (b) that there are no actions, suits or proceedings pending or, to the knowledge of such Party, threatened against or affecting such Party, at law or in equity or before any Governmental Authority which would impair such Party's ability to perform its obligations under this Agreement, and (c) that the consummation of the transactions hereby contemplated and the performance of this Agreement will not result in any breach or violation of, or constitute a default under any lease, bank loan or credit agreement. If Tenant is not an individual, Tenant shall provide to the County, upon the County's request, evidence that the execution and delivery of this Agreement have been duly authorized by Tenant and that the person or persons executing and delivering this Agreement on behalf of Tenant have been duly authorized to do so, together with a certified copy of Tenant's articles of incorporation, partnership agreement or operating agreement, as applicable, and all amendments thereto.

24.18 All notices and demands required or desired to be given by either Party to the other with respect to this Agreement or the Premises shall be in writing and shall be delivered

personally, sent by overnight courier service, prepaid, or sent by United States registered or certified mail, return receipt requested, postage prepaid, and addressed as herein provided. Notices to or demands upon Tenant shall be addressed to Tenant at _____ Attention: _____ prior to its occupancy of the Premises and at the Premises following its occupancy of the Premises. Notices to or demands upon County shall be addressed to County at _____, Attention: _____. Notices and demands shall be deemed given and served (a) upon receipt or refusal, if delivered personally, (b) one (1) Business Day after deposit with an overnight courier service, or (c) upon deposit in the United States mails, if mailed. Facsimile transmission shall not be deemed effective service of notice under this Agreement. Either Party may change its address for receipt of notices by giving notice of such change to the other Party in accordance herewith. Notices and demands from County to Tenant may be signed by County, its beneficiary, the managing agent for the Premises or the agent or attorney of any of them.

24.19 The County's title is and always shall be paramount to the title of Tenant, and nothing in this Agreement contained shall empower Tenant to do any act which can, shall or may encumber the title of the County.

24.20 It is expressly understood and agreed by and between the Parties that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of the County while in form purporting to be the representations, warranties, covenants, undertakings and agreements of the County are nevertheless each and every one of them made and intended, not as personal representations, warranties, covenants, undertakings and agreements by the County or for the purpose or with the intention of binding County personally, but are made and intended for the purpose only of subjecting County's interest in the Premises to the terms of this Agreement and for no other purpose whatsoever, and in case of default hereunder by County (or default through, under or by any of its beneficiaries, or agents or representatives of said beneficiaries) and that Tenant shall look solely to the interests of County in the Premises.

24.21 The County, its board members, employees and agents, disclosed and undisclosed, shall have no personal liability under or in connection with this Agreement.

24.22 The County grants and declares that, as long as there is not a then existing Event of Default, at any time during the Term the County intends to offer to sell or otherwise voluntarily transfer fee simple title to the Premises, Tenant shall have the right of first opportunity to purchase the County's fee simple interest in the Land, the County Museum Facilities, the Parking Garage and any other improvements to the Land owned by the County (collectively, the "**County's Interest**") on the following terms (the "**RoFO**"):

- (a) The County shall deliver to Tenant a written notice (the "**RoFO Notice**") stating the County's *bona fide* intention to offer to sell or otherwise voluntarily transfer all or any part of the fee simple title to the Premises. At any time within 30 days after receipt of the RoFO Notice, Tenant may, by giving written notice to the County (the "**Tenant's Notice**"), elect to purchase all, but not less than all, of the County's Interest, at the Fair Market Value (defined in Section 24.22(a)) of the County's Interest as of the date of the RoFO Notice and on such other the terms

established in accordance with Section 24.22(a). The Parties will attempt to agree upon the Fair Market Value of the County's Interest within 30 days after the Tenant's Notice. If after such 30 days, the Parties are unable, having acted in good faith, to agree upon the Fair Market Value of the County's Interest as of the date of the RoFO Notice, the Fair Market Value of the County's Interest shall be determined by binding arbitration by Qualified Appraisers as set forth in Section 24.22(a).

(b) If the Parties fail to agree upon the Fair Market Value of the County's Interest as of the date of RoFO Notice, it shall be determined by Qualified Appraisers, one to be chosen by the County and one to be chosen by Tenant. The Parties shall instruct their Qualified Appraisers to appraise the Fair Market Value of the County's Interest in accordance with the following instructions:

(i) The most probable price which the County's Interest should bring in a competitive and open market under all conditions requisite for a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus, under the following conditions:

(A) buyer and seller are typically motivated;

(B) both parties are well informed or well advised, and acting in what they consider their best interests;

(C) a reasonable time is allowed for exposure in the open market;

(D) payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto;

(E) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(F) the highest and best use of the County's Interest shall be the then current zoning of the Premises,

(G) the determination shall be made without regard to the existence of this Agreement or the RoFO provided in this Section, without regard to the existence of any mortgage placed upon the Premises; without regard to the existence of any eminent domain or condemnation proceedings then pending for the taking of all or a part of the Premises.

(ii) For purposes of this Agreement, "Qualified Appraiser" means an appraiser (A) having an MAI designation from the Appraisal Institute or any successor entity (or such other equivalent designation or certification as may be used by the Appraisal Institute or any successor entity in lieu of

an MAI designation) and who has at least 10 years' experience in valuing institutional properties in the metropolitan Peoria, Illinois area and (B) is independent of the Parties, familiar with Premises and of good business reputation.

- (iii) If either Party fails to select a Qualified Appraiser within ten business days after the date the Parties are deemed unable to agree upon the Fair Market Value of the County's Interest, the appraisal shall be made by the Qualified Appraiser selected by the other Party. On or before 30 days following selection of the last Qualified Appraiser to be selected, each Qualified Appraiser shall submit to the County and Tenant its independently prepared written appraisal report of the Fair Market Value of the County's Interest as of the date of the RoFO Notice. If the Fair Market Value determined by the two Qualified Appraiser are within ten percent of one another, using the lower appraisal amount as the base amount, then the Fair Market Value for the County's Interest shall be the average of the two appraisals. If the difference between the two appraisals is more than ten percent of one another, using the lower value as the base amount, then the two Qualified Appraiser shall choose a third Qualified Appraiser who shall appraise the County's Interest and shall choose one of the appraised values determined by the two other Qualified Appraiser or some value in between such appraised values as the Fair Market Value of the County's Interest, which determination shall be conclusively binding on the Parties and shall be the purchase price for the County's Interest. If two or more Qualified Appraiser are utilized, each Party shall pay the costs associated with the Qualified Appraiser selected by such party, and the Parties shall share equally the costs associated with a third Qualified Appraiser, if necessary.
- (iv) Tenant and the County shall close the sale and purchase of the County's Interest within 60 days after the determination of the purchase price as set forth above. In exchange for the receipt of the full purchase price as determined in accordance with this Section, the County shall at the closing convey to Tenant fee simple interest to the County's Interest by recordable special warranty deed free and clear of any and all liens, encumbrances and exceptions of any kind or nature whatsoever except the following: real estate taxes and assessments; easements, covenants, conditions and restrictions of record created prior to the Commencement Date or created after the Commencement Date which do not impair the marketability of title to the County's Interest or which Tenant agrees to assume or take title subject to; all acts done or suffered by, through or under Tenant; and to be executed lease with the County of the Parking Garage permitting the County to operate the Parking Garage for 20 years after the closing date on the same basis that it was pursuant to this Agreement. All closing costs incurred in connection with the sale and purchase of the County's Interest shall be Tenant's responsibility.

Any assignment or transfer of Tenant's interest in this Agreement shall terminate the RoFO without further action of the Parties. The RoFO shall terminate automatically upon the expiration or earlier termination of the Agreement. The RoFO shall not apply to any transfer of the County's Interest to a "unit of local government" under the Illinois Constitution or to a "governmental entity" under 30 ILCS 557/5 *et al.* Any transfer of the County's Interest pursuant to this Section 24.22 shall be subject to the Redevelopment Agreement.

**ARTICLE 25.
DECLARATIONS AND CERTIFICATIONS**

25.01 Tenant certifies it is under no legal prohibition on contracting with the County, has no known conflicts of interest and further specifically certifies that:

- (a) Tenant has disclosed, and agrees it is under a continuing obligation to disclose to the County, financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest or which would prohibit Tenant from having or continuing the Lease. This includes, but is not limited to, conflicts under the Illinois Public Officer Prohibited Activities Act (50 ILCS 105/3.1).

25.02 [review continues]

[SIGNATURES ON FOLLOWING PAGE.]

The County and Tenant have entered into and executed this Capital Facility Development, Lease and Operating Agreement on the Commencement Date.

LANDLORD

TENANT

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

SCHEDULE AND EXHIBIT LIST

Schedule A	Defined Terms
Exhibit 2.01	Legal Description
Exhibit 5.02	County's Final Plans
Exhibit 5.05	Assigned Parking Spaces
Exhibit 6.01	County Museum Facility Requirements
Exhibit 6.01(a)	Construction Escrow
Exhibit 6.01(b)	County Construction Requirements
Exhibit 6.01(c)	County Museum Facility Legal
Exhibit 7.05(b)	Insurance
Exhibit 7.05(d)	Indemnification Agreement
Exhibit 7.07(a)	Construction Completion Guaranty
Exhibit 23.01	Memorandum of Lease

SCHEDULE A
DEFINED TERMS

Capitalized terms contained and used in this Agreement and in all amendments to this Agreement (unless otherwise specified or unless the context otherwise requires), shall have the meanings set forth below:

ADA has the meaning set forth in Section 11.02.

ADAAG has the meaning set forth in Section 11.02.

Additional Facilities has the meaning set forth in Section 7.12.

Additional Rent means all amounts payable by Tenant under this Agreement, other than the Base Rent, whether or not designated as Additional Rent.

Affiliate means any Person that directly or indirectly controls, is controlled by, or is under common control with the designated Person or any officer, director, managing or general partner, or member of such designated Person.

Agreement means this Capital Facility Development, Lease and Operating Agreement dated , 2010, between the County and Tenant and any amendments and supplements thereto made in conformity herewith.

Alterations has the meaning set forth in Section 7.02.

Alterations LC Amount has the meaning set forth in Section 7.07(b)(1).

Alterations Letter of Credit has the meaning set forth in Section 7.07(b)(1).

Architect's Certificate has the meaning set forth in Section 6.03(m).

Assigned Spaces has the meaning set forth in Section 5.05.

Associated Infrastructure Improvements has the meaning ascribed to it in the Redevelopment Agreement.

Award means the condemnation award and/or proceeds of the Taking, including any interest earned on the Award.

Base Rent means \$1.00 per Lease Year.

Bonds has the meaning set forth in Section 7.06(c).

Building Department means the building department of the City of Peoria.

Business Days means any day which shall not be a Saturday, Sunday, legal holiday or a day on which banking institutions in Illinois are authorized by Law to close as set forth in 205 ILCS 630/17 (2010) or its successor.

Casualty Termination Work has the meaning set forth in Section 14.04.

Commencement Date means the date this Agreement is signed and delivered by the Parties, which date is set forth at the top of the first page of this document.

Comparison Area has the meaning set forth in Section 12.01.

Condemnation Restoration has the meaning set forth in Section 15.04.

Construction Completion Date has the meaning set forth in Section 6.06(e).

Construction Contracts has the meaning set forth in Section 6.03(d).

Construction Disbursement has the meaning set forth in Section 6.08.

Construction Escrow means the construction escrow established with Chicago Title Insurance Company as escrowee pursuant to a construction escrow agreement in the form attached to this Agreement as **Exhibit 6.01(a)**. The Parties shall deposit their Initial Construction Deposit into the Construction Escrow as of the Commencement Date. The Construction Escrow shall require delivery to the County and the escrowee prior to each construction disbursement of such documents regarding the construction disbursement as the County and the escrowee may require including as set forth in Section 6.07. Tenant will cause the Major Contractors to comply with the requirements of the escrowee in order to enable the escrowee to issue to the County any interim mechanics' lien certifications, make disbursements and obtain necessary sworn statements and waivers of lien. If upon final completion of construction of the County Museum Facility, a surplus of funds remains, such surplus shall be returned to the Parties proportionately in accordance with each Party's Initial Contribution Deposit.

Construction Ready Condition has the meaning set forth in Section 5.03.

Construction Security means the Initial Construction Deposit and such other security as the County may reasonably require from time-to-time to secure completion of Tenant's Initial Construction, including such amounts to be deposited during the Tenant's Initial Construction pursuant to Section 6.02.

Contested Obligation has the meaning set forth in Section 11.04.

Contractor has the meaning set forth in the definition of "Major Contractor."

County means the County of Peoria, an Illinois municipal corporation, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

County Construction Requirements means the list of Laws attached to this Agreement as **Exhibit 6.01(b)**. The County is a “unit of local government” under the Illinois Constitution and a “governmental entity” under 30 ILCS 557/5 *et al.* The County owns the Land. The County shall own the County Museum Facility, to be constructed pursuant to ARTICLE 6. Tenant’s development and construction of the County Museum Facility pursuant to ARTICLE 6 shall be conducted in accordance with Laws as if the County were the contracting party, which Laws are referred to in this Agreement as the “**County Construction Requirements.**” The County Construction Requirements are not inclusive of all Legal Requirements.

County Contribution means the proceeds from the sale of the 2010 County of Peoria Revenue Bonds (Peoria Riverfront Museum Series), less \$_____, which the County shall apply toward the cost of the County Work. The County Contribution shall be the County’s sole obligation with respect to the development and construction of the County Museum Facility. No interest shall be payable on the County Contribution.

County Museum Facility means the independent, free standing structure located entirely within the boundaries of the Land to be constructed pursuant to ARTICLE 6 consisting of approximately 80,000 square feet of building area and such other capital facilities more fully described in the attached **Exhibit 6.01(c)** and any Alterations permitted under this Agreement, together with all fixtures now or in the future installed or erected in or upon such building (including boiler(s), equipment, elevators, escalators, machinery, pipes, conduit, wiring, septic systems, wells, heating, ventilation and air conditioning systems, and any other building systems).

County Parties means the County, the County Board and its employees, agents and representatives.

County’s Final Plans has the meaning set forth in Section 5.02.

County’s Notice Address means _____.

County’s Interest has the meaning set forth in Section 24.22.

County’s Work has the meaning set forth in Section 5.01.

CPI Fraction means a fraction (which shall never be less than one), the numerator of which is the Price Index (hereinafter defined) most recently published prior to the applicable date and the denominator of which is the Price Index most recently published prior to the Commencement Date. “**Price Index**” means the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor (or any successor thereto), for All Urban Consumers, U.S. City Average, All Items (1982-1984). If such Consumer Price Index is terminated, a successor or substitute index, appropriately adjusted, shall be reasonably selected by the County. If such Consumer Price Index is converted to a different standard reference base or is otherwise revised, the Price Index shall be determined with the use of such conversion factor, formula or conversion table as may be published by the Bureau of Labor Statistics or, if such Bureau shall not publish same, then with the use of such conversion factor, formula or table as may be reasonably selected by the County.

Customary has the meaning set forth in Section 12.01.

Depository has the meaning set forth in Section 14.02(b).

Design Contracts has the meaning set forth in Section 6.03(e).

Environmental Laws shall mean all Laws (a) relating to the environment, human health or natural resources; (b) regulating, controlling or imposing liability or standards of conduct concerning Hazardous Substances; (c) relating to the remediation of the Premises for Hazardous Substances, including investigation, response, clean-up, remediation, prevention, mitigation or removal of any Hazardous Substance; or (d) requiring notification or disclosure of releases of Hazardous Substances or of the existence of any environmental conditions on or at the Premises, as any of the foregoing may be amended, supplemented, or supplanted from time to time.

Estimated Construction Cost has the meaning set forth in Section 6.06(b).

Event of Default has the meaning set forth in Section 20.01.

Expiration Date means the last day of the 240th full calendar month after the Commencement Date, as same may be extended pursuant to Section 2.03.

Extension Option has the meaning set forth in Section 2.03.

Extension Terms has the meaning set forth in Section 2.03.

FF&E has the meaning as set forth in Section 8.04.

Fee Lender means the holder of any Fee Mortgage.

Fee Mortgage means any mortgage, deed of trust, assignment of leases and rents, financing statement or other agreement or instrument, and all modifications, extensions, supplements, consolidations and replacements thereof that secures repayment of any indebtedness by the grant of a lien, security interest or other encumbrance on the fee estate of the County in the Premises and/or the County's interest in this Agreement, the Improvements, and/or the Personal Property, whether executed before or after this Agreement.

Final Governmental Approval has the meaning set forth in Section 11.03(c).

Financing Commitment has the meaning set forth in Section 6.06(c).

Full Replacement Cost has the meaning set forth in Section 12.01.

Governmental Authority means any federal, state, county, municipal or other governmental or regulatory authority, agency, board, department, bureau, body, commission, or instrumentality, or quasi-governmental authority, and any court, arbitrator, or other administrative, judicial or quasi-judicial tribunal, or any other public or quasi-public authority, having jurisdiction over the Premises or the matter at issue.

Interest Rate means three percentage points above the rate of interest publicly announced from time to time by [REDACTED], or its successor, as its “base rate” (or such other term as may be used by [REDACTED] or its successor, from time to time, for the rate presently referred to as its “base rate”), but in no event greater than the maximum rate permitted by applicable Law. If [REDACTED] or its successor no longer publicly announces such rate, then another bank prime rate (or its equivalent) selected by the County shall be used by the County in lieu of such base rate.

Land means all that certain parcel of land located in the City of Peoria, County of Peoria, which land is described in the attached **Exhibit 2.01**.

Law means any present or future law, statute, ordinance, regulation, code, judgment, injunction, arbitral award, order, rule, directive, proclamation, decree, common law or other requirement, ordinary or extraordinary, foreseen or unforeseen, of the Federal or any state or local government, or any political subdivision, arbitrator, department, commission, board, bureau, agency or instrumentality thereof, or of any court or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction, or of any other public or quasi-public authority or group, having jurisdiction over the Premises or Tenant’s operations at the Premises; and any reciprocal easement, covenant, restriction, or other agreement, restriction or easement of record affecting the Premises at any time during the Term.

Lease Year means (a) if the Commencement Date is the first day of a calendar month, the twelve (12) month period commencing on the Commencement Date or (b) if the Commencement Date is not the first day of a calendar month, the period commencing on the Commencement Date and ending on the last day of the twelfth (12th) full calendar month of the Term, and in either case, each succeeding twelve (12) month period thereafter which falls in whole or in part during the Term.

Legal Requirements means all requirements of Law.

Liabilities means all losses, claims, suits, demands, costs, liabilities, and expenses, including reasonable attorneys’ fees, penalties, interest, fines, judgment amounts, fees, and damages, of whatever kind or nature.

Liability Policy has the meaning set forth in Section 12.01.

Major Contractors means tenant’s general contractor (or construction managers, if applicable, the “**Contractor**”) and/or subcontractors performing the following work at the Premises: site work, utilities work, concrete, masonry, carpentry/drywall/glazing, HVAC, electrical, roofing, and plumbing.

Manager has the meaning set forth in Section 12.09.

Material means, as used to describe Tenant’s compliance obligations in ARTICLE 11, means that the failure to so comply may reasonably be expected to result in material risk of (a) physical injury or illness to any individual, (b) criminal liability or (c) fines or Remedial Action

or compliance costs in excess of the product of \$ _____ and the CPI Fraction (as of the date such materiality is to be determined).

Museum has the meaning set forth in the definition of “Permitted Use”.

Non-Renewal Notice has the meaning set forth in Section 7.07(b)(1).

Opening Date has the meaning set forth in Section 8.04.

Parking Garage means the underground parking garage to be constructed on the Land by the County in accordance with Article 5. The Parking Garage is planned to have no less than 115 parking spaces.

Partial Taking has the meaning set forth in Section 15.04.

Party or **Parties** has the meaning as set forth in the Recital.

Permitted Encumbrances means, as of any particular time, (a) this Agreement; (b) liens for real estate taxes, assessments, levies and other governmental charges; (c) utility, access and other easements and rights of-way, restrictions and exceptions of record which do not materially interfere with or impair Tenant’s use of the Premises as herein provided; (d) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist; with respect to property similar in character to the Premises and as do not, either singly or in the aggregate, materially impair the property affected thereby for the purpose for which it was acquired and held by the County; (e) those exceptions to title to the Premises enumerated in the title insurance policies insuring the County’s fee ownership of the Land; (f) any mechanic’s, workmen’s, repairmen’s, materialmen’s, contractors’ warehousemen’s, carriers’, suppliers’ or vendors’ lien or right in respect thereof if payment is not yet due and payable; and (g) any mortgage, lien, security interest or other encumbrance which exists in favor of a Fee Lender.

Permitted Use means a public, not-for-profit regional museum, including a historical museum (a “**Museum**”) and such other related activities that are incidental to a Museum, to the extent permitted by Law, Insurance Requirements and the terms of this Agreement.

Person means any individual, corporation, partnership, firm or other legal entity.

Personal Property means all furniture and other personal property owned or leased by the County or Tenant or any Affiliate of Tenant, located upon the Premises and used in the operation of the Premises, excluding trucks and cars.

Premises means the Land, the Improvements, and all rights, privileges, easements, and appurtenances to the Land and the Improvements, including all right, title and interest of the County, if any, in and to any easements, covenants or conditions benefitting the Land and/or the Improvements. References in this Agreement to the “**Premises**” shall be construed as if followed by the phrase “or any part thereof” unless the context otherwise requires. The Premises are subject to the Permitted Encumbrances.

Price Index has the meaning set forth in the definition of “CPI Fraction”.

Property Damage Policy has the meaning set forth in Section 12.01.

Qualified Appraiser has the meaning set forth in Section 24.22.

Redevelopment Agreement has the meaning set forth in the Preambles.

Release means the release or threatened release of any Hazardous Substances into or upon or under any land, water or air, or otherwise into the environment, including by means of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, powering, escaping, emptying, placement and the like.

Remedial Action means the investigation, response, clean up, remediation, prevention, mitigation or removal of contamination, environmental degradation or damage caused by, related to or arising from the existence, generation, use, handling, treatment, storage, transportation, disposal, discharge, Release (including a continuous Release) or emission of any Hazardous Substance, including the investigation, removal or closure of any underground storage tanks and any soil or groundwater investigation, remediation or other action required under or necessary to comply with any Environmental Laws.

Rent means the Base Rent and Additional Rent.

Rent Address means _____, _____, Peoria, Illinois Attn: _____; or at such other address(es) as the County may, from time to time, designate by notice to Tenant given in the manner prescribed in this Agreement.

Request For Payment has the meaning set forth in Section 6.08(a).

Requirements means Legal Requirements, County Construction Requirements and Insurance Requirements.

Restoration has the meaning set forth in Section 14.01.

RoFO has the meaning set forth in Section 24.22.

RoFO Notice has the meaning set forth in Section 24.22.

Sublease means any lease, sublease, license or other agreement for the use or occupancy of space in the Improvements (other than this Agreement). "Subtenant" means any tenant, licensee or other occupant of space in the Improvements (other than Tenant).

Substantial Completion, "Substantially Complete" or "Substantially Completed," means that all of the following events have occurred: (a) Tenant's architect delivers to the County a certification that the Alterations have been completed with the exception of minor punch list items and insubstantial details of construction, mechanical adjustment or decoration, in accordance with the plans and specifications approved by the Governmental Authorities and, if applicable, the County, and (b) Tenant has obtained and furnished to the County all approvals, permits, sign-offs, and other documents required by Law to be issued in connection with such Alterations, including any letter of completion, permanent or

temporary certificate of occupancy, and/or amendment of certificate of occupancy, and (c) the County has received (i) a commissioning report confirming the performance testing and start-up process and satisfactorily demonstrating that all building systems comply with the requirements of the contract documents and (ii) such performance testing and/or start-up information necessary for the USGBC LEED certification, and (d) Tenant has delivered to the County a final release and waiver of mechanics lien covering all of the Alterations, in form and substance reasonably satisfactory to the County, executed by each of (A) the Major Contractors and (B) as applicable, the general contractor, construction manager, and/or design-builder.

Substantial Taking has the meaning set forth in Section 15.02.

Taking means a taking during the Term of all or any part of the Premises, or any interest therein or right accruing thereto including any right of access, by or on behalf of any Governmental Authority or by any entity granted the authority to take property through the exercise of a power of eminent domain granted by statute, any agreement that conveys to the condemning authority all or any part of the Premises as the result of, or in lieu of, or in anticipation of the exercise of a right of condemnation or eminent domain, or a change of grade affecting the Premises. The date of the Taking shall be deemed to be the date that title vests in the condemning authority or its designee.

Temporary Taking has the meaning set forth in Section 15.03.

Tenant means Peoria Riverfront Museum, an Illinois not-for-profit corporation, and its permitted successors and assigns pursuant to ARTICLE 17.

Tenant's Final Plans has the meaning set forth in Section 6.05.

Tenant's Initial Construction means the construction described in Section 6.01, including all related demolition and excavation activities.

Tenant's Initial Contribution means the difference between the amount of the Initial Construction Deposit and the County's Contribution. No interest shall be payable on Tenant's Initial Contribution. Any costs or expenses incurred in connection with the Tenant's Initial Construction in excess of the amount of the Initial Construction Deposit shall be the sole responsibility of Tenant and shall be deposited as set forth in this Agreement, including Section 6.02.

Tenant's Notice has the meaning set forth in Section 24.22.

Tenant's Notice Address means .

Term means the period from the Commencement Date until the Expiration Date, unless earlier terminated pursuant to the terms of this Agreement.

Timetable has the meaning set forth in Section 6.06.

Unavoidable Delays means delays due to strikes, lockouts, acts of God, inability to obtain labor or materials, government restrictions, enemy action, terrorist attack, civil

commotion, fire or other casualty, shortages of materials, or other causes of a like nature beyond the reasonable control of the County or Tenant, as the case may be.