

CAPTAIN FREDERICK PABST THEATER TRANSFER AGREEMENT

This Agreement is entered into this ____ day of April, 2002 by and among the City of Milwaukee ("City"), the Board of the Captain Frederick Pabst Theater ("Board") and The Cudahy Foundation, a not-for-profit Wisconsin charitable trust recognized as exempt under Section 501(c)(3) of the Internal Revenue Code ("Transferee").

Witnesseth:

Whereas, The Captain Frederick Pabst Theater (the "Theater") is a municipal theater organized and operating under sec. 229.27, Stats., and sec. 16-12, Milwaukee City Charter. The legal description of the premises where the Theater is located is attached hereto as Exhibit A-1 and hereinafter referred to as the "Theater Premises;" and

Whereas, Pursuant to sec. 229.27(4), Stats., and sec. 16-12-4, Milwaukee City Charter, all real and personal property of the Theater is titled in the City; and

Whereas, Pursuant to sec. 229.27(3), Stats., and sec. 16-12-3, Milwaukee City Charter, the Board has complete and autonomous control of the building, maintenance and control of the Theater; and

Whereas, Pursuant to sec. 229.27(4)(b), Stats., and sec. 16-12-4-b, Milwaukee City Charter, the Board has the authority, subject to City approval, to enter into a transfer agreement with another person under which the Board may transfer any of the City's interest in the Theater. Such a transfer may take the form of a sale, lease or other conveyance and may be made with or without financial consideration, except that if the transfer is made to a private, for profit entity, the transfer shall be for fair market financial consideration. Further, such transfer shall require the transferee to accept an assignment of all contracts with other persons, with respect to the

transferred Theater, that are in force at the time of the transfer except that the provision does not apply to collective bargaining contracts; and

Whereas, The Transferee is a Wisconsin charitable trust recognized as exempt under Section 501(c)(3) of the Internal Revenue Code ; and

Whereas, The City, Board and Transferee have agreed to the transfer of all of the City and Board's interest in the Theater and Theater Premises (hereinafter collectively referred to as the "Theater Premises") in accordance with the terms and conditions which are hereinafter set forth; and

Whereas, The City's Common Council has approved this Agreement via Common Council Resolution _____ adopted _____; and

Whereas, The Board has approved this Agreement on _____; and

Whereas, The Transferee has approved this Agreement on _____, 2002;

Now, Therefore, In consideration of the premises and for the other good and valuable consideration hereinafter expressed, the parties agree as follows:

A.

CONVEYANCE OF THEATER PREMISES

No sooner than May 1, 2002 and no later than November 1, 2002 at a date mutually acceptable to all of the parties, the City and Board shall convey their interest in the Theater Premises to the Transferee in accordance with the following terms and conditions:

1. Transfer of Theater Premises. The City and Board shall convey to the Transferee all of their right, title and interest in the real property described on Exhibit A, the Theater Premises, and the personal property owned by the City or the Board that is used in the operation and maintenance of the Theater or Theater Premises, which is intended to include all interest

held by the City and the Board in the existing municipal theater facilities on such Theater Premises; and the City and the Board shall also assign any leasehold or easement interest appurtenant thereto, except that the City's leasehold interest in the Renovation Project described in the Amended and Restated Captain Frederick Pabst Theater Renovation Lease and Cooperation Agreement ("Cooperation Agreement") attached hereto as Exhibit B shall be conveyed, by limited warranty deed or bill of sale, to the Transferee by the City immediately after the Redevelopment Authority of the City of Milwaukee's conveyance of its interest in the Renovation Project to the City as is provided in Section VI.C(2) of the Cooperation Agreement. The transfer of the City's fee interest in the Theater Premises shall be by means of a limited warranty deed and as to appurtenant leasehold or easement interests by assignment consented to if necessary by the lessor or grantor. As to all conveyances, City agrees to provide a title insurance policy at City's expense with standard title exceptions deleted, showing fee simple title vested in the transferee free and clear of all liens and encumbrances except as otherwise permitted in this Agreement. City shall also provide at City's expense, a certified survey showing all improvements constructed within the Theater Premises with no encroachments thereon and showing all appurtenant interests thereto. Prior to the Redevelopment Authority's transfer of the Renovation Project as provided under the terms of the Cooperation Agreement, the Redevelopment Authority hereby gives its consent and license to the Transferee to permit the Transferee's use of the Renovation Project consistent with the terms of this Agreement. This consent is hereby provided by the Redevelopment Authority's affirmative written consent provided at the end of this Agreement and made part of this Agreement.

2. Compliance with Cooperation Agreement. The City and the Board shall comply with all of their obligations, duties and activities as set forth in the Cooperation Agreement; and

the City and Board further agree that their failure to comply with any obligation, duty or activity specified in the Cooperation Agreement shall be considered a breach of this Agreement, actionable by the Transferee.

3. Transfer of Operating Funds. The Board shall also convey to the Transferee the Board's operating fund cash balance as that balance exists on the date of the transfer of the Theater Premises. This cash-balance transfer shall not include any Contributed Funds, as that term is defined in the Cooperation Agreement, that are needed to satisfy City rental obligations to the Redevelopment Authority.

4. Conditions of Transfer. The transfer of the Theater Premises is expressly conditioned upon the following covenants by the Transferee:

a. Neither Transferee nor any subsequent owner shall use the Theater Premises for purposes other than primarily for use as a theater facility as that term is defined in Sec. 229.27, Stats., without the consent of the City.

b. In the event that the Transferee elects to convey the Theater Premises, the City shall have a right of first refusal for a purchase price of \$1.00 plus the depreciated value of documented capital improvements made to the Theater Premises by the Transferee. This right of first refusal shall expire 10 years after the execution of this Agreement. Following conveyance of the Theater Premises by Transferee, Transferee shall have no further liability or obligations hereunder. Nothing in this section is intended to diminish the City's rights under subch. II of Ch. 32, Wis. Stats..

c. Transferee shall use reasonable efforts to ensure that the Theater Premises is made available to performing arts groups and artists who have substantial ties to the

Milwaukee community and who represent the diversity of the Milwaukee community. The community groups and artists currently using the Theater are listed on Exhibit C.

d. Transferee shall establish a plan for its use of disadvantaged business enterprises, as currently defined in Chapter 360, Milwaukee Code of Ordinances, with a spending goal of 18% per year, on a good faith, reasonable effort basis, to be applied against Transferee's discretionary spending with regard to the Theater Premises.

e. The Transferee shall not change the Theater's name, i.e., the Captain Frederick Pabst Theater, without the consent of the City.

f. The Transferee shall operate and maintain the Theater in a fashion consistent with the needs of the facility and in a manner that would maintain both the historic appearance and the function of the facility for future generations of Milwaukee area residents.

g. The Transferee shall honor all naming rights commitments entered into by the Board prior to the date of this Agreement, as set forth in attached Exhibit D.

5. Assignment of Contracts. Effective as of the date of conveyance of the Theater Premises, the City and the Board, as their interests may appear, assign, and Transferee accepts the assignment of, all contracts in effect on that date with respect to the Theater Premises and the operations thereof. Such contracts are those listed on Exhibit E hereto, plus any contracts entered into hereafter which are approved in advance by Transferee.

6. Status of Current Board Employees. Upon conveyance of the Theater Premises, the Transferee shall offer employment to all current Board employees, subject to the terms and conditions established by the Transferee. The Board and the City shall thereafter have no responsibility regarding such employees.

7. Structural and Environmental Condition of Theater Premises. The City is selling the Theater Premises in an "as is" condition and makes no warranty as to the structural or environmental condition of the Premises. The City represents that it has no notice or knowledge of any material structural defect or environmental condition in the Theater Premises that has not been disclosed in writing to the Transferee.

8. Insurance. Transferee will furnish a certificate of insurance showing insurance written by a company licensed in the State of Wisconsin and providing commercially reasonable coverage for liability which may result from the operations by Transferee's employees, agents, contractors or subcontractors as aforesaid in this Agreement; such certificate of insurance will name the Board and the City as additional insureds to the extent they have an insurable interest, and provided that naming them as additional insureds does not result in any greater premiums. The certificate shall provide that the company will furnish the City with a thirty (30) day written notice of cancellation, nonrenewal or material change. Said insurance shall be written in comprehensive form and shall protect Transferee and City against all claims arising from injuries to members of the public or damage to property of others arising out of any acts or omissions of Transferee's employees, agents, contractors or subcontractors as follows, subject to commercially reasonable deductibles:

Comprehensive General Liability
(including applicable contractual liability
specifically relating to this Agreement)

\$1,000,000 per occurrence
\$5,000,000 aggregate (which may be
provided either pursuant to a primary
coverage policy or an excess liability
policy)

Worker's Compensation

In accordance with Ch. 102,
Wisconsin Stats., and Federal Law

Failure of Transferee to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation under this Agreement.

The attorney in fact or agent of any insurance company furnishing any policy or insurance shall sign and furnish an affidavit setting forth that no Board or City official or employee has any interest, direct or indirect, or is receiving any premium, commission, fee or other thing of value on account of furnishing said policy of insurance (excluding any interest as a shareholder in any insurance company providing such coverage).

9. Representations and Warranties of the City and Board. The City and Board jointly and severally represent the following to the Transferee:

(a) All approvals required to be obtained by the City and or Board have been obtained.

(b) All contracts assigned to the transferee pursuant to Section A.5 are enforceable in accordance with their respective terms and neither the City nor Board are in default of any of their respective obligations under the terms of said contracts.

10. Conditions Precedent to Transferee's Obligations. The Transferee's obligations under the terms of this Agreement shall be conditioned upon the following:

(a) On or prior to conveyance of the Theater Premises to the Transferee, the Transferee shall have obtained all licenses, permits, authorizations, approvals and other rights necessary for continued operation of the Theater Premises in that manner in which it is presently being operated by the Board.

(b) On or prior to conveyance of the Theater Premises to the Transferee, the City and Board shall have delivered to the Transferee all books, records, and files relating to the operation of the Theater, including without limitation, advertising and promotional materials, invoices, blueprints, employment and personnel records, computers software and data files, and

related property and information of the City and the Board that would be useful in the continued operation of the Theater.

(c) As of the date and time of Transfer, all representations and warranties made by the City and Board hereunder shall be and at all times after execution of this agreement shall have been true and correct.

B.

CITY OPERATING SUBSIDY

On or before January 31, 2003, the City shall provide a \$150,000 operating subsidy to the Transferee subject to the conditions of Section C.2.

C.

MISCELLANEOUS PROVISIONS

1. Assignment. No party to this Agreement may assign any of its interest or obligations under this Agreement or in the Theater Premises without the written consent of the other party, except as provided under Section A.4.b or 13.

2. Limitations on City Financial Obligations. The expenditure of any City funds under this Agreement is subject to subsequent annual budget appropriations by the City. Recognizing its moral obligation to authorize such appropriations in subsequent budgets, the City hereby expresses its expectation and aspiration that if ever called upon to do so, it shall make the necessary budget appropriations and provide the appropriate budget expenditure authority.

3. Dissolution of Board. Upon the later of either acceptance of the Theater Premises by Transferee in accordance with the terms and conditions of this Agreement or the conclusion

of all Board obligations under the Cooperation Agreement including, but not limited to, the collection of all pledges for Contributed Funds, the City shall repeal sec. 16-12, Milwaukee City Charter, the provision under which the Board was created.

4. Completion of the Renovation Project. As of the date of conveyance of the Theater Premises, the City and the Board will have completed all work related to the current renovation project, all such work will have been paid for in full, the Theater Premises will be conveyed free and clear of all liens and encumbrances related to such project, the capital fund raising campaign related thereto will be concluded except for actions by the City or Board to collect outstanding pledges of the Contributed Funds as that term is defined in the Cooperation Agreement; and the Transferee will not assume any obligations with regard to collection of any pledges related to such capital campaign. The City and the Board agree to assign to the Transferee all warranties and guarantees of contractors and suppliers related to such work.

5. Sole Agreement and Amendment. This Agreement and the attached exhibits to which references are made herein contain all of the agreements and covenants made between the parties hereto, shall be binding upon the parties hereto and their respective successors and assigns, and may not be modified orally or in any other manner other than by agreement, in writing, signed by each of the parties to this Agreement.

6. Notice. Any notice provided herein or given pursuant to this Agreement shall be deemed in compliance herewith if in writing and sent by United States certified or registered mail, postage prepaid, return receipt requested, or by receipted personal delivery to the parties as follows:

City of Milwaukee

City Clerk
Room 205

Pabst Theater Board

City Attorney's Office
Room 800

The Cudahy Foundation,

200 E. Wells Street
Milwaukee, WI 53202

200 E. Wells Street
Milwaukee, WI 53202

7. Governing Law. This Agreement shall be governed by the laws of the State of Wisconsin. If any term or provision of this Agreement or any exhibits hereto, or the application thereof to any person or circumstance, shall to any extent be declared invalid or unenforceable, then the remainder of this Agreement and exhibits, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by applicable law.

8. Nondiscrimination. Transferee hereby agrees that in its use of the Theater Premises and in its activities undertaken pursuant hereto it shall comply with all laws relating to discrimination or restriction on the basis of race, sexual orientation, creed, ethnic origin or identity, color, gender, religion, marital status, age, handicap or national origin.

9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

10. Compliance with Laws and Orders. Transferee agrees to observe fully and to comply with any lawful rule, regulation or directive which shall emanate from any state, federal or local departments or agencies having jurisdiction.

11. Time of the Essence. It is expressly understood and agreed to by the parties hereto that time is of the essence for each term and provision of this Agreement.

12. Waiver. One or more waiver by any party hereto of any covenant or condition of this Agreement shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by any party hereto with respect to

any act by another party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such other party.

13. Permitted Assignment. Transferee may assign its interest in the Theater Premises to a subsidiary or other not-for-profit corporation controlled by the Cudahy Foundation provided that prior to such assignment, the Transferee delivers a legally enforceable guarantee or other similar assurance, approved by the City Attorney, to the City. That guarantee or assurance shall provide sufficient assurances to the City that the Transferee's assignee will perform all of the requirements of this Agreement including, but not limited to, the performance of the requirements of Section A.4.a-g and C.1.

In Witness Whereof, The parties hereto have by their duly authorized officers executed this Agreement under seal as of the day and year first above written.

IN THE PRESENCE OF:

IN THE PRESENCE OF:

CITY OF MILWAUKEE

Mayor

City Clerk

COUNTERSIGNED:

Comptroller

BOARD OF THE CAPTAIN
FREDERICK PABST THEATER

Chairperson

IN THE PRESENCE OF:

THE CUDAHY FOUNDATION

CONSENT OF REDEVELOPMENT AUTHORITY OF THE
CITY OF MILWAUKEE

The provisions of Section A.1. of this Agreement are consented to by the Redevelopment
Authority of the City of Milwaukee on this ___ day of _____, 2002.

By: _____
Chairperson

Approved as to content this
___ day of _____, 2002

Special Deputy City Attorney

Approved as to form and execution
this ___ day of _____, 2002

Special Deputy City Attorney

PBMcD:dms
4/8/02
1099-2002-676
51000