

CAPTAIN FREDERICK PABST THEATER TRANSFER AGREEMENT

This Agreement is entered into this ____ day of _____, 2002 by and among the City of Milwaukee ("City"), the Board of the Captain Frederick Pabst Theater ("Board") and ~~Michael J. Cudahy Foundation, Inc.~~ _____, a non-for-profit Wisconsin corporation ("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 upon which the Theater is located is attached hereto as Exhibit A 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 not-for-profit Wisconsin corporation; 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

On or before January 1, 2003, 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 and personal property described on Exhibit A, the 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 quit claim deed or quick claim 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. Such transfer of the City's fee interest in the Theater Premises shall be by means of a quit claim deed in the form attached hereto as Exhibit B, and as to appurtenant leasehold or easement interests by assignment consented to if necessary by the lessor or grantor. City agrees to provide a title insurance policy at City's expense with standard title exceptions deleted, and a certified survey at City's expense. 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. 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. 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.

34. 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 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 ~~20~~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.

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 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.

45. 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.

56. Status of Current Board Employees. Upon conveyance of the Theater Premises, the Transferee shall retain 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.

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

78. 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 or obligations 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 to the extent they have an insurable interest, and provided that naming them as additional insureds does not result in any higher 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).

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 upon conveyance of the Theater Premises under Section A.2., above.

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
200 E. Wells Street
Milwaukee, WI 53202

Pabst Theater Board

City Attorney's Office
Room 800
200 E. Wells Street
Milwaukee, WI 53202

Michael J. Cudahy Foundation, Inc.

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. Cudahy Foundation Guaranty. The performance of Sections A.4.a-g and C.1.
has been guaranteed by the Cudahy Foundation, Inc. in a separate document attached hereto
and incorporated herein as Exhibit E.

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:

MICHAEL J. CUDAHY
FOUNDATION, INC.

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
3/5/02
1099-2002-676
51000

EXHIBIT E

GUARANTY

This Guaranty is made and entered into this ____ day of _____, 2002, by and between the Cudahy Foundation, Inc. ("Guarantor") on behalf of itself and the City of Milwaukee ("City").

Whereas, _____, hereinafter referred to as the Transferee, is a wholly owned subsidiary of the Guarantor; and

Whereas, The City's willingness to enter into the Transfer Agreement with Transferee, to which this Guaranty is attached and incorporated into as Exhibit E, was predicated upon Guarantor's willingness to guarantee certain key obligations of Transferee under the Transfer Agreement;

Now, Therefore, In addition to the good and valuable consideration recited above, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees as follows:

1. Irrevocable Guaranty. The Guarantor, on behalf of itself guarantees absolutely, irrevocably and unconditionally to the City the complete and prompt observance, fulfillment and performance by the Transferee of the provisions of Section A.4a-e, 3, 6, and C.1 of the Transfer Agreement to which this guaranty is attached as Exhibit E.

2. Effective Date. The guarantee set forth in Section 1 shall be effective upon the conveyance of the Theater Premises to the Transferee.

3. Modification. No termination, amendment, waiver, modification of this guaranty or any of its terms or provisions shall be effective unless set forth in a written instrument signed by the Guarantor and the City.

4. Applicable Law. This guaranty shall be governed and construed in accordance with the laws of the State of Wisconsin, as applicable to contracts entered into and to be performed entirely within the State of Wisconsin.

5. Provisions Separable. If any one or more of the covenants, agreements or provisions of this guaranty shall be held to be contrary to any express provision of law or contrary to any policy or express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid or unenforceable, then such covenants, agreements or provisions shall be null and void and shall be deemed separated from the remaining covenants, agreements or provisions of this guaranty.

6. Notice of Exercise. The City may invoke the provisions of this guaranty by delivery of a ten day written notice to Guarantor.

7. City Remedies. If the City's remedies to enforce this guaranty at law are inadequate, the City may exercise equitable remedies including seeking injunctive relief, to enforce the terms of this guaranty.

8. Notices. Unless otherwise stated herein, notices required under the Transfer Agreement and this guaranty shall be mailed first class, postage prepaid, to the addresses below. Each party may change its designee by providing written notice to the other party but each party may only designate one entity receive notice.

Notices to the Guarantor shall be mailed to:

Notices to the City shall be mailed to:

City Attorney's Office
800 City Hall
200 E. Wells Street
Milwaukee, WI 53202

The Guarantor shall, at all times, keep the City advised as to which individual(s) are authorized to act on behalf of Guarantor and whose acts shall be considered the _____ Guarantor.

9. Entire Agreement. This guaranty supersedes all oral statements and prior drafts.

10. Binding Acceptance. This guaranty shall bind and benefit the parties hereto and the respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, however designated, and the promises and obligations herein shall survive in perpetuity.

In Witness Whereof, The Guarantor on behalf of itself has caused this guaranty to be executed under seal and by its duly authorized representatives on the date first above written.

CUDAHY FOUNDATION, INC.

Accepted and agreed to on this ____ day of _____, 2001.

CITY OF MILWAUKEE

Mayor

City Clerk

COUNTERSIGNED:

Comptroller

Approved as to content this
____ day of _____, 2001

Special Deputy City Attorney

Approved as to form and execution
this ____ day of _____, 2001

Special Deputy City Attorney

3/28/2002
1099-2002-676/51896