

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), made as of November 5, 2022 ("Effective Date"), between **WAKE COUNTY, NORTH CAROLINA**, a body politic and corporate duly created and existing under the Constitution and laws of the State of North Carolina ("Landlord"), and **MARBLES KIDS MUSEUM**, a North Carolina nonprofit corporation ("Tenant", "MARBLES").

WITNESSETH:

WHEREAS, Landlord is the fee simple owner (or controls by long term leases with the City of Raleigh and State of North Carolina (respectively) certain parcels of land comprising the Marbles Kids Museum Facility, identified as the tracts of land referenced herein as Exhibit A, Exhibit A1 and Exhibit A2 and further shown on plats recorded in Book of Maps 1995, Page 590 and as "New Tract 2,"and recorded in Book of Maps 2000, Page 1801, Wake County Registry; and

WHEREAS, Tenant is a non-profit corporation organized pursuant to Chapter 55A of the North Carolina General Statutes and is administered and operated exclusively for charitable and educational purposes within the meaning Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, a primary purpose of Tenant is to develop and operate the museum ("MUSEUM") contemplated in Paragraph 4.A of the "Interlocal Agreement Between Wake County and The City of Raleigh Regarding Implementation of Countywide Room Occupancy and Prepared Food and Beverage Tax Revenues," dated November 19, 1991, as the same has been amended (the "Interlocal Agreement"), which MUSEUM will inspire imagination, discovery and learning through extraordinary adventures in play; and

WHEREAS, Landlord has previously designated Tenant as the non-profit corporation that will operate MUSEUM in accordance with Paragraph 6.A of the Interlocal Agreement; and

WHEREAS, an additional purpose of Tenant is to develop and operate the theater, cafe and multi-purpose room located within the Building (the "Wells Fargo IMAX Theatre at Marbles" hereafter referred to as "THEATRE") contemplated in Paragraph 4.J of the Interlocal Agreement, in conjunction with, and in furtherance of the purposes of, MUSEUM; and

WHEREAS, Landlord has previously designated Tenant as the non-profit corporation that will operate THEATRE in accordance with Paragraph 6.1C of the Interlocal Agreement; and

WHEREAS, on or about November 5, 2012, Landlord entered into a Lease Agreement with the Tenant to lease the Premises (as defined below) for Tenant to provide for the operation of the MUSEUM and THEATRE (and other included) facilities; and

WHEREAS, on or about October 28, 2013, Landlord and Tenant entered into a First Amendment to Lease for the purpose of including additional leased space ("Kid Grid"); and

WHEREAS, the Lease Agreement is set to terminate on November 12, 2022, and the Wake County Board of Commissioners, on or about October 17, 2022 duly authorized the Chairman of the Board of Commissioners to execute this new Lease; and

WHEREAS, Tenant desires to lease the Premises (as defined below) from Landlord.

NOW, THEREFORE, subject to and in accordance with the terms and conditions set forth herein, in consideration of the Premises, the promises and covenants set forth herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **PREMISES.** Landlord leases to Tenant and Tenant leases from Landlord those tracts and parcels of land, lying and being in the City of Raleigh, State of North Carolina and described on **Exhibit A, A1 and A2** attached hereto and made a part hereof (the "Land"), the buildings situated thereon with a street address of 201 East Hargett Street, Raleigh, North Carolina, consisting of: 1) approximately 83,960 SF of space (the "Museum Building"), and 2) approximately 28,920 SF of space ("Marbles IMAX") and all privileges, appurtenances, exterior space, easements,

machinery, equipment systems, fixtures, amenities and any other improvements and rights now or hereafter belonging thereto, being hereinafter referred to as the "Premises." Such Premises shall also include, without limitation, all drives, truck, and delivery passages, loading zones, walkways, courtyards, landscaped and planted areas, exterior ramps, truck loading areas, entrances, exits, sidewalks, sign structures and other improvements of every nature and description located at any time upon the Land. Provided, however, that the Premises expressly exclude the items listed on Exhibit B attached hereto and incorporated herein by reference constituting the IMAX System. The Premises are leased subject to those covenants, restrictions, reservations, liens, conditions, encroachments, easements and other matters of title and survey as are particularly listed and described in Exhibit C hereto (hereinafter called the "Permitted Exceptions").

2. **LANDLORD ACKNOWLEDGEMENT.** Landlord acknowledges and agrees that (a) pursuant to the IMAX Contract (as defined in Exhibit B), with the exception of the IMAX System will remain the property of IMAX, Ltd. during the term of the IMAX Contract. Landlord further acknowledges and agrees that the IMAX System is to remain personal property, or if considered a fixture under applicable law, the IMAX System will be and remain subject to the ownership rights of IMAX, Ltd.

3. **LANDLORD OPTION.** Intentionally omitted.

4. **TERM.** The term of this Lease ("Term") shall be for a period of ten (10) years and shall commence as of the Effective Date of this Lease Agreement. This Lease shall replace and supersede, in its entirety, all former lease agreements between Landlord and Tenant.

A Memorandum of Lease to evidence the commencement and termination date of this Lease in the form of **Exhibit D** attached hereto and made a part hereof shall be recorded in the Wake County Registry

5. **RENT.** Tenant promises to pay Landlord at the office of Landlord or at such address as Landlord may direct, term rent in the amount of ONE DOLLAR (\$1.00) for the entire term of the Lease.

6. **USE OF PREMISES.** The Premises shall be used and occupied by Tenant as a large format theater open to and for the benefit of the general public, for general office, food service, catering, cafe', exhibit, special event, program, and retail purposes, and for all lawful uses incident thereto. Such incidental uses shall include, without limitation, arts and science related educational and cultural activities and programs. Landlord and Tenant agree that Tenant may charge fees reasonably necessary to support THEATRE and MUSEUM including without limitation, those for admission to MUSEUM and THEATRE, sell memberships, conduct food service, catering, cafe' and retail operations, and may also rent, sublease or license the Premises, or any part thereof, from time to time to third parties for the purpose of operating the cafe' at the Premises or holding business, social or educational meetings and events, as provided for in Section 12 below. Tenant shall operate the theater on a continuous basis, except that Tenant may close THEATRE at anytime and from time to time for a period not to exceed thirty (30) calendar days, or for such longer period as necessary due to circumstances beyond Tenant's control.

7. **REPRESENTATIONS AND WARRANTIES OF LANDLORD.** Landlord represents and warrants that: (i) to Landlord's knowledge, there are no covenants, restrictions, easements, zoning, other governmental laws or regulations in effect as of the Effective Date and the Date of Acceptance which would impair or prohibit the use of the Premises as specified in Section 6 above; (ii) all of Landlord's work to complete construction of the Premises has been performed in a first-class workmanlike manner in accordance with the standards usual and

customary for public theaters, cafe', multi-purpose facilities and other first-class commercial facilities of a similar nature in the Raleigh/Durham/Chapel Hill, North Carolina areas, in accordance with the design specifications provided by **IMAX**, Ltd. for the theater, and in accordance with all applicable laws, regulations, ordinances and building codes in existence as of the Effective Date; and (iii) Landlord has the right, power and authority to lease the Premises pursuant to the terms hereof. Any future encumbrances or other exceptions to title, other than the Permitted Exceptions (as defined in Section **I** above), shall be subject to the written approval of Tenant to the extent that any of the same shall apply to Tenant or to its occupancy of the Premises and this Lease.

8. **SALE OR CONVEYANCE OF PREMISES BY LANDLORD.** Any sale, transfer, conveyance, or encumbrance of the Premises by Landlord shall be subject to all of the terms, conditions, covenants and provisions of this Lease, including without limitation the obligations of Landlord set forth in Sections [10) and [11] above and the rights of IMAX, Ltd. respecting the IMAX System as set forth in the IMAX Contract, and no such sale, transfer or conveyance shall release Landlord from such obligations. In connection with any sale, transfer or conveyance of the Premises by Landlord, Landlord shall obtain from the transferee an acknowledgment of Tenant's and IMAX's respective rights under this Lease in form and content reasonably satisfactory to Tenant and IMAX.

9. **MAINTENANCE AND REPAIR.** Tenant, or its contractors, shall be responsible for the maintenance, repair, and replacement as necessary of all Tenant machinery, equipment and other personal property including without limitation the IMAX System. Landlord shall be responsible for all maintenance, repair, replacement, janitorial, pest control and security obligations relating to the Premises, as such obligations are described in **Exhibit E** attached hereto and made a part hereof, provided, however, that Landlord shall have no maintenance obligations with respect to the IMAX system. Landlord shall use its best efforts to conduct maintenance during times to avoid disruption of Tenant's business and Tenant shall coordinate routine scheduled maintenance activity with Landlord. If closure is necessary to perform any non-emergency maintenance, Landlord shall give Tenant at least thirty (30) days prior written notice of scheduled closure of the Premises for maintenance.

10. **SERVICES AND UTILITIES.** All agreements between the parties concerning

services and utilities are as set forth in **Exhibit E** attached hereto.

11. **INSTALLATION OF PERSONALTY.** From and after the Effective Date and during the term of this Lease, Tenant and its contractors, employees and agents shall have the right, from time to time, to install, operate, maintain, repair, remove and replace the personal property of Tenant or third parties. Notwithstanding the above, any modification to structural elements of the buildings or alterations, additions, changes, and improvements to the Premises or its life-safety systems, that are necessary to install, operate, maintain, repair, remove and replace such personal property, including exhibits, shall require Landlord consent as provided in Section 14, herein. Landlord acknowledges and agrees that all such personal property is and shall remain the personal property of Tenant or third parties, as their interests may appear. Tenant likewise acknowledges that Landlord has installed security equipment on the Premises and on real property owned by Tenant, namely the Marbles Annex, which shall remain the personal property of the Landlord. Tenant and Landlord may at any time during the term of this Lease, or any renewal or extensions hereof, and for a period of sixty (60) days thereafter, remove any personal property belonging to themselves, provided that they make reasonable repairs to the Premises for any damages thereto caused by such removal.

12. **ALTERATIONS.** As of the commencement of this Lease, when the Premises are substantially completed, and thereafter, Tenant, at its cost, shall be entitled to install such machinery, equipment and personality that has not already been installed at the Premises, which installations may include necessary alterations, additions, changes, and improvements to the Premises, as permitted by Section 8 above. In addition, Tenant, at its cost, may alter, modify or improve its administrative, office, storage, exhibit, or other space in the Premises as Tenant determines necessary or desirable from time to time, provided any such alterations, modifications or improvements are consistent with the permitted uses of the Premises as set forth in Section 6 hereof. Facility changes shall be completed per the Wake County partner facility modification process. All such structural alterations, additions and improvements which are non-movable fixtures (this excludes any equipment that that may be leased or considered the property of others as documented by another lease or license agreement to which Wake County is party) and otherwise not trade fixtures shall remain or become the property of Landlord and shall remain upon and be surrendered with

the Premises at the end of the Term. Tenant shall be responsible for all design and engineering costs associated with any alterations contemplated herein. Except for the foregoing, Tenant shall not make any structural alterations, additions or improvements to the Premises without Landlord's advance written consent. Notwithstanding the foregoing, at the expiration or termination of this Lease, Tenant may remove trade fixtures, furniture, equipment, and other personal property belonging to it or third parties provided that Tenant promptly repairs any damage caused by such removal. Provided, however, that Tenant shall not remove the IMAX System from the Premises if it has assigned the Purchase Right to Landlord pursuant to Section 3 hereof. If Tenant makes any alterations not otherwise permitted under this Lease and without Landlord's consent, Landlord may remove such alterations, and all expenses incurred by Landlord in removing the alterations shall be payable by Tenant upon written notice and demand.

13. **SIGNS.** Tenant shall have the privilege of placing within and on the exterior of the Buildings and upon the exterior portions of the Premises such signs as it deems necessary and proper in the conduct of its operations, provided such signs conform to all governmental requirements. Upon Tenant's request and at Tenant's sole cost, Landlord shall cooperate with Tenant in requesting any variance or permit necessary for Tenant to install and maintain any Tenant signage. Tenant shall have prepared and installed in a prominent location in the Premises at least one sign of prominent size acknowledging Landlord's participation in, and contribution to, the construction of THEATRE.

14. **ENTRY.** Subject to the terms of **Exhibit E** attached hereto, and provided that Landlord gives Tenant reasonable advance notice, Landlord and its agents and employees may, at all reasonable times, including times outside of regular business hours, enter into the Premises for the purpose of examining or inspecting the Premises, providing services or maintenance, or making such repairs or alterations as Landlord may deem necessary; provided, however, that when Landlord enters the Premises, Landlord shall make reasonable efforts not to disrupt Tenant's THEATRE operations or administrative operations, and further provided that during the hours THEATRE is open to the public, Landlord shall make reasonable efforts not to disrupt the activities and enjoyment of Tenant's visitors and guests, except when necessary in the event of an emergency.

15. **COMPLIANCE WITH LAWS.** Except as specifically set out herein, Tenant will comply with all governmental laws, rules, orders, ordinances, and regulations applicable to Tenant's use or occupancy of the Premises. Tenant will not use the Premises for any purpose reasonably deemed by Landlord's insurer or by Landlord to be extra hazardous on account of fire risk, or in violation of any law or legal requirement, or for any purpose that will materially increase the existing rate of premiums for insurance on the Premises or cause a cancellation of any insurance policy covering the Premises, unless Tenant (or its subtenant or licensee) pays for any additional coverage or the increase in Landlord's premium caused by Tenant's (or its subtenant's or licensee's) use of the Premises. Landlord acknowledges that Tenant plans to sublet or license part of the Premises for use as a cafe/restaurant. Notwithstanding anything to the contrary contained herein, (i) Landlord shall be responsible for compliance with all governmental laws, rules, ordinances, or regulations regarding the physical condition of the Premises, including without limitation building codes and the Americans With Disabilities Act; and (ii) in no event shall Tenant be required to make alterations, changes, or additions to the Premises

16. **ASSIGNMENT AND SUBLETTING.** Tenant may sublease, rent, or license space in the Buildings or upon the Land (a) for the purpose of operating the cafe' at the Premises and (b) on a temporary basis to third parties for private meetings, parties and other business, social and educational events, for such rent and upon such terms as determined by Tenant in its sole discretion, subject, however, to the terms of this Lease. For the purposes of this Section, the term "temporary" shall mean, for each subleasing or rental, a period of less than five (5) days. Except as authorized by the terms of this Section, Tenant shall not assign, sublet, sell, transfer, or encumber its interest in the Premises and this Lease without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

17. **SIGNS.** Tenant shall have the privilege of placing within and on the exterior of the Buildings and upon the exterior portions of the Premises such signs as it deems necessary and proper in the conduct of its operations, provided such signs conform to all governmental requirements. Upon Tenant's request and at Tenant's sole cost, Landlord shall cooperate with Tenant in requesting any variance or permit necessary for Tenant to install and maintain any Tenant signage. Tenant shall have prepared and installed in a prominent location in the Premises at least one sign of prominent size acknowledging Landlord's participation in, and contribution to,

the construction of THEATRE.

18. **DEFAULT.**

(a) **Tenant's Default.** Each of the following shall constitute a default ("Default") by Tenant:

(1) Tenant's failure to pay rent or additional fees for agreed upon services within ten (10) business days after Tenant receives notice from Landlord of Tenant's failure to pay;

(2) Tenant's failure to perform or observe any other term or condition of this Lease within thirty (30) business days or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure, after receipt of written notice from Landlord stating the nature and extent of the failure and identifying the applicable Lease provision;

(3) Tenant's failure to vacate or stay any of the following within ninety (90) days after they occur:

- (i) A petition in bankruptcy is filed by or against Tenant;
- (ii) Tenant is adjudicated as bankrupt or insolvent;
- (iii) A receiver, trustee, or liquidator is appointed for all or a substantial part of Tenant's property; or
- (iv) Tenant makes an assignment for the benefit of creditors.

(b) **Landlord's Default.** Each of the following shall constitute a default by Landlord:

(1) Landlord's failure to perform or observe any maintenance, repair or service obligation required to be performed by Landlord under the terms of **Exhibit E** attached hereto within the earlier of (i) the recommended response time provided for in **Exhibit E**, (ii) ten (10) business days after receipt of notice from Tenant stating the nature and extent of the failure, and (iii) in the case of an Emergency (as defined in **Exhibit E**), one (1) business day.

(2) Landlord's failure to perform or observe any of its obligations under this Lease within thirty (30) business days or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure, after receipt of written notice from Tenant stating the nature and extent of the failure and identifying the applicable Lease provision, shall constitute a default by Landlord.

(3) There shall be a substantial taking of the Premises as described in Section 21 below.

19. **REMEDIES.**

(a) **Landlord's Remedies.** If Tenant commits a Default, Landlord may, after notice and expiration of the applicable cure period:

(1) Terminate the Lease;

(2) Make demand for such expenses as Landlord may incur for legal expenses, reasonable attorneys' fees, brokerage, removing and storing Tenant's property, keeping the Premises in good order, or preparing the same for reletting, less any sums Landlord receives for reletting the Premises; and

(3) Re-enter and take possession of the Premises, subject to process of law, and remove Tenant.

(b) Tenant's Remedies. If Landlord commits a default, in addition to any other right or remedy Tenant may have under this Lease, at law or in equity, Tenant shall have the option to effect the cure and demand the reasonable costs of cure from Landlord which shall be paid by Landlord within a reasonable period of time after Tenant's written demand therefor.

20. MECHANICS' LIENS. Tenant shall not permit any mechanics' or materialmen's liens to be filed against the Premises nor against Tenant's leasehold interest in the Premises and not discharged or bonded off within fifteen (15) days after Tenant receives notice of the same, subject to Tenant's right to contest described below. Landlord shall have the right to post and keep posted on the Premises any notices which it deems necessary for protection from such liens. Tenant shall have the right to contest the validity of any such lien or claim filed or asserted against the Premises, if Tenant shall first give Landlord assurance that, upon final determination of the validity of such lien or claim, Tenant will pay any final judgment rendered against it and will have such lien released without cost to Landlord.

21. HOLDOVER. If Tenant continues to occupy the Premises after the expiration of the Term with the consent of Landlord, such tenancy shall be from month to month upon the same terms and conditions as set forth herein, including, without limitation, the payment of rent.

22. CONDEMNATION.

(a) Definitions. The terms "eminent domain," "condemnation," and "taking," include takings for public or quasi-public use and private purchases in lieu of condemnation by any authority authorized to exercise the power of eminent domain.

(b) Substantial Taking. If so much of the Premises or the Buildings or any portions thereof are taken by eminent domain such that, in the sole determination of Tenant, the Premises cannot thereafter reasonably be used by Tenant for carrying on, at substantially the same level and scope, the operations theretofore conducted by Tenant on

the Premises, then Tenant shall have the option to terminate this Lease immediately upon written notice to Landlord.

(c) Insubstantial Taking. If there is a taking such that, in the sole determination of Tenant, the Premises can thereafter continue to be used by Tenant for carrying on, at substantially the same level and scope, the operations theretofore conducted by Tenant on the Premises, then this Lease shall continue in full force and effect and Landlord, at its expense, up to the extent of any award for such partial taking, shall promptly repair and restore the Premises to the condition that existed immediately before the taking, except for the part taken, to render the Premises a complete architectural unit suitable for Tenant's use. Landlord shall pay, up to the extent of any award for such partial taking, to Tenant upon demand any damages suffered by Tenant as a result of any such insubstantial taking, including loss of revenues or loss of or damage to any of Tenant's personality.

(d) Awards and Damages. To the extent that Landlord complies with its obligations under Subsections 21(b) and (c) above, Landlord reserves all rights to damages paid because of any partial or entire taking of the Premises up to the current value of the Premises. Any award made in excess of the current value of the Premises shall be paid to Tenant. However, in the event that Landlord does not satisfy in full its obligations set forth above, then Tenant shall be entitled to receive the full amount of any damages or awards paid because of any partial or entire taking of the Premises, and Landlord assigns to Tenant any right Landlord may have to the damages or award in such case. Notwithstanding anything else to the contrary in this subparagraph (d), Tenant may file a claim to recover from the condemning authority (but not against Landlord) a separate award for Tenant's moving expenses, business dislocation damages, loss of or damage to Tenant's personal property and fixtures, the unamortized costs of leasehold improvements paid for by Tenant, and such other costs and damages to which Tenant may be entitled.

23. **CASUALTY.** In the event of partial or total damage to or destruction of the Premises during the Term by fire, the elements, or casualty, Landlord shall promptly repair and restore the same to the condition existing immediately prior to such casualty, at its expense, regardless of the extent of the damage. Landlord's obligation to repair and restore the Premises shall be limited to the extent of insurance proceeds made available to Landlord, provided that Landlord has complied with its obligation to maintain insurance under Section 25 of this Lease. Landlord shall commence such repairs and restoration as soon as reasonably practicable after the casualty and shall permit Tenant to participate, at Tenant's option, to the same extent as was permitted during the original construction of the Premises. Provided that the casualty is not the result of Landlord's negligence or willful misconduct, Landlord is not obligated to repair or replace Tenant's trade fixtures, furniture, equipment, or other personal property or any Tenant improvements.

24. **INDEMNIFICATION.** Subject to the waiver of subrogation set out in Section 26 hereof, Tenant indemnifies, defends, and holds Landlord harmless from claims for personal injury, death, or property damage, provided they arise out of incidents occurring in or about the Premises or Buildings, and are caused by the negligence or willful misconduct of Tenant, its agents, employees, invitees, licensees or sublessees. When the claim is caused by the joint negligence or willful misconduct of Tenant and Landlord, Tenant's duty to defend, indemnify, and hold Landlord harmless shall be in proportion to Tenant's allocable share of the joint negligence or willful misconduct. This provision shall not in any way affect immunity defenses available to either Party and shall not be interpreted as a waiver of Landlord's governmental or sovereign immunity. Tenant acknowledges that Landlord does not waive any sovereign or governmental immunity by entering into this Agreement. Nothing herein shall be construed to mandate purchase of insurance by the Landlord pursuant to N.C.G.S. 153A-435; or to be inconsistent with Wake County's "Resolution Regarding Limited Waiver of Sovereign Immunity" enacted October 6, 2003; or to in any other way waive the defense of sovereign or governmental immunity in any cause of action alleged or brought against the County or Tenant. Specifically, naming Landlord as an additional insured, if applicable, is not intended by Landlord to constitute a waiver of any applicable statutory or common law immunities that Wake County may have under applicable law, including but not limited to governmental or sovereign immunity.

25. **TAXES.** Real and personal property belonging to Landlord is exempt from ad valorem taxes pursuant to N.C. Gen. Stat. §105-278. Accordingly, the Premises is not subject to ad valorem taxes. Unless the subject of exemption, Tenant shall pay prior to delinquency all taxes assessed against or levied upon trade fixtures, furnishings, equipment, and other personal property of Tenant contained in the Premises.

26. **INSURANCE.** Landlord shall keep the Premises insured by "All Risk" property insurance in the amount of the replacement cost of the Premises. Tenant shall, at its own cost, keep its personal property, trade fixtures, furniture, and equipment, including the IMAX System located in the Premises insured under a policy of "All-Risk" property insurance in an amount equal to the replacement cost of such personal property and fixtures. Landlord may also elect at any time during the term of this Lease not to carry insurance required by this Section and to "self-insure" against such risks.

Tenant shall obtain and maintain, at its sole expense, all insurance required in the following paragraphs and shall provide certification thereof to Landlord's Finance Department.

Workers' Compensation, with limits for Coverage A: Statutory for State of North Carolina, and Coverage B - Employers Liability: \$500,000 each accident/disease each employee/disease policy limit.

Commercial General Liability, with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, including liquor liability and contractual liability. Landlord shall be included as additional insured on a primary and non-contributory basis.

If Tenant rents, subleases, or licenses premises for an event, Tenant or renter, sublessee, or licensee must procure event insurance coverage, including liquor liability where applicable, naming Tenant and Landlord as additional insured.

Umbrella Liability, with limits of \$5,000,000.

Commercial Automobile Liability, with limits not less than \$1,000,000 per accident for bodily injury and property damage applicable to any vehicle used during performance of services, including coverage for owned, hired, and non-owned vehicles.

All insurance companies must be authorized to do business in North Carolina and have an AM Best rating of "A-/VII" or better; or have reasonable equivalent financial strength to the satisfaction of Wake County's Finance Department. Insurance Policies, except Workers' Compensation, shall be

endorsed (1) to show Wake County as additional insured, as its interest may appear and (2) to provide 30-day notice of cancellation to Wake County.

27. **WAIVER OF SUBROGATION.** Tenant waives any right of recovery which any insurer of Tenant may acquire against the Landlord by virtue of the payment of any loss under such insurance. Tenant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Landlord has received a waiver of subrogation endorsement from the insurer.

28. **ANTENNAE.** If allowed by the law, Tenant may install and, once installed, modify a television, microwave, satellite, or other antenna communications system (individually and collectively called the "Antennae") on the roof of the Buildings for use in connection with the Tenant's operations. Tenant shall furnish detailed plans and specifications for the Antennae (or modification thereto) to the Landlord for approval, which approval shall not be unreasonably withheld, conditioned or delayed. Upon approval, the Antennae shall be installed at the Tenant's sole cost and expense. Tenant shall be responsible for procuring whatever licenses or permit may be required from third persons for the use or operation of the Antennae, provided that Landlord shall cooperate with such licensing and permitting process as may be required, and the Landlord makes no warranties or representations as to the permissibility of the Antennae under applicable law. Tenant warrants that the Antennae shall not constitute a nuisance or unreasonably interfere with the operations of the Landlord which exist on the date the Antennae are made operational.

29. **QUIET ENJOYMENT.** Landlord covenants and agrees that, for so long as Tenant is not in default hereunder, after notice and expiration of the applicable cure period, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term without hindrance or disturbance.

30. **BINDING EFFECT.** This Lease shall not be binding on either party until a counterpart has been executed and delivered by the parties each to the other. This Lease shall bind and inure to the benefit of the parties and their respective heirs, representatives, successors, and permitted assigns.

31. **CONSTRUCTION.** Feminine, neuter, and masculine pronouns, the plural and the singular, shall be construed to be and shall be interchangeable, in any place or places in which the context may require such interchange.

32. **ENTIRE AGREEMENT; AMENDMENTS.** This Lease, and the exhibits attached hereto, contain all the agreements regarding the Landlord/Tenant relationship between the parties. There have been no representations made by Landlord or understandings made between the parties other than those contained in this Lease. This Lease may be modified only by written instrument executed by both parties.

33. **WAIVER.** Failure of either party to exercise any of its rights is not a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.

34. **PARTIAL INVALIDITY.** If any Lease provision is invalid or enforceable to any extent, the remainder of this Lease shall continue in effect and be enforceable to the fullest extent permitted by law.

35. **GOVERNING LAW.** The Lease shall be governed by the laws of North Carolina.

36. **NOTICES.** All notices under this Lease shall be in writing and shall be deemed received upon the earlier of actual delivery or one (1) day after deposit with a nationally recognized overnight courier service (such as Federal Express or United Parcel Service) or three (3) days after being sent prepaid registered or certified mail, to the addresses below or such other address as the parties state in writing:

To Landlord: Wake County Attorney's Office
PO Box 550
Raleigh, NC 27602
Attention: County Attorney

To Tenant: Marbles Kids Museum
201 East Hargett Street
Raleigh, North Carolina 27601
Attention: President

37. **RECORDS.**

Landlord agrees to maintain books and records showing operating costs and security costs for a period of 1 year after the end of each calendar year during which such operating costs were incurred and shall make available to Tenant for inspection upon prior reasonable notice. Likewise, Tenant agrees to maintain books and records showing operating revenue and expenses associated with the Museum and Theatre for a period of 1 year after the end of each calendar year and shall make available to Landlord for inspection upon prior reasonable notice.

38. **USE OF FACILITY BY WAKE COUNTY ADMINISTRATION AND CITY OF RALEIGH.** Tenant agrees that during the Term of this Lease after the execution date hereof Tenant shall waive its admission fees for daytime (8:00 a.m. to 5:00 p.m.) admission to the theater located at the THEATRE by Wake County Administration or the City of Raleigh, subject to the terms hereof. Such waiver of the admission fees shall be limited to a total of seven (7) days for two (2) showings per day in any calendar year for each of Wake County and the City of Raleigh. Alternatively, Wake County Administration may obtain annually without charge the number of tickets calculated by multiplying two (2) showings by seven (7) days by the number of seats in the theatre for use as it may determine without reserving the entire theatre. Wake County Administration or the City of Raleigh, as the case may be, shall provide at least fourteen (14) days prior notice to Tenant (the "Usage Request") of its request to reserve the theater located at THEATRE pursuant to this Section. Similarly, Wake County Administration shall provide at least fourteen (14) days prior notice of any request for tickets pursuant to this Section. All Usage Requests shall be made directly by a contact person designated by the Office of the Wake County General Services Administration (GSA) Director who will serve as the sole contact between Tenant and Wake County Administration or the City of Raleigh, respectively. for Usage Requests. Use of the theater located at THEATRE under this arrangement is subject to availability. Tenant will not be required to relocate a paying facility user if the theater located at THEATRE is booked for the requested date at the time of the Usage Request, or in the case of a ticket request if a particular showing is sold out.

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IN WITNESS WHEREOF, the parties have executed this Lease under seal or, if corporate, have caused this Lease to be executed by their duly authorized officers, attested by their secretaries, and their corporate seals affixed by authority of their boards of directors.

Date: _____

LANDLORD

David Ellis, County Manager

Date: _____

MARBLES KIDS MUSEUM

President

SCHEDULE OF EXHIBITS, AND ATTACHMENTS:

- Exhibit A** - Property Description
- Exhibit B** - Equipment Constituting IMAX System
- Exhibit C** - Permitted Exceptions
- Exhibit D** - Memorandum of Lease
- Exhibit E** - Facilities Maintenance

EXHIBIT A

{Insert }

EXHIBIT B

EQUIPMENT CONSTITUTING IMAX SYSTEM AND IMAX PRESHOW

IMAX SYSTEM

The IMAX System shall mean and include the following:

- Two (2) integrated electronically controlled IMAX digital projectors
- One (1) digital sound system
- One (I) screen
- One (I) glasses cleaning machine
- One (J) reverse osmosis filtration equipment

The foregoing items are more particularly described in Schedule C to that certain Digital Upgrade Agreement dated September 14, 2010, by and between IMAX, Ltd., and Marbles Kids Museum, as amended (the "IMAX Contract").

EXHIBIT C

PERMITTED EXCEPTIONS

- I. Encroachments onto subject property of A/C, window well and building as shown on plat recorded in Book of Maps 1992, Page 70, Wake County Registry.
2. Easement to Carolina Power and Light Company recorded in Book 8889, Page 2075, Wake County Registry.
3. Easement Modification Agreement recorded in Book _____, Page _____, Wake County Registry.

EXHIBIT D

MEMORANDUM OF LEASE

THE COUNTY OF WAKE, a body politic and corporate, political subdivision of the State of North Carolina and the City of Raleigh, a municipal corporation (hereinafter called "Lessor"), hereby leases to **MARBLES KIDS MUSEUM**, a North Carolina Non-Profit including extensions and renewals, if any, the following property:

See Exhibit A attached hereto and incorporated herein by reference.

The provisions set forth in a written Lease Agreement (the "Lease") between the parties dated as of the _____ day of _____ 2022, are hereby incorporated in this memorandum.

IN WITNESS WHEREOF, the parties hereto have duly executed this Memorandum of Lease and have hereunto set their seals as of the ____ day of ____, 2022

LESSEE:

[CORPORATE SEAL] _____, a North Carolina non-profit corporation

ATTEST:

By: _____
Secretary

President

LESSOR:

COUNTY OF WAKE

ATTEST:

By: _____
Clerk to the Board

By: _____

EXHIBIT E

FACILITY MAINTENANCE

1. BUILDING HOURS. The Premises is operational Monday through Sunday, 8:00 a.m. through 1 :00 a.m.
2. LIFE/SAFETY. The Premises is equipped with fire/smoke alarm, sprinkler, and elevator life safety systems. These systems will be tested regularly as required by all applicable codes.
3. AIR CONDITIONING/HEATING. Heating, ventilation, and air conditioning will be provided by Landlord during operational hours and outside of operational hours for special events upon request of Tenant. Best efforts will be used to maintain building interior temperatures between 68 and 78 degrees Fahrenheit.
4. JANITORIAL SERVICES. Janitorial services are provided daily for each week, except Tenant observed holidays, by Landlord's Housekeeping Contractor. Management of the Janitorial Contract will be provided by Landlord. Janitorial services to be provided shall meet or exceed the specifications set forth in the Custodial Services Contract Specifications for Wake County Government - Marbles Kids Museum dated February 2020, as may be subsequently amended from time to time. Additional janitorial services requested by Tenant, including special events, will be invoiced to the Tenant by the Landlord.
5. FACILITY MAINTENANCE. Landlord shall furnish all material, labor and services necessary for the operation, maintenance and repair of the following: foundation and structure; roof, outer walls; existing interior walls and coverings; windows and coverings; doors and locks; ceiling and floor coverings; HVAC systems; lighting and power distribution systems (including, without limitation, those running the projection booth but excluding DC power supply for the projector); water and plumbing systems; cafe' fixtures and life safety including fire alarm system, fire extinguishers, sprinkler and hose systems. Excluded from Landlord's operation, maintenance and repair responsibilities is the IMAX System as defined in the Lease.

Landlord shall not be responsible for the maintenance and repair of furniture, furniture partitions, telephones and office equipment (such as, by way of example, typewriters, computers, printers, copy machines). Landlord may provide such services to Tenant on a cost reimbursable basis.

6. REQUEST FOR SERVICE. All non-emergency and emergency requests for services from Landlord shall be directed to Landlord's General Services Administration department. Requests may be transmitted by telephone (919-856-2777 during normal business hours (8:30 a.m. - 5:15 p.m.) and 919-856- 7007 after normal business hours). An emergency is a condition that threatens Life Safety, Building Integrity, and/or system failures that prohibits personnel from performing their job. Examples are fire, flood, smoke, gas or burning smell, power outage, bomb threat, and loss of floor or building heating or air conditioning. Landlord will make best efforts to respond to emergencies within four (4) hours of notification.

7. KEYS. Tenant will be given entrance and interior door keys or access cards as applicable. Tenant shall not make duplicates of keys or access cards. If additional keys or access cards are desired, they may be purchased from Landlord at cost (currently photo/id access cards are \$15.00 each). Additions or changes in door hardware, locks or keys will be at the sole expense of Tenant.

8. ALTERATIONS AND RENOVATIONS. Tenant must issue the Landlord a written request or phone notification and receive a written approval from the Landlord prior to any such alterations, renovations, or improvements. Landlord reserves the right to contract out any or all such requests. Tenant is allowed to modify the facility upon Landlord approval of plans specifications and any changes to or deviations from the plans and specifications that may occur during construction.

9. LANDSCAPE MAINTENANCE. The Premises will be serviced as required in the discretion of Landlord to maintain a visually pleasing appearance. All exterior areas include turf, planting beds, parking lots, sidewalks and entrances to the Premises will be maintained by Landlord at its expense. The level of maintenance shall be equal to that provided to other Landlord maintained buildings and grounds, and comparable to maintenance provided similar theater facilities and similar restaurant and Class A commercial space in the Raleigh, North Carolina area.

10. SECURITY. Electronic Premises security monitoring shall be provided through Landlord's security services contractor. An on Premises roving security guard shall be provided for forty (40) hours per week to service the MUSEUM and THEATRE, with the hours to be selected by Tenant. Landlord shall provide 24 hour, 7 days per week video surveillance of the Premises. Landlord shall provide occasional, unscheduled roving patrol of the Premises after normal operating hours. BY PROVIDING THESE SERVICES LANDLORD MAKES NO WARRANTY WHATSOEVER REGARDING THE QUALITY OR EFFECTIVENESS OF SAME. LANDLORD ACCEPTS NO LIABILITY FOR DAMAGE TO PERSON OR PROPERTY RESULTING FROM FAILURE TO PROVIDE THESE SERVICES OR THE QUALITY THEREOF. THIS PROVISION IS NOT INTENDED TO CONFER A THIRD-PARTY BENEFIT UPON ANY PERSON OR PERSONS. Additional security services above forty (40) hours per week requested by the Tenant will be invoiced to the Tenant by the Landlord. Security personnel resource (Security or law enforcement officer) must be consistent, whether funded by the Tenant and Landlord.

11. UTILITIES. Landlord shall provide at Landlord's expense all utilities including electricity, natural gas, water, sewer, and solid waste disposal.

12. PEST AND RODENT CONTROL. Landlord shall provide at Landlord's expense integrated pest management services to the Premises, including the buildings and grounds. Tenant shall be notified when the Premises are scheduled for service. Such services shall be provided on a regular basis and as needed after a timely manner after Tenant's request, the parties hereto acknowledging that exhibits may require pest control measures in addition to any regularly scheduled pest management services.