



211 Walnut Street
Neenah, WI 54956

AN ORDINANCE: By Finance and Personnel Comm.
Re: Repealing City of Neenah Ordinance No. 117,
Volume 1; and approving a 99 year lease with
the Bergstrom-Mahler Museum, Inc.

ORDINANCE NO. 2015-15
Introduced: October 21, 2015
Committee/Commission Action:
RECOMMENDED FOR PASSAGE

AN ORDINANCE

WHEREAS, the City of Neenah in 1953 received the property located at 165 North Park Avenue from Evangeline Bergstrom (the "Property") for the purpose of providing a home for an art museum dedicated to paper weights and glass now known as the Bergstrom-Mahler Museum of Glass; and,

WHEREAS, the City agreed to accept the Property under terms outlined in Ord. No. 958, Vol. VI, dated October 7, 1953; provided a ten year lease agreement in 1958 which was replaced with a lease of indefinite term by Ord. No. 117, Vol. 1, dated November 18, 1970; and,

WHEREAS, the Museum has requested a more detailed lease of 99 years which better protects the interest of both the City and Museum and honors the City's commitment to Evangeline Bergstrom in accepting the property, a copy of which is attached as Exhibit A and incorporated herein (the "Lease");

NOW THEREFORE, the Common Council of the City of Neenah, Wisconsin, do ordain as follows:

Section 1. Ordinance No. 958 Vol. VI is hereby revised by striking Paragraph 3 and replacing it with the Lease.

Section 2. Ordinance No. 117, Volume 1 is hereby repealed.

Section 3. The 99 year lease between the City of Neenah and the Bergstrom-Mahler Museum, Inc., attached as Exhibit A, is hereby approved and the appropriate City officials are authorized to execute the Lease on behalf of the City of Neenah.

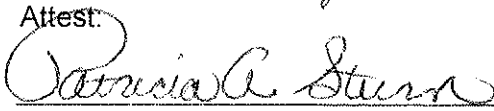
Section 4. Severability. In the event any section, subsection, clause, phrase or portion of this ordinance is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of this ordinance. It is the legislative intent of the Common Council that this ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

Section 5. Repeal, Noncodificatiion and Effective Date. All ordinances or parts of ordinances and resolutions in conflict herewith are hereby repealed. This ordinance shall not be codified and shall take effect on November 1, 2015.

Moved by: Ald. Stevenson/Ramos
Adopted: October 21, 2015
Approved: October 21, 2015
Published: October 26, 2015

Approved:


Dean R. Kaufert, Mayor

Attest:


Patricia A. Sturn, City Clerk

THIS INSTRUMENT WAS DRAFTED BY:
City Attorney James G. Godlewski
211 Walnut Street
Neenah, WI 54956
State Bar No. 1005210

EXHIBIT A

LONG TERM LEASE AGREEMENT

I. The Parties

1.01 The Parties to this Agreement are:

1.011 The City of Neenah (“the City”), with its principal office located at 211 Walnut Street, P.O. Box 426, Neenah, WI 54956.

1.012 The Bergstrom-Mahler Museum, Inc. (“the Museum”), with its principal office located at 165 N. Park Avenue, Neenah, Wisconsin, 54956.

(The City and the Museum may be referred to herein, collectively, as “the Parties.”)

II. The Recitals

2.01 The Date of this Agreement is November 1, 2015.

2.02 The City owns the building (“the Building”) located at 165 N. Park Avenue, Neenah, Wisconsin, and land on which the Building is sited, described as follows:

Lot Eight (8) of Block “A”, South Sixty (60) feet of Lot Nine (9) of Block “A”, Lot Eight (8) of Block “B” and the South Sixty (60) feet of Lot Nine (9) of Block “B”, Lake View Addition, City of Neenah, Winnebago County, Wisconsin (collectively, the “Land and Building”).

2.03 The Museum owns the contents of the Museum, including all art and glass collections and all furniture, fixtures, and equipment located within or on the grounds of The Museum including display cases, cabinets, and shelving regardless whether such display cases are affixed to the building, but excluding other items permanently affixed to the Land and Building (i.e. fixtures) (“Personal Property”). Museum desires to lease said Land and Building from the City, and the City desires to lease to the Museum, the Land and Building for the price, and upon the terms and conditions set forth in this Agreement.

III. The Agreement

THEREFORE, the Parties agree as follows:

- 3.01 The Recitals. The Recitals are a part of this Agreement.
- 3.02 Premises Leased. The City shall, and by this Agreement does, lease to The Museum, and Museum shall, and by this Agreement does lease from the City the Land and Building (which may also be referred to as the “Leased Premises”), subject to the restrictions and limitations set forth in this Agreement.
- 3.03 Use of Leased Premises and Subleases. The Leased Premises shall be used for the daily operation of the museum, specifically dedicated to education, promotion of the arts, festivals, and the display of permanent collections and traveling exhibitions of glass paperweights, glass collections, and other art. In conjunction with such use, the Museum shall comply with all applicable state and federal laws, including, but not limited to, state and federal environmental laws.
- 3.04 Term. The Term of this Lease shall commence on the Date of this Agreement, November 1, 2015 and shall continue for ninety-nine (99) years (“the Term”) unless sooner terminated. The Museum may terminate the lease prior to the end of its Term by giving to the City a notice one (1) year in advance of the proposed termination date. Upon termination, the Museum shall have removed all its Personal Property from the leased premises and all right to the Land and Buildings shall revert to the City.
- 3.05 Rent. The Museum shall pay to the City at the offices of the City, or at such other place as the City shall designate in writing, rent as follows, payable in advance: beginning on the Date of this Agreement, Rent shall be paid as of the first day of each year at the rate of \$1.00 per year. The Museum may prepay all or any portion of the Rent. In the event that the Museum terminates this Lease under Paragraph 3.04, the Museum shall not be entitled to any refund of prepaid rent.
- 3.06 Insurance. During the Term of this Lease, including any holdover or renewals, the Museum shall procure and keep in full force and effect policies of insurance, naming the City as additional insured, with coverage as follows:
 - 3.06.1 Fire and Extended Property Damage Insurance. Maintain coverage for 100% of the replacement costs (at current costs, without depreciation) of the Leased Premises as the same shall exist from time to time.
 - 3.06.2 Workers Compensation. Maintain statutory workers’ compensation insurance in compliance with Wisconsin’s workers’ compensation law.

3.06.3 General Liability Insurance. Maintain a commercially reasonable minimum combined single limit of coverage per occurrence for bodily injury and property damage but not less than One Million Dollars (\$1,000,000), with an excess liability or umbrella coverage policy of a commercially reasonable amount not less than Ten Million Dollars (\$10,000,000), with deductible or self-insured retainage of not more than Fifty Thousand Dollars (\$50,000.00), which policy shall include coverage for premises and operations, products and completed operations, contractual liability, and broad form property damage.

3.06.4 Proof of Insurance. The Museum shall annually provide the City with a certificate of insurance naming the City as additional insured and reflecting coverage for the insurance required by this Agreement.

3.07 Obligations of the Museum.

3.07.1 Taxes; Utilities. The Museum shall not be required to pay real estate tax or to make any payments in lieu of taxes, so long as it remains a 501(c)(3) entity under the U.S. Internal Revenue Code and the Museum operations continue to qualify for property tax exemption under Wis. Stat. §70.11. The Museum shall pay when due all water, sanitary sewer, and storm sewer utility charges to the City, as well as any other utility charges (e.g., electricity, gas, telephone, internet, cable or satellite television), and taxes (if any) in the event it is determined that the Museum is no longer qualified for property tax exemption under Wis. Stat. §70.11.

3.07.2 Environmental Issues. The Museum shall have no responsibility for any environmental issue on the Leased Premises not caused by the Museum existing on or before the date of this Lease, whether or not disclosed by any environmental audit performed by either Party prior to the date of this Agreement, or for subsequent contamination caused by the City or by migration from elsewhere, but the Museum shall be responsible for, and shall hold the City harmless from, any and all costs, damages, and expenses of any kind caused by or arising out of any environmental contamination of the Leased Premises caused by the Museum, its sublessees, guests, or invitees of such sublessees, whether occurring before or after the date of this Lease.

3.07.3 Compliance with Laws. The Museum agrees to comply with all laws, ordinances, rules, and regulations promulgated by any governmental unit having jurisdiction except as follows; the Museum may charge admission so long as doing so does not violate the Museum's requirements as a 501(c)(3) entity or the provisions of

Wis. Stat. §70.11 and, the Museum may, on a periodic, occasional basis, serve alcoholic beverages, subject to State and Municipal licensing requirements.

- 3.07.4 Repair of Premises. The Museum shall keep, maintain, and repair the Leased Premises, including but not limited to the roof, heating, electrical, air conditioning, and plumbing systems and keep all equipment in good and well-maintained condition consistent with good business practice and in a manner which will preserve and protect the general appearance and value of the Leased Premises. To assist the Museum with the costs of maintaining the Leased Premises, the City shall contribute an amount not less than \$20,000 annually to the Museum. At the City's budget time, the Museum shall provide the City with a list of improvements to be funded by the City's contribution.
- 3.07.5 Safety and Security. The Parties hereby agree that the Museum assumes all responsibility and obligation for providing safety and security on the Leased Premises.
- 3.07.6 Subsequent Alterations. The Museum shall have the right, in its discretion, during the term of this Lease to make alterations to existing improvements, attach fixtures, and erect additional structures in or upon the Leased Premises, subject to applicable building codes and zoning ordinances.
- 3.08 Quiet Enjoyment & Board Representation. The City covenants, warrants, and represents that it has full right and power to execute and perform this Lease and to grant the estate leased herein and that the Museum, upon payment of Rent herein specified and performance of the covenants and agreements herein contained, shall peaceably and quietly have, hold, and enjoy the Leased Premises during the full term of this Lease, subject to the City's right to inspect the Leased Premises. The City shall make no rule, regulation, or ordinance imposing residency or other restrictions on the Museum's board of directors. The Museum shall provide for one member of its board to include the City's Mayor, or Mayor's designee,
- 3.09 Damage to Premises. In the event of partial or complete loss to the Leased Premises by fire, the elements, accident, or other occurrence ("Premises Damage"), the City shall have no obligation to compensate the Museum for any loss incurred except that caused by the City's negligence. The Museum shall, within thirty (30) days of said loss give notice to the City of its intent to repair or rebuild. Any insurance proceeds received by the Museum as a result of Premises Damages shall either be divided pro rata and used by the Museum to rebuild the Premises and reimburse losses to leasehold improvements or such insurance proceeds shall revert to the City. Leasehold Improvements shall be defined to

mean structural additions or functional enhancements to the Leased Premises and shall not include the costs of any item of maintenance.

3.10 Liability; Indemnification.

3.10.1 Fire Liability. The City shall not have any liability for damages to the Leased Premises or to any property of the Museum or of its subtenants located on the Leased Premises caused by or resulting from fire, except for damage caused by the City.

3.10.2 Indemnification. Each Party shall indemnify the other and hold it harmless against and from all loss, cost, and expense, including but not limited to attorney's fees and other costs of defense, occasioned at any time by reason of liability imposed by law upon the other party for damages. Notwithstanding the foregoing, to the extent that such liability arises in whole or in part by reason of any negligent act or omission of the Party making the claim for indemnification, or of any person or organization for whose acts or omissions that party is legally responsible, this indemnity provision shall be inapplicable.

3.11 Governing Law; Resolution of Dispute.

3.11.1 This Agreement shall be governed by the laws of the state of Wisconsin. Claims, disputes, and other matters in question between the Parties arising out of, or relating to, this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Wisconsin Statutes. In the event of arbitration, the following shall govern any such proceedings.

a. Unless the Parties otherwise agree, the dispute shall be resolved by a single arbitrator.

b. The costs of the arbitration proceeding (except for the filing fee, which shall be paid by the Party initiating the proceeding) shall be borne equally by the parties. Each Party shall pay its own legal fees and expenses incurred in connection with the proceeding.

c. The arbitration shall take place in the City, Winnebago County, Wisconsin.

d. The proceeding and arbitration shall be governed by the laws of the state of Wisconsin, including specifically, chapter 788 of the Wisconsin Statutes, and either Party may seek injunctive relief in a court of competent jurisdiction pending the arbitration determination.

3.12 Severability of Provisions. If any term or condition of this agreement is held to be invalid or unenforceable, the remainder of the terms and conditions herein shall not be affected thereby and shall remain valid and enforceable.

3.13 Representation of Authority. The Museum represents and warrants to the City that its officers who execute and deliver this Agreement to the City are duly authorized to do so and that, when so executed and delivered, it will be legally binding upon the Museum's corporate parent, The Bergstrom-Mahler Museum, Inc.

3.14 Notice. Any notice required or desired to be served by either party upon the other may be served by depositing such notice in certified United States mail, return receipt requested, in a sealed envelope, postage prepaid, and addressed as follows:

a. To the City:

CITY OF NEENAH
Attn: City Attorney
211 Walnut St.
Neenah, WI 54957-0426

b. To the Museum:

THE BERGSTROM-MAHLER
MUSEUM
Attn: Executive Director
165 N. Park Ave.
Neenah, WI 54956

or such other address or person as shall from time to time be designated by the Parties in writing.

3.15 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and each Party understands that there are no other oral understandings or agreements other than those set out herein. This Agreement cannot be added to, altered or amended in any way except by written agreement signed by both of the Parties hereto.

3.16 Successors and Assigns. The conditions, covenants, and agreements in the foregoing lease contained to be kept and performed by the Parties hereto shall be binding upon said respective parties, their successors and assigns.

EXECUTED by the Parties on the Date of this Agreement.

CITY OF NEENAH

By: Dean R. Kaufert
Mayor

Attest By: Patricia A. Sturn
City Clerk

BERGSTROM-MAHLER MUSEUM

By: [Signature]

ACKNOWLEDGMENT

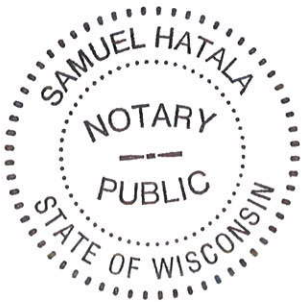
STATE OF WISCONSIN)
) ss.
COUNTY OF WINNEBAGO)

Personally came before me this day of October, 2015 the above named Dean R. Kaufert, Mayor and Patricia A. Sturn, City Clerk who acknowledged that they were Mayor and City Clerk, respectively of the City of Neenah, a municipal corporation, and that they, as such Mayor and City Clerk, being authorized to do so, executed the foregoing instrument on the City of Neenah's behalf.

[Signature]
Notary Public for the State of Wisconsin
My commission expires: 8-7-2016

Approved as to form:

[Signature]
City Attorney



ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF WINNEBAGO)

Personally came before me this 28 day of October, 2015 the above named Jan Miranda Smith, Executive Director who acknowledged that she is the Executive Director of the Bergstrom Mahler Museum, a Wisconsin non-stock corporation, and that she, as such Executive Director, being authorized to do so, executed the foregoing instrument on the Bergstrom-Mahler Museum's behalf.

[Signature]
Notary Public for the State of Wisconsin
My commission expires: 8-31-2019

