BOARD OF SUPERVISORS

Brown County

305 E. WALNUT STREET
P. O. BOX 23600
GREEN BAY, WISCONSIN 54305-3600
PHONE (920) 448-4015 FAX (920) 448-6221

EDUCATION & RECREATION COMMITTEE
John Van Dyck, Chair
Paul Ballard, Vice Chair
David Landwehr, Kathy Lefebvre, Ray Suennen

SPECIAL EDUCATION & RECREATION COMMITTEE
WEDNESDAY, MAY 15, 2019
6:00 pm
Room 207, City Hall
100 N. Jefferson St., Green Bay, WI

NOTICE IS HEREBY GIVEN THAT THE COMMITTEE MAY TAKE ACTION ON ANY ITEMS LISTED ON THE AGENDA

I. Call Meeting to Order.
II. Approve/Modify Agenda.

Comments from the Public

Resch Center/Arena

1. **Closed Session: Resch Center and Expo Center, including Resch Center Lease and Expo Center Management Agreements.**

   a. Open Session: Motion and Recorded Vote pursuant to Wis. Stats. Sec. 19.85(1), regarding going into closed session pursuant to Wis. Stats. Sec. 19.85(1)(e), i.e. deliberating or negotiating public business, whenever competitive or bargaining reasons require a closed session, in particular, deliberating and negotiating strategy and options regarding the Resch and Expo Centers, including the Expo Center Management Agreement and the Resch Center Lease.
   b. Convene into Closed Session: Pursuant to Wis. Stats. Sec. 19.85(1)(g), the Brown County Board of Supervisors shall convene into closed session for purposes of deliberating or negotiating public business, whenever competitive or bargaining reasons require a closed session, in particular, deliberating and negotiating strategy and options regarding the Resch and Expo Centers, including the Expo Center Management Agreement and the Resch Center Lease.
   c. Reconvene into Open Session: The Brown County Board of Supervisors shall reconvene into open session for possible voting and/or other action regarding the Resch and Expo Centers, including the Expo Center Management Agreement and the Resch Center Lease.

2. **Resolution Authorizing Resch Center Lease Agreement and Expo Center Management Agreement.**
3. **Such other matters as authorized by law.**
4. **Adjourn.**

John Van Dyck, Chair

Notice is hereby given that action by Committee may be taken on any of the items which are described or listed in this agenda.

Please take notice that it is possible additional members of the Board of Supervisors may attend this meeting, resulting in a majority or quorum of the Board of Supervisors. This may constitute a meeting of the Board of Supervisors for purposes of discussion and information gathering relative to this agenda.

AS AMENDED AT THE 05-06-2019 EXECUTIVE COMMITTEE MEETING

AMENDED AND RESTATED LEASE AGREEMENT
RESCH CENTER

This Amended and Restated Lease Agreement ("Lease"), made as of this 1st day of June, 2019, by and between Brown County, Wisconsin, hereinafter referred to as "Tenant," and PMI Entertainment Group, Inc., a Wisconsin non-stock corporation, with its office at 1901 South Oneida Street, Green Bay, Wisconsin, hereinafter referred to as "Subtenant" (Tenant and Subtenant are collectively referred to as the "Parties"). The Parties desire to Amend and Restate the Original Lease Agreement in its entirety, together with all Amendments, and in consideration of the mutual covenants and agreements contained herein, agree as stated below.

WITNESSETH

Tenant does hereby lease to Subtenant, and Subtenant does hereby lease from Tenant, on the terms, covenants, and conditions herein stated, the premises known and described as follows: The Resch Center (the "Center"), and other property as more particularly described within Exhibit "A," which is attached hereto and incorporated herein by reference, located at 1901 South Oneida Street in the Village of Ashwaubenon, Brown County, Wisconsin.

1. Definitions.

1.1 "Leased Premises," shall refer to the Resch Center (the "Center") and other property as more particularly described within Exhibit "A," which is attached hereto and incorporated herein by reference.

1.2 "Capital Improvement" shall mean any additional Leased Premises asset or significant improvement, added or significantly improved after this Lease is entered into, at a cost of over $25,000 and that has a useful life of more than 1 year.

1.3 "Capital Improvements to the Leased Premises" are Capital Improvements that are permanently affixed to the leased premises, and that will accordingly be considered Tenant property when placed in service, under Section 3.2.

1.4 "Required Subtenant Capital Improvements" are Tenant preapproved Capital Improvements, made at the expense of Subtenant and considered Subtenant property when placed in service, under Section 3.3.

1.5 "Optional Subtenant Capital Improvements" are Tenant preapproved Capital Improvements, made at the expense of Subtenant and considered Subtenant property when placed in service, under Section 10.2.

1.6 "Effective Date" shall mean the date on which construction of the Expo Center, also located at 1901 South Oneida Street in the Village of Ashwaubenon, Brown

County, WI, has been completed, on June 1 of the year a certificate of occupancy for the Expo Center has been issued, and the Expo Center has been fully furnished and delivered to PMI Venue Management, LLC for operation.

1.7 "Operating Deficits" shall refer to the net loss from operation of the business conducted in the Leased Premises.

1.8 "Operating Revenues" shall refer to the gross revenue received from any source as a result of the business conducted in the Leased Premises

2. Term of Lease.

2.1 Until the Effective Date, the current lease shall remain in full force and effect.

2.2 This Lease shall have an Initial Term that commences on the Effective Date, and shall terminate on May 31, 2026, unless renewed as provided for below. Should the Management Agreement regarding the Expo Center, of which Tenant and Subtenant are also parties to, terminate, then this Lease shall also terminate on the same date.

2.3 This Lease shall be renewable as provided for below for two (2) additional five (5) year terms ("renewal terms"), at the option of the Parties and upon such terms and conditions as they may agree to.

2.4 Subtenant shall notify Tenant, in the manner set forth in Section 21 of this Lease, of its intent to exercise or not to exercise its option to renew at least 18 months prior to expiration of the then current term. If Subtenant notifies Tenant of its intent to exercise its option to renew as described above, then Subtenant and Tenant shall meet to negotiate the terms and conditions of a potential Lease renewal and/or of a new Management Agreement. In the event that Subtenant and Tenant cannot reach an agreement on the terms and conditions of a potential Lease renewal and/or Management Agreement at least 12 months prior to expiration of the then current term, then Subtenant shall be deemed to have notified Tenant that it has elected not to exercise its option to renew.

If during the initial or any renewal term of this Lease, a proposal involving the demolition of any of the buildings within the Leased Premises and/or any structural additions to the Leased Premises is submitted to or on behalf of the Tenant, the Tenant shall have the right to opt out of this Lease, provided that the Subtenant is afforded the Right of First Refusal.

3. Rent.

3.1 Subtenant shall pay Tenant as Base Rent during each year of the term according to the following schedule:

Effective Date to 05-31-2023 - $334,750.00 per year; and

06-01-2023 to 05-31-2026 - $350,000.00 per year.

Base Rent shall be paid on a monthly basis during the Lease term.

3.2 Use of Rental Payments. All of the aforementioned rental payments shall be restricted in a separate County fund (the "Enterprise Fund"). On or before July 15 of each year of this Lease, and semi-annually thereafter, Subtenant shall present a Capital Improvement budget to Tenant for written approval. Capital Improvements made pursuant to this Section shall be the property of Tenant.

3.3 Required Subtenant Capital Improvements. During the Initial Term of the Lease, Subtenant shall pay an additional Three Hundred Thousand Dollars ($300,000) for Tenant preapproved Required Subtenant Capital Improvements, and/or capitalized equipment, to the Leased Premises, the timing of which is within the discretion of Subtenant; provided, total payments are made before the expiration of the Initial Term, and Tenant's preapproval shall not be unreasonably withheld. Subtenant shall report the amount of the Required Subtenant Capital Improvements, and/or capitalized equipment, to Tenant on an annual basis. Required Subtenant Capital Improvements, and/or capitalized equipment, made pursuant to this Section shall be the property of Subtenant. Upon termination of the Lease, Subtenant may choose to remove said Required Subtenant Capital Improvements, and/or capitalized equipment, at its own expense as long as it returns the premises to the condition it was found, or may choose to instead have Tenant purchase said Required Subtenant Capital Improvements, and/or capitalized equipment, from Subtenant for Net Book Value.

4. Operating Revenues/Deficits.

4.1 Subtenant will assume the responsibility for any Operating Deficits with no expense to Tenant. Subtenant will provide to Tenant its independently audited annual financial statement of the Center, which shall include an income statement, a capital assets summary and the auditor's opinion of the Subtenant's complete operations.

Additionally, the Tenant's Finance Director (or designee) shall have the right to approve the independent audit firm for preparation of the aforementioned financial information. Finally, the Tenant's Finance Director (or designee) shall have the right to review with the independent audit firm any records used in support of the audited financials of the Complex.

4.2 Sources of revenue available to the Subtenant shall include, but are not limited to the following items:

1. Ticket Sales
2. Concession Sales
3. Novelty Sales
4. Advertising
5. Parking at Lambeau Field and Blue Lot
6. Electrical, pipe and drape, and other exhibition services

7. Suite leases
8. Club seat leases
9. Admission surcharge
10. Sponsorship
11. Venue rental of the Leased Premises.

It is agreed that all revenue generated through events in or on the Leased Premises, and related marketing and promotions (e.g., logo merchandise, trademarks, etc.) regarding the Leased Premises shall flow through the Center and be recorded as revenue on the books of the Center. Subtenant shall be responsible to notify Tenant of, and to include within the disclosure mandates of Section 4.1, any additional sources of revenue realized by Subtenant subsequent to the execution of this Lease. Upon notification of any additional sources of Leased Premises related revenue realized by Subtenant subsequent to the execution of this Lease, the Parties shall enter into an amendment to this Lease for purposes of including them within the itemization of Section 4.2.

4.3 Sources of revenue allocated to construction specific Capital Improvements, Structural Repairs or retirement of the bond debt, and not available to the Subtenant, shall include Naming Rights (regarding only the name of the facility, the Resch Center).

4.4 *Subtenant shall provide Tenant, on a semi-annual basis, with a Maintenance Report of maintenance activities and their associated expenditures made by Subtenant regarding the Resch Center. For purposes of said Maintenance Report, 'maintenance activities' means activities required to conserve as nearly, and as long, as possible the Resch Center's original condition and operational status to achieve its maximum useful life (including both corrective maintenance and preventative maintenance), but does not include activities that are customarily capitalized. Any reimbursements received per the 12-01-1999 Resch Center Naming Rights Agreement MOU, as extended on 03-05-2010, shall be deposited into the County's associated Enterprise Fund.*

5. Occupancy. Occupancy of the Leased Premises by Subtenant shall continue upon execution of this Amended and Restated Lease.

6. Utilities. Subtenant agrees to pay all necessary utility costs for the operation of the Leased Premises and will not seek reimbursement for those expenses from Tenant.

7. Real Estate Taxes. Tenant shall be responsible for the payment of any real estate or property taxes, assessments, fees, including required payments in lieu of taxes levied by any taxing authority against the Leased Premises. Should Tenant be required to make any such payments, rent for the Complex may be renegotiated.

8. Use.

8.1 Purpose. The purpose of the Center is to provide the people of Brown County with a quality public building for Leased Premises appropriate events.

8.2 Quiet Use. Tenant, for itself, and its successors and assigns, agrees that so long as Subtenant shall not be in default under this Lease, Subtenant shall at all times during the term hereby granted, peaceably have, hold, and enjoy the Leased Premises; provided, however, that the Tenant's liabilities under this Lease shall only be for the period during which it shall be the owner of the Leased Premises.

9. Operations. Subtenant shall have sole responsibility and authority over the operations of the Leased Premises, including but not limited to:

9.1 Management. Subtenant has complete authority/responsibility, including but not limited to financial responsibility, to furnish any and all management services and labor as it deems necessary to operate, supervise, manage and maintain the Leased Premises. This includes employing, compensating, supervising and discharging all employees and personnel.

9.2 Marketing and Promotion. Subtenant will create and execute a targeted marketing and promotional plan to maximize the utilization and revenue generating potential of the Leased Premises, and shall have, except for naming rights, the exclusive ownership and rights to any trade names, trademarks, intellectual property, promotions, and advertising created for the Leased Premises. Tenant shall not be responsible or liablefor any claims, lawsuits, grievances, costs or expenses that in any way relate to third party allegations regarding Subtenant's exclusive ownership and rights to any trade names, trademarks, intellectual property, promotions, and/or advertising created by Subtenant for the Leased Premises, and Subtenant agrees to defend and indemnify Tenant against the same.

9.3 Scheduling/Technical Services. Subtenant shall maintain all schedules for events held at the Leased Premises and shall utilize all resources and efforts as is reasonably possible to maximize the efficient use of the Leased Premises. Subtenant shall provide all necessary technical services associated with the normal operation of the Leased Premises, including but not limited to, patron assistance, box office and ticketing services, and contracting for the events in or on the Leased Premises.

9.4 Custodial/Maintenance/Repair Services. Subtenant shall provide maintenance services associated with the housekeeping, preventive maintenance, and customary repairs required to keep the facilities and equipment in sound operating condition. Subtenant will establish necessary policies and procedures to ensure that the Leased Premises are properly maintained at all times, and Tenant shall be provided with copies of said policies and procedures upon request.

9.5 Pest Control. Subtenant shall be responsible for arranging and paying for all necessary pest control services.

9.6 Snow Removal. Subtenant will be responsible for arranging and paying for all snow removal services at the grounds of the Leased Premises.

9.7 Trash Removal. Subtenant will be responsible for arranging and paying for all trash removal services. Tenant shall reasonably assist Subtenant in its desire to

acquire the same consideration as other county facilities when making said arrangements, but in no way shall Tenant's assistance be in any way deemed a guarantee or promise to Subtenant in this regard. Subtenant will implement a comprehensive recycling and waste/hazardous waste disposal program that meets all federal, state, and local laws, regulations, and/or ordinances.

9.8 Operational Services. Subtenant, at its discretion, will provide and be responsible for all human resources services and associated expenses required to stage (set up and tear down) events, including but not limited to services involving the stage areas, sound systems, lighting systems, stage rigging, dressing room areas, stage equipment and loading in and loading out.

Subtenant will be responsible for providing all management staff, ticket sales personnel, ushers and other personnel required for the operation of the Leased Premises including but not limited to general patron assistance, including the patrons with special needs.

Subtenant shall have the right to make, at its own expense, but subject to the limitations set forth herein, such reasonable minor alterations and repairs to the Leased Premises as may be required for any exhibition, event or convention purposes.

Tenant provided the original furnishings, fixtures, and equipment for theLeased Premises. The Subtenant shall have the option to install at its expense additional or replacement furniture and equipment that is not fixed to the Leased Premises, which may be needed to carry out any exhibitions, events or conventions, and all such fixtures and equipment, whether installed during the term of this Lease or prior to the commencement thereof, shall remain the sole property of the Subtenant unless any expenses associated therewith were paid for in whole or in part by the Tenant, which would then require reimbursement by the Subtenant to the Tenant in an amount equal to the Tenant's contributions in order for Subtenant to acquire sole ownership of the property at issue. Notwithstanding the aforementioned, the Subtenant shall not install any fixtures, furniture or equipment which requires modification to any building and/or building system without the prior written consent of Tenant.

9.9 Ticket Sales. Subtenant will retain all authority and responsibility for all aspects of ticket sales for events and activities. If the written preapproval of Subtenant is first obtained, then Tenant may impose an additional ticket surcharge, as may be agreed to by Subtenant and Tenant, in order to meet the needs of the Leased Premises. Subtenant may provide such ticket technology including hardware and software as it deems necessary for the operation of ticket sales, which equipment and technology will remain the property of Subtenant unless any expenses associated therewith were paid for in whole or in part by the Tenant, which would then require reimbursement by the Subtenant to the Tenant in an amount equal to the Tenant's contributions in order for Subtenant to acquire sole ownership of the property at issue.

9.10 Licenses and Permits. Subtenant will obtain and maintain all licenses and permits necessary under federal, state and local law for Subtenant to manage and operate the Leased Premises, and Tenant agrees to assist the Subtenant, to the extent it

reasonably can but subject to any and all limitations under federal, state and local law, in applying for any such permits or licenses.

9.11 Special Events. It is the intent of the Subtenant to fund, create, and stage its own special events to maximize efficient use of the Leased Premises.

9.12 Advertising Rights. Subtenant shall retain all internal and external advertising rights to the Leased Premises, excluding naming rights. Subtenant agrees to comply with any naming rights agreements entered into by Tenant.

9.13 Emergency Procedures. Subtenant will develop and implement an emergency procedures manual for the Leased Premises, and provide the appropriate training to full and part-time staff. Tenant shall be provided with copies of said manual upon request.

9.14 Right to Cover/Cure. If the Subtenant does not perform the operations as set forth in this Section 9 in a manner deemed satisfactory by Tenant, then Tenant reserves the right to take any action necessary to adequately perform the operation or operations at issue, and to seek reimbursement from the Subtenant for an amount equal to the Tenant's costs associated therewith, including actual attorney's fees incurred as a result of Subtenant's refusal to reimburse the Tenant hereunder.

10. Capital Improvements/Facility and Site Repairs.

10.1 Tenant will be responsible for Tenant preapproved Capital Improvements in excess of $25,000 to the extent funds are available from the rent collected pursuant to this Lease, and Tenant's preapproval shall not be unreasonably withheld. Subtenant shall advise Tenant on an annual basis of the Capital Improvement needs of the Leased Premises. Any significant changes to the Leased Premises shall require the express preapproval of Tenant, and Tenant's preapproval shall not be unreasonably withheld.

10.2 Subtenant may make such Optional Subtenant Capital Improvements at its expense, and in addition to the sums set forth in Sections 3.2 and 3.3, as may be necessary with the express written preapproval of Tenant, which consent will not be unreasonably withheld. Optional Subtenant Capital Improvements made pursuant to this Section shall be the property of Subtenant. Upon termination of the Lease, Subtenant may choose to remove said Optional Subtenant Capital Improvements at its own expense as long as it returns the premises to the condition it was found, or may choose to instead have Tenant purchase said Optional Subtenant Capital Improvements from Subtenant for Net Book Value.

10.3 Facility and Site Repairs. Tenant hereby covenants and agrees to maintain the Leased Premises structures in good condition, including the primary structure and enclosure systems; mechanical, electrical, and plumbing systems; conveying systems; life-safety systems; ice making systems; the Parking Lot in Exhibit A; and other site improvements.

10.4 Tenant's Alterations. Tenant also agrees to make, at its expense, such alterations and modifications to the Leased Premises as may be required by building, OSHA, NFPA, ADA, or other applicable state and federal regulations or local codes unless such alterations/modifications are necessitated by actions or inactions of Subtenant. Tenant shall be allowed to make any other Capital Improvements it deems appropriate.

11. Tenant to Have Access. The Tenant and its agents shall have free access to the Leased Premises for examining the same during the term of this Lease.

12. Use of Leased Premises by Tenant. Upon reasonable notice and request from Tenant's Director of Administration or designee to Subtenant, and at no cost to Tenant, Tenant may have use of the Leased Premises from time to time for Tenant events, functions and other Tenant related purposes, as long as reasonably determined by Subtenant to have a minimal effect on Leased Premises operations.

13. Enterprise Fund. Tenant shall establish an Enterprise Fund to track all expenditures of facilities and operations that make up the Leased Premises.

14. Public Works Projects. Subtenant agrees to follow Wisconsin law as it applies to Tenant regarding competitive bidding when the estimated cost of a Public Works project or Public Construction exceeds $25,000. Public contracts must follow the bidding requirements of Wis. Stat. Sec. 66.0901, and all relevant statutes, laws, rules and regulations, including Wis. Stat. Sec. 59.52(29), as they apply to counties, and as they exist now and may be modified in the future, shall be followed whenever a Public Works project or Public Construction in excess of $25,000 regarding the Leased Premises is pursued.

15. Indemnity-Liability Insurance.

15.1 Indemnity. After the Commencement Date, Subtenant shall indemnify, defend, and hold harmless Tenant against and from any and all liabilities, fines, suits, claims, demands, and actions, and costs and reasonable expenses of any kind or nature or by anyone whomsoever, that in any way relate to:

(a) any default in observing; any violation of; and/or non-performance of any term, covenant, or condition of this Lease on the part of Subtenant that is to be observed and/or performed hereunder;

(b) any bodily injury or property damage relating to Subtenant's use and occupancy of the Leased Premises, or to any use or occupancy which Subtenant may permit or suffer to be made of the Leased Premises; and/or

(c) any injury to person or persons, including death resulting at any time therefrom, occurring in or about the Leased Premises as a result of Subtenant's negligence or default under the terms and conditions of this Lease.

The Parties agree and Tenant specifically reserves and does not waive its rights to assert any and all affirmative defenses and limitations of liability as specifically set forth in Wis. Statute Chapter 893 and/or other related statutes.

15.2 Liability Insurance. During the term of this Lease, Subtenant, at its sole expense and for the mutual benefit of Tenant and Subtenant, shall procure and maintain comprehensive commercial Liability insurance, including property damage, issued by a company licensed to do business in Wisconsin, insuring Tenant and Subtenant, as named insureds, against liability for injury to persons or property occurring in or about the Leased Premises or arising out of its ownership, maintenance, use or occupancy. The insurance shall meet the following requirements:

(a) Worker's Compensation Insurance. Subtenant shall obtain and maintain throughout the duration of this Lease statutory Worker's Compensation insurance for all of its employees employed at the site or while working on this project. In case any work is sublet, Tenant shall require the subcontractor similarly to provide statutory Workers' Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Subtenant.

(b) Commercial Liability, Professional Liability and Property Damage Insurance. Subtenant shall secure and maintain in -force throughout the duration of this Lease such Commercial Liability and Property Damage Insurance (as shall protect him/her, the Tenant, and any subcontractor performing work covered by this Lease) from claims for damages for personal injuries including accidental death, as well as from claims for property damage, which may arise from operations under this Lease , whether such operations be by Subtenant or by any subcontractor or by anyone directly or indirectly employed by either of them; and the amount of such insurance shall be as follows:

- Comprehensive Commercial Liability $1,000,000 per occurrence and in aggregate for bodily injury and Property Damage.
- Automobile Liability $1,000,000 per occurrence and in aggregate for bodily injury and property damage.
- Excess Liability Coverage, $5,000,000 over the Commercial Liability and
- Automobile Liability Coverages.

(c) Proof of Insurance. Subtenant shall furnish the Tenant with a Certificate of Insurance countersigned by a Wisconsin Resident Agent or Authorized Representative of the insurer indicating that Subtenant meets the insurance requirements identified above. The Certificates of Insurance shall include a provision prohibiting cancellation of said policies except upon 30 days prior written notice to the Tenant and specify the name "Resch Center." The Certificate of Insurance shall be delivered to Tenant, with a copy of the Certificate of Insurance to be delivered to the Tenant's Risk Manager for approval prior to the execution of this Lease. Upon renewal of the required insurance and annually thereafter, the Tenant shall receive a new Certificate of Insurance for three years after completion of the project and/or expiration of the Lease, whichever occurs later. The Certificates shall describe the Lease by name in the "Description of Operations" section of the form.

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16. Damage by Fire or Other Casualty.

16.1 Substantial Casualty. If the Leased Premises are materially damaged or rendered materially untenantable by fire or other casualty (whether occurring in the Leased Premises alone or in the building of which they form a part), that their repair, restoration, or rebuilding would require more than sixty (60) days from date of loss, Subtenant may, by giving written notice to Tenant within forty-five (45) days after the fire or other casualty occurs, terminate this Lease upon a date specified in the notice. This date shall not be less than five (5) nor more than ten (10) days after the notice is given.

In such event, the term of this Lease shall expire in the same manner as if the date specified in the notice were the date herein originally specified for the expiration of the term. The rent shall abate from the date of the fire or other casualty until the repairs, restoration, and rebuilding is completed. If this Lease is terminated pursuant to notice as provided above, Subtenant shall pay no rent for any period after the date of the fire or other casualty. The rent shall be apportioned as of that date, and Subtenant shall be repaid all rent paid for any subsequent period.

16.2 Casualty Insurance. Tenant shall insure the Center against damage and destruction by fire, including extended coverage, and other perils to the same extent that a lending institution holding a mortgage on the property would require, to the full replacement cost of the building, and shall maintain such insurance during the term of this Lease.

To the extent that any part of the damage and/or destruction, as described within Sections 16.1 and 16.2 of this Lease, is caused either directly or indirectly by the negligent act(s), or breach(es) of this Lease by Subtenant, its assigns, employees and/or agents, Tenant shall maintain the right to recover from Subtenant all losses associated therewith whether through a policy of insurance procured by Subtenant, subrogation procedures, or otherwise.

16.3 Contents Insurance. During the term of this Lease, Subtenant shall procure and maintain at its own expense personal property insurance as may be required by Tenant and/or any mortgage company to protect itself against losses by fire, theft, or other causes on an all-risk basis. On the Commencement Date, Subtenant shall furnish to Tenant the insurance policy together with proof of payment of the premium therefor, and shall upon the expiration of the term of any such policy similarly furnish to Tenant each renewal policy together with proof of payment of the premium therefor. The policy and each renewal thereof shall provide that it may not be canceled by the insurer without thirty (30) days' prior written notice to the Tenant and any named insured.

16.4 Business Interruption Insurance. Subtenant, at its sole expense shall procure and maintain business interruption insurance to protect the financial interests of Subtenant and Tenant against loss of earning and income from the Center which are due to the direct result of fire or other insured peril.

17. Termination. Should either party materially fail to comply with any of the terms of this Agreement, the non-defaulting party may cancel this Agreement upon 90 days' written notice to the other party of the alleged breach and failure by such other party to cure such breach within such 90 day period; provided, however, that in the event the default is not curable within such 90 day period, but the defaulting party has commenced within the 90 day period efforts to cure the default, the time to cure the default shall be extended for a reasonable period of time in order to allow such cure. In the event the party alleged to be in material default of this Agreement disputes the existence of such material default, this Agreement shall continue in full force until a court of competent jurisdiction finds such party to be in material default, after written notice and expiration of the applicable cure period, and all time periods for appeal of such finding have expired.

18. Rights and Obligations Following Termination. In addition to the rights and remedies otherwise available to the Parties at law or in equity, the following provisions will apply following termination of the Lease and/or the expiration of the Operating Term.

- Subtenant shall quit, vacate, surrender, and deliver to Tenant peacefully and promptly the Leased Premises, and all other pertinent and necessary documents and records pertaining to the Leased Premises and the operation thereof;

- Subtenant shall do all acts and execute and deliver all documents reasonably requested by Tenant and otherwise reasonably cooperate with Tenant and any successor Subtenant to insure or facilitate orderly continuation of the business of the Leased Premises. Subtenant shall take such actions at Tenant's cost;

- The rights and liabilities of the Parties having accrued prior to termination shall continue; and

- All provisions hereof identified herein as surviving termination of this Agreement shall survive.

19. Risk Loss Control Program. Tenant's Risk Manager and Subtenant shall develop and implement a risk loss control program for any and all risk hazards related to the Leased Premises and Subtenant agrees to comply with all reasonable requests made for the purpose of minimizing the Subtenant's and Tenant's risk loss potential, including requiring sufficient insurance coverage from users of the Leased Premises, which limits of required coverage shall not exceed industry standards.

20. Assignment and Subletting. Subtenant may, only after receiving the written preapproval of the County Executive, assign this Lease to an Operating Tenant, provided that all of the terms and conditions of this agreement are complied with.

21. Notices. All notices and other communication under this Lease shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the person to whom such notice is to be given, or on the date of the receipt of the certified or registered letter by the party to whom such notice is addressed, if mailing is by registered or certified mail, postage prepaid, U.S. Mail. All such notices shall be addressed as follows:

To Tenant: County Executive
Brown County, Wisconsin
Address: Northern Building
P.O. Box 23600
305 East Walnut Street
Green Bay, Wisconsin 54305-3600

To Subtenant: PMI Entertainment Group, Inc.
1901 South Oneida Street
P.O. Box 10567
Green Bay, Wisconsin 54307-0567

Any Party may change its address for purposes of this paragraph by giving the other Party written notice with a new address in the manner set forth above.

22. Default. Each of the following events shall constitute a default of this Lease by Subtenant unless said default is cured within Ten (10) days of its receipt of Tenant's written notice demanding the same:

22.1 If either Party shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall make an Assignment for the Benefit of Creditors.

22.2 If an involuntary proceeding under any bankruptcy law or insolvency act shall be instituted against either Party.

22.3 Failure of either Party to comply with any material provision of this Lease.

23. Entire Agreement. This Lease is the entire agreement between the Parties with respect to the subject matter hereof and no alteration, modification or interpretation hereof shall be binding unless in writing and signed by the Parties hereto.

24. Severability. If any provision of this Lease or its application to any party or circumstances will be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Lease or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, will not be affected thereby, and each provision hereof will be valid and will be enforced to the fullest extent permitted by law.

25. Computation of Time. The time in which any act under this Lease is to be done shall be computed by excluding the first day and including the last day. If the last day of any time period stated herein shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday. Unless preceded by the word "business", the word "day" shall mean a calendar day. The phrase "business day" or "business days" shall mean those days on which the banks located in Green Bay, Wisconsin are open for business.

26. Applicable Law. This Lease shall be construed and enforced in accordance with the laws of the State of Wisconsin.

27. Waiver. The failure of either party to insist upon a strict performance of any of the terms or provisions of this Lease or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

28. Force Majeure. At Subtenant's option, Subtenant's performance under this Lease shall be suspended to the extent Subtenant shall be delayed or hindered in or prevented from the performance of any act required by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, terrorism, insurrection, war or other reason of a like nature not the fault of Subtenant.

29. Headings. Headings of Sections are inserted only for convenience and are in no way to be construed as a limitation on the scope of the particular Sections to which they refer.

30. Third Party Beneficiaries. This Lease shall not inure to the benefit of any third parties.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have signed this

Attest:

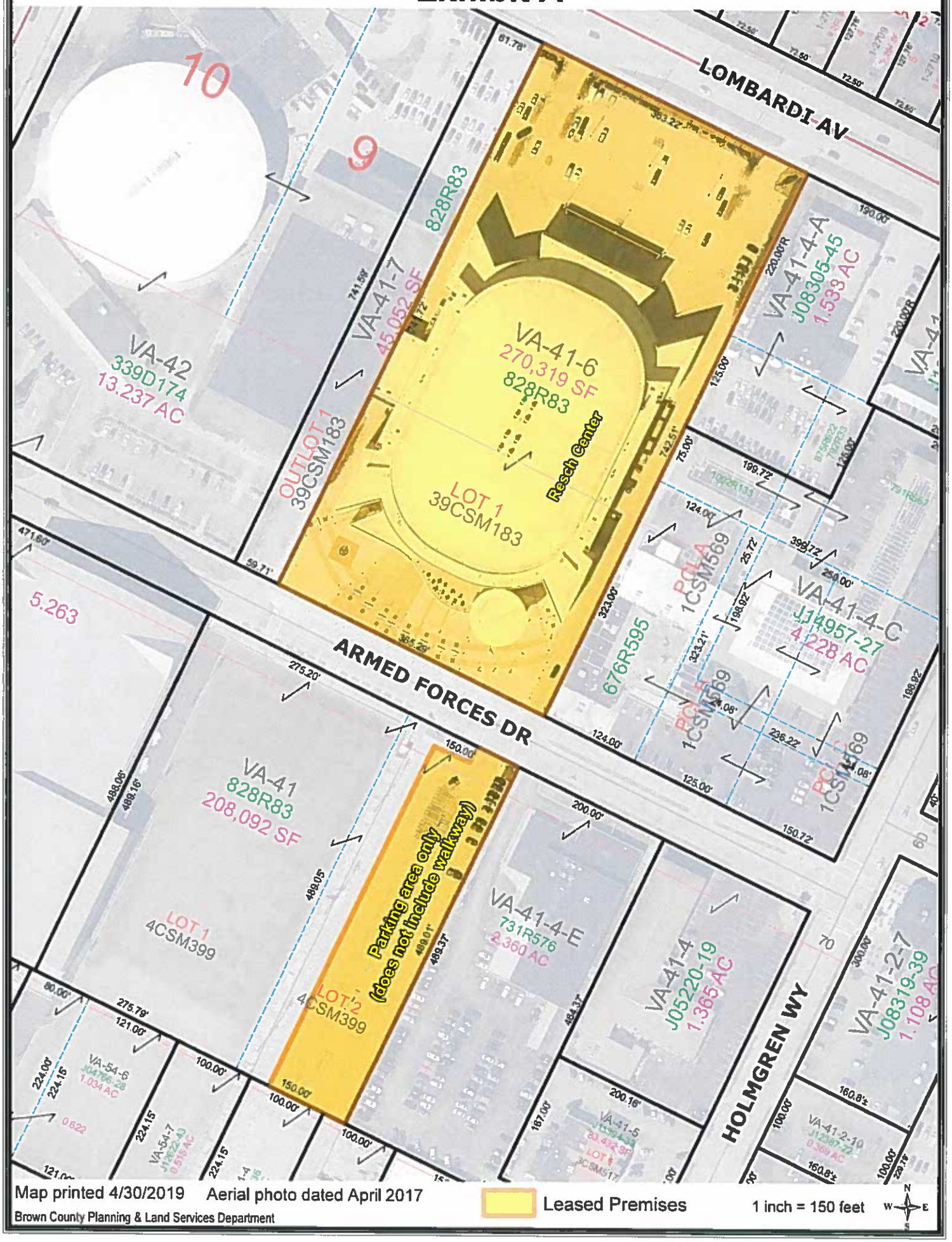
Subtenant: PMI Entertainment Group, Inc.

By: _____

Tenant: Brown County, Wisconsin

By: _____

Exhibit A



Map printed 4/30/2019 Aerial photo dated April 2017

Brown County Planning & Land Services Department

Leased Premises

1 inch = 150 feet

EXPO CENTER MANAGEMENT AGREEMENT

THIS EXPO CENTER MANAGEMENT AGREEMENT (**"Agreement"**) is entered into this _____ day of _____, 2019, by and between BROWN COUNTY, WISCONSIN (**"County"**) and PMI VENUE MANAGEMENT, LLC, a Wisconsin non-stock corporation (**"Manager"**) (collectively, the **"Parties).**

RECITALS

A. County intends to lease the Expo Center (the **"Expo Center"**) to be constructed adjacent to the existing Resch Center in Ashwaubenon, Wisconsin, from the Community Development Authority of the Village of Ashwaubenon, Wisconsin (the **"CDA"**).

B. County has determined that significant public benefits will ensue to the citizens of County when the Expo Center is continuously operated at a high standard of quality and amenities, in order to maximize its long-term utilization.

C. County has further determined that the Expo Center be made available to all persons and groups on such basis, without any preference for business entities or associations, and that County's objectives may best be achieved through a management agreement with a private company with expertise in such matters.

D. Through its operation of the Resch Center, Arena, Shopko Hall and the Packers Hall of Fame, Manager possesses experience and knowledge as to local conditions and the resources to efficiently operate facilities of a character and location comparable to the Expo Center.

E. County desires to have Manager manage and operate the Expo Center, and Manager is willing to perform such services for the account of County on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS

1.1 Defined Terms.

In addition to the terms defined elsewhere in this Agreement, the following terms shall have the meanings assigned to them herein, unless the context otherwise indicates:

"Annual Plan" shall have the meaning set forth in Section 7.1.

"Approving Tax Opinion" shall mean the opinion of tax counsel experienced in federal income tax matters related to state and local bonds, within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended (the **"Code"),** and qualified bonds, within the meaning of Section 141 of the Code, to the effect that a proposed action or amendment will not impair any

exclusion of the interest on any outstanding issues of obligations that were issued to finance the Expo Center.

"**Capital Account**" shall have the meaning set forth in Section 6.3.

"**Capital Expenses**" shall mean all expenditures for Capital Improvements. Manager shall not "mark-up" or otherwise add any profit or administrative charge to any Capital Expense.

"**Capital Improvements**" shall mean one or more items or project(s): i) the cost of each of which totals $25,000 or more; ii) that becomes part of the Expo Center; and iii) the cost of which is required or allowed to be capitalized under GAAP. Examples of Capital Improvements include but are not limited to, equipment, furniture, fixtures, roof, HVAC components, carpet, windows, wallpaper, interior and exterior walls, and removable rental exhibit space floor coverings, including the cost of repair or replacement thereof.

"**County Administration**" shall mean the Brown County Director of Administration or designee, acting in concert with the County Executive or designee.

"**Effective Date**" shall mean the date on which construction of the Expo Center has been completed, on June 1 of the year a certificate of occupancy for the Expo Center has been issued, and the Expo Center has been fully furnished and delivered to PMI Venue Management, LLC for operation.

"**Expo Center**" shall have the meaning set forth in Recital A hereto.

"**Expo Center Employees**" shall have the meaning set forth in Section 5.3(a) but shall not include any officer or member of Manager or any person who, directly or indirectly, otherwise owns an interest in a Manager or any affiliate thereof.

"**Financial Statement**" shall have the meaning set forth in Section 7.8.

"**Fiscal Year**" shall mean the twelve (12) month period ending May 31 of each year during the Operating Term of this Agreement. The first Fiscal Year shall be the period commencing on the Effective Date and ending on the next following May 31. A partial Fiscal Year after the end of the last full Fiscal Year and ending with the expiration or earlier termination of the Operating Term shall constitute a Fiscal Year.

"**GAAP**" shall mean Generally Accepted Accounting Principles based on the accrual method of accounting.

"**Management Fee**" shall the mean the fee described in Section 3.1.

"**Manager's Other Businesses**" shall have the meaning set forth in Section 5.1.

"**Net Operating Revenues**" shall mean for any period the excess, if any, of Operating Revenues over Operating Expenses, as determined using GAAP.

"**Operating Account**" shall have the meaning set forth in Section 6.1.

"**Operating Expenses**" shall mean all expenses required to be incurred in order to operate and manage the Expo Center to the extent the same are authorized under the applicable County Administration approved Annual Plan, including, but not limited to the following: (a) Salary Costs of Expo Center Employees and Shared Employees; (b) operating supplies; (c) utility and telephone charges; (d) repair and maintenance costs; (e) equipment rental costs; (f) insurance costs related to Expo Center operations, including insurance premiums paid by Manager on behalf of County but not performance or fidelity bonds; (g) security costs; (h) cleaning expenses; (i) cost of merchandise sales; (j) catering expenses; (k) cost of box office income; (1) cost of reimbursable event expenses; (m) the cost of obtaining an audited financial statement of Manager; (n) pre- and post-opening marketing, promotional and advertising expenses; (o) sales commissions, but only if approved by County pursuant to Sections 7.3 or 7.4 of this Agreement; and (p) any other expenses incurred in the operation of the Expo Center that would be considered operating expenses under GAAP. Operating Expenses shall not include debt service on any borrowing to finance the acquisition, construction, installation, and equipping of the Expo Center. Manager shall not "mark-up" or otherwise add any profit or administrative charge to any Operating Expense.

"**Operating Revenues**" shall mean the gross revenues and revenue commissions generated from the operation of the Expo Center including, but not limited to, the following: (a) Expo Center space licenses and rentals; (b) merchandise sales revenues; (c) on-site Expo Center advertising revenues; (d) equipment rental fees; (e) utility income; (f) box office income; (g) interest income, if any, from the Operating Account; (h) reimbursable event expenses; (i) all catering revenues; (j) all other Expo Center miscellaneous revenue; and (k) any and all revenues generated by or associated with Expo Center marquee advertising.

"**Operating Term**" shall have the meaning set forth in Section 2.4.

"**Salary Costs**" shall mean the gross amount payable by an employer to secure the services of an employee including, without limitation, employees' accrued and vested wages, salaries, employee medical/disability/life insurance and other health benefits incurred by Manager, vacation pay and sick leave, severance costs, 401(k), profit sharing, pension or similar retirement benefits or other accrued and vested fringe benefits, business travel expenses, and other compensation of whatever nature, including any applicable federal, state and local taxes. For the avoidance of doubt, Salary Costs may also include bonuses for employees (subject to Section 5.3(d) of this Agreement) or commissions for sales staff (but only if pre-approved by County pursuant to Sections 7.3 or 7.4 of this Agreement). Manager shall not "mark-up" or otherwise add any profit or administrative charge to any Salary Costs.

"**Shared Employees**" shall have the meaning ascribed thereto by Section 5.3(f) and may include officers, managers or members of Manager.

"**Standard**" shall mean the first-class standard of operation, maintenance and repair of the Expo Center in accordance with generally accepted industry standards.

ARTICLE II
APPOINTMENT OF MANAGER AND OPERATING TERM

2.1 **Appointment of Manager; Powers and Duties Generally.** Subject to Manager's covenants set forth in § 5.1, County hereby appoints, authorizes, and engages Manager, and

Manager hereby accepts appointment on the terms and conditions hereinafter provided as agent to: (a) manage, operate, control, license, and rent the Expo Center on County's behalf during the Operating Term; (b) collect all fees, pay all expenses, and pay or cause to be paid all Capital Expenses with respect to the Expo Center in accordance with the Annual Plan; (c) render Financial Statements to County as set forth in this Agreement; (d) remit to County on an annual basis Net Operating Revenues for the immediately preceding annual period, less permitted reserves as authorized by § 6.2 of this Agreement; (e) execute, renew and cancel rental and license agreements for the Expo Center or any part thereof at rates and on such terms as may be approved by County in accordance with the Annual Plan; and (f) sue in Small Claims Court, as provided for in Wis. Stats. Ch. 799 (as it exists now and as it may be amended in the future), to recover for rent and for loss of or damage to any part of the Expo Center and, when expedient, compromise, settle and release any such legal proceedings or lawsuits, provided, however, that Manager shall not settle any lawsuit or other claim relating to the Expo Center without the prior written consent of County, and prior to suing in a forum other than Small Claims Court, Manager shall obtain the written preapproval of County; Manager covenants and agrees to exercise the full concession rights granted hereunder at all such events in such manner and with such number of personnel as are necessary to provide adequate supplies and other products described herein to patrons of the Expo Center at all times consistent with the Standard. Expo Center operations shall be under the exclusive supervision and control of Manager subject to the terms of this Agreement and the County Administration approved Annual Plan.

2.2 Restriction on Expo Center Licenses and Rentals. Manager acknowledges that the Expo Center will be financed with tax-exempt bonds issued by the CDA, and that the Manager accordingly must not permit any uses of the Expo Center that result in private business use of the Expo Center, except as expressly approved by County. Except as otherwise additionally limited hereby, Manager shall have the discretion to prescribe the terms of the rental or licensing of space at the Expo Center based on generally applicable and uniformly applied rates or that are negotiated with the user in arms-length bargaining, in either case, that is consistent with the applicable County Administration approved Annual Plan, provided, in addition, that any negotiated agreement for space licenses or rentals: (a) shall not be for a term exceeding 100 days, including all renewal options, if the rates or charges are based on generally applicable and uniformly applied rates, as set forth in the applicable County Administration approved Annual Plan; and (b) shall not be for a term exceeding 50 days, including all renewal options, if the rates or charges are negotiated with the user in arms-length bargaining in lieu of generally applicable and uniformly applied rates. Notwithstanding the foregoing, Manager shall not be prohibited by this Section 2.2 from entering into a lease or licensing of space at the Expo Center if Manager and County have received an Approving Tax Opinion.

2.3 Relationship of the Parties. Neither this Agreement nor any agreements, instruments, documents or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making Manager a partner or joint venturer with County or as creating any similar relationship or entity, and County and Manager agree that they will not make any contrary assertion, contention, claim or counterclaim in any action, suit or other legal proceeding.

2.4 Operating Term. Subject to Article IV, the initial Operating Term of this Agreement shall be for a period commencing on the Effective Date and terminating on May 31, 2026. Should the Lease Agreement regarding the Resch Center, of which County and Manager are also parties to, terminate, then this Management Agreement shall also terminate on the same date.

The initial Operating Term may be renewed or extended as provided in Section 2.5. Notwithstanding the foregoing, this Agreement shall be binding on the date it is signed by County and Manager and provisions of this Agreement shall survive the Operating Term to the extent specifically set forth in this Agreement.

2.5 Option to Extend Operating Term. This Agreement shall be renewable as provided for below for up to two additional five-year terms ("renewal terms"), at the option of the Parties and upon such terms and conditions as they may agree to. Manager shall notify the County, in the manner set forth in Section 10.6 of this Agreement, of its intent to exercise or not to exercise its option to renew at least 18 months prior to expiration of the then current term. If Manager notifies County of its intent to exercise its option to renew as described above, then Manager and County shall meet to negotiate the terms and conditions of a potential Agreement renewal. In the event that Manager and County cannot reach an agreement on the terms and conditions of a potential Agreement renewal at least 12 months prior to expiration of the then current term, Manager shall be deemed to have notified County that it has elected not to exercise its option to renew.

ARTICLE III
COMPENSATION OF MANAGER

3.1 Expo Center Management Fee. Commencing on the Effective Date, County shall pay to Manager a Management Fee as specified in the relevant County Administration approved Annual Plan, for performing its services under this Agreement in managing the Expo Center; provided that such fee will not be based in whole or in part on net profits of the operation of the Expo Center, and will otherwise be in compliance with Internal Revenue Service Rev. Proc. 2017-13. If the Parties are unable to agree on the initial Management Fee in the initial Annual Plan, then either Party shall have the right to terminate this Agreement upon 90 days written notice to the other Party. Manager may also be entitled to a portion of Naming Rights (see Exhibit A, attached).

3.2 Payment of Fee. The Management Fees shall be due and payable prior to the end of the Manager's Fiscal Year in the year in which the Management Fee is owed, and may be remitted by Manager directly to Manager from the Operating Account.

ARTICLE IV
TERMINATION

4.1 Termination. Should either party materially fail to comply with any of the terms of this Agreement, the non-defaulting party may cancel this Agreement upon 90 days' written notice to the other party of the alleged breach and failure by such other party to cure such breach within such 90 day period; provided, however, that in the event the default is not curable within such 90 day period, but the defaulting party has commenced within the 90 day period efforts to cure the default, the time to cure the default shall be extended for a reasonable period of time in order to allow such cure. In the event the party alleged to be in material default of this Agreement disputes the existence of such material default, this Agreement shall continue in full force until a court of competent jurisdiction finds such party to be in material default, after written notice and expiration of the applicable cure period, and all time periods for appeal of such finding have expired.

4.2 **Rights and Obligations Following Termination.** In addition to the rights and remedies otherwise available to the Parties at law or in equity, the following provisions will apply following termination pursuant to this Article or the expiration of the Operating Term.

(a) Manager shall quit, vacate, surrender, and deliver to County peacefully and promptly the Expo Center, together with all books, records, accounts, contracts, keys, all cash in the Operating Account, less any fees due Manager, and in the Capital Account, and all other pertinent and necessary documents and records pertaining to the Expo Center and the operation thereof. After termination of this Agreement, County shall, without right of offset against Manager, timely pay all unpaid Operating Expenses incurred by Manager prior to the date of such termination, including without limitation, pro-rated Salary Costs;

(b) Manager shall do all acts and execute and deliver all documents reasonably requested by County and otherwise reasonably cooperate with County and any successor manager to insure or facilitate orderly continuation of the business of the Expo Center. Manager shall take such actions at County's cost, in which case the costs of such action shall be an Operating Expense;

(c) The rights and liabilities of the Parties having accrued prior to termination shall continue; and

(d) All provisions hereof identified herein as surviving termination of this Agreement shall survive.

ARTICLE V
SERVICES OF MANAGER

5.1 **Manager's General Covenants.**

(a) Manager shall use commercially reasonable efforts to manage and operate the Expo Center, its businesses, services, and sales, in accordance with industry standards for first class trade, exhibit, and event centers of similar size and quality.

(b) Manager acknowledges that a conflict of interest could arise between Manager's duties hereunder with respect to the Expo Center and the interests of Manager in the Resch Center and any other businesses owned or operated (directly or through one or more affiliates) by Manager (**"Manager's Other Businesses"**). Manager covenants to use its best efforts to cause the Expo Center to be operated to fulfill County's objectives. Without limiting the generality of the foregoing, Manager shall never reduce or discount fees or charges for the license or rental of the Expo Center, or for goods or services provided at the Expo Center, which comprise part of Operating Revenues, from the fees or charges authorized to be charged in such circumstances pursuant to the applicable County Administration approved Annual Plan, in consideration for the use, or promise to use, goods or services provided by Manager's Other Businesses.

(c) Manager shall maintain a separate set of books and records and prepare financial statements reflecting its activities hereunder that are sufficient to enable an auditor to audit the same on the same basis as if such activities were conducted by a separate accounting unit or single purpose entity. Manager shall provide copies of said books, records, and financial statements to County upon written request by County. County shall have the right to review any

and all financial information that affects the income or expenses of the Expo Center, including agreements between Manager (including agreements entered into by or on behalf of Manager, Manager's Affiliates, and/or Manager's other entities such as PMI Entertainment Group, Inc.) and third parties, and Manager shall make any such financial information and agreements available to County for in-person review.

(d) Manager acknowledges that the Expo Center will be financed with tax-exempt bonds issued by the CDA. Accordingly, it is the intent of Manager and County that this Agreement be interpreted in a manner that meets an exception from "private business use" under Section 141 of the Internal Revenue Code, and specifically meets a safe harbor from private business use under Internal Revenue Service Rev. Proc. 2017-13. Manager agrees that it is not entitled to and will not take any tax position that is inconsistent with being a service provider to County with respect to the property leased by County that is managed or otherwise used under this Agreement. Manager agrees not to claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment as rent with respect to the property provided by the Institute that is managed or otherwise used under this Agreement. Manager specifically acknowledges and agrees that this Agreement is not a lease, and provides for no rights of any kind to Manager as a lessee. Manager agrees to charge itself appropriate rent for its offices in the Center.

5.2 Policies and Practices. Manager shall adopt and implement administrative, accounting, budgeting, marketing, personnel, and operational policies and practices consistent with industry standards for trade, exhibit, and event centers of similar size and quality.

5.3 Personnel.

(a) Employment. Subject to the terms of this Agreement, Manager shall select, employ, promote, terminate where appropriate, supervise, direct, train, and assign the duties of all personnel which Manager reasonably determines to be necessary or appropriate for the operation of the Expo Center (collectively, the "**Expo Center Employees**"). All Expo Center Employees shall be employed by Manager. County may at any time consult or communicate with Manager regarding any of the Expo Center Employees, but County shall not give orders to or otherwise interfere in the day-to-day activities of Expo Center Employees, including for this purpose Shared Employees.

(b) Selection. Manager agrees to use reasonable and prudent judgment in the training and supervision of Expo Center Employees to ensure that they are courteous and efficient, and do not use improper language or act in a loud or boisterous manner while performing duties at the Expo Center. Manager agrees that it will not discriminate against any Expo Center Employee or applicant for employment for work under this Agreement because of race, religion, color, sex, disability, national origin, ancestry, physical handicap, age or for any other prohibited reason.

(c) Appearance and Training. Manager shall ensure that non-management Expo Center Employees performing the duties at the Expo Center shall be neatly attired in clean, commercially attractive uniforms. Manager shall train all such employees that they are aware of the high standards for cleanliness, courtesy and service required.

(d) Compensation. Manager shall set the salaries and fringe benefits of all Expo Center Employees consistent with industry standards and the County Administration approved

Annual Plan. Cost-of-living increases shall be presented in the Annual Plan proposed for County Administration approval. Unless otherwise provided in the County Administration approved Annual Plan, no bonuses or merit raises shall be given without the approval of County.

(e) Salary Costs for Full Time Expo Center Employees. Although all Expo Center Employees shall be employed by Manager, County shall be responsible for all Salary Costs of Expo Center Employees which shall be paid out of the Operating Fund.

(f) Salary Costs of Shared Employees. In order to provide the most cost effective services, the Parties specifically contemplate that Manager may provide certain of the services under this Agreement through employees and agents of Manager's affiliated Businesses (**"Shared Employees"**). To the extent Manager incurs Salary Costs of its Shared Employees that are allocable to operation of the Expo Center, Manager shall not "mark-up" or otherwise add any profit or administrative charge to such Salary Costs, and such Salary Costs shall be deemed to be Operating Expenses and shall be remitted to Manager from the Operating Account the same as any other Operating Expense. Salary Costs of a Shared Employee shall be deemed to have been fairly allocable to Expo Center operations if the proportion of the Shared Employee's aggregate Salary Costs for the period in question so allocated is in the same the proportion of the amount of time the Shared Employee exclusively devoted to operation of the Expo Center in relation to the total amount of time worked for the period in question, or if allocated in another manner as approved in the County Administration approved Annual Plan.

(g) Recordkeeping. The books and records required to be maintained by Manager pursuant to Section 7.7 hereof shall be sufficient to establish the amount of time that any Expo Center Employee spends providing services to Manager's Other Businesses, and the amount of time any Shared Employee expends providing services for the Expo Center, in each case as a percentage of their periodic work schedules.

5.4 Maintenance.

(a) Expo Center. Manager shall maintain the Expo Center in good condition and repair, and shall maintain, repair, and replace when necessary furniture, fixtures and equipment for the Expo Center. Subject to the limitation of Section 6.3, if applicable, Manager may withdraw funds from the Capital Account to pay for Capital Expenses.

5.5 Marketing. Marketing of the Expo Center shall be the responsibility of Manager.

5.6 Compliance with Government Rules and Regulations. Manager shall operate the Expo Center in compliance with all applicable federal, state and local laws and insure that no activity or condition occurs on or about the Expo Center in violation of any laws, provided, however, that Manager shall have no liability nor be subject to any allegation of default with respect to non-compliance by the Expo Center with any applicable federal, state and local laws regarding the condition or use of the Expo Center and the surrounding property, including without limitation, the Americans with Disabilities Act, zoning regulations and hazardous waste laws.

5.7 Limitation Upon Obligations. In the event that the performance of any of Manager's duties requiring expenditure of County's funds shall be impeded by reason of unavailability of such funds, then, Manager's performance of such obligations shall be excused to the extent so impeded and until such funds become available. Manager shall be under no obligation

to provide such funds from any source other than amounts then held in the Operating Account or the Capital Account. Manager's obligations also shall be excused to the extent performance would be contrary to express written instructions of County. County shall indemnify, defend, and hold Manager harmless from and against any and all liabilities, claims, suits, fines, penalties, damages, judgments, fees, costs and expenses (including, but not limited to reasonable attorneys' fees and disbursements) related to the performance of any of Manager's duties requiring expenditure of County's funds, if and when such funds are not available to Manager.

5.8 **Contracts.** (a) In General. Manager is hereby authorized, without County's prior approval, to enter into contracts, in its own name or as County's agent, with vendors or service providers of its choice, provided, in addition, that: (i) the contract in question does not have a term exceeding the Operating Term; (ii) the aggregate annual Operating Expense attributable to the contract in question does not exceed $50,000; (iii) the contract in question does not provide for compensation based on net profits of the Expo Center, (iv) the contract in question does not result in private business use of the Expo Center under Section 141 of the Internal Revenue Code; and (iv) the contract in question is not inconsistent with the applicable County Administration preapproved Annual Plan. Manager shall notify County of the execution of such contracts on an annual basis.

(b) Special Indemnity. In the event Manager, in its own name or as agent of County, enters into a contract for or related to the Expo Center, County shall indemnify, defend, and hold Manager harmless from and against any and all liabilities, claims, suits, fines, penalties, damages, judgments, fees, costs and expenses (including, but not limited to reasonable attorneys' fees and disbursements) related to the payment of, or obligations related to such contract. This right of indemnification shall survive termination of this Agreement.

5.9 **Costs of Compliance.** Unless otherwise set forth in this Agreement to the contrary, any costs related to duties imposed on Manager shall, except to the extent incurred as a result of Manager's negligence, willful misconduct or breach of this Agreement, be at County's cost, in which case the costs of such action shall be an Operating Expense and may be paid from the Operating Account.

ARTICLE VI
BANK ACCOUNTS, PAYMENTS AND DISTRIBUTIONS

6.1 **Bank Accounts.** Manager shall open, at one or more banks within the County selected by Manager, a bank account for the benefit of County, which will serve as an operating account for the Expo Center (the "**Operating Account**"), and (b) a bank account for the benefit of County, which shall serve as a capital account for the Expo Center (the "**Capital Account**"), as the source of funds for Capital Expenses.

6.2 **Operating Account; Payment to County.** Manager shall deposit all Operating Revenues into the Operating Account. All Operating Revenues, whether or not deposited into such account, shall be solely the property of County. All Operating Expenses shall be borne exclusively by County. Manager shall have authority to execute checks, drafts and other items on the Operating Account to pay the Operating Expenses, including the Management Fee. On or prior to the Effective Date and on June 1 of every year during the Operating Term, County agrees to deposit into the Operating Account an appropriate amount based on needs as identified in the County

Administration approved Annual Plan . In the event the amount held in the Operating Account at the end of any Fiscal Year exceeds the amount reasonably anticipated to be necessary for the operation of the Expo Center for the succeeding Fiscal Year (after taking into account the annual deposit), Manager shall distribute such excess amount to County for deposit into the County's Enterprise Fund not later than upon delivery of the annual Financial Statement for such Fiscal Year. If at any time the Operating Account contains less than the reasonably anticipated Operating Expenses for a period of time not longer than the ensuing 90 days, Manager shall so advise County in writing, accompanied by an (pro-forma) operating budget, that was submitted as part of the County Administration approved Annual Plan or, if the Annual Plan has not yet been adopted, in Manager's proposed budget for the Annual Plan, and County shall cause such amount to be deposited into the Operating Account within 30 business days of receipt of such notice. The intent of this section is that the Operating Account shall, at all times, contain a permitted reserve sufficient to cover Operating Expenses for the next 90 days, without regard to the future receipt of any Operating Revenues. In the event of a deficiency in the Operating Account, Manager may, but shall not be required to, in its sole discretion, advance funds to meet Operating Expenses and such advances shall become immediately due from County.

6.3 **Capital Improvements and Capital Account.** County agrees to provide all necessary funding for Capital Expenses that are reasonably necessary to maintain the Expo Center to the Standard in accordance with the County Administration approved Annual Plan. On June 1 of each calendar year following the Effective Date, County agrees to deposit into the Capital Account an appropriate amount based on needs as identified in the County Administration approved Annual Plan . Manager is authorized to expend funds held in the Capital Account for all Capital Expenses as reasonably necessary to fund Capital Improvements to the Expo Center in accordance with the Standard and with the applicable County Administration approved Annual Plan. To the extent funds are not available in the Capital Account which are reasonably necessary to maintain the Expo Center, Manager shall so notify County in writing and within 30 days of such notification, County shall cause to be deposited into the Capital Account a sufficient amount to fund Capital Improvements in accordance with the Standard and the County Administration approved Annual Plan. In the event that performance of any of Manager's obligations requiring expenditure of County's funds related to the Capital Expenses shall be impeded by reason of unavailability of such funds, then Manager's performance of such obligations shall be excused to the extent so impeded and until such funds become available. Manager shall be under no obligation to provide such funds from any source other than Net Operating Revenue of the Expo Center or other sources of funds provided by County. Manager's obligations shall also be excused to the extent performance would be contrary to the express written instructions of County. In the event County fails to make such money available to Manager, County shall indemnify, defend, and hold Manager harmless from and against any and all liabilities, claims, suits, fines, penalties, damages, judgments, fees, costs and expenses (including, but not limited to reasonable attorneys' fees and disbursements) related to the performance of any of Manager's duties hereunder requiring expenditure of funds for Capital Improvements. In the event of a deficiency in the Capital Account necessary to maintain the Expo Center to the Standard and in accordance with the County Administration approved Annual Plan, Manager may, but shall not be required to, in its sole discretion, advance funds to maintain the Expo Center to the Standard and such advance shall be immediately due and payable from County.

6.4 **Indemnity.** Debts, obligations, and other liabilities incurred by Manager that are part of the County Administration approved Annual Plan or are otherwise authorized hereunder

and are incurred in the performance of its duties under this Agreement shall be deemed to be incurred on behalf of County. County shall indemnify, defend, and hold Manager harmless from and against any and all liabilities, claims, suits, fines, penalties, damages, judgments, fees, costs and expenses related to the payment of, or obligations related to, the Management Fee, other Operating Expenses, and Capital Expenses. Expenses arising from the fraud or negligence of Manager's corporate office senior management personnel in the management, operation, or maintenance of the Expo Center shall not be authorized expenditures and shall not be subject to indemnification from the County.

6.5 **Tax Authority Audits.** If, during the Operating Term or thereafter, any applicable taxing authority assesses additional taxes of any kind are due with respect to the Expo Center, such additional taxes or assessments, together with any interest, penalties, fees, or other amounts assessed related thereto, shall be Operating Expenses, together with all costs, accounting fees, and legal fees incurred by Manager on behalf of the Expo Center in reviewing and, if necessary, challenging or negotiating such determinations. Manager shall be authorized to pay from the Operating Account all such costs, fees, and tax amounts determined to be due but shall otherwise have no liability therefor. This provision shall survive any termination of this Agreement.

ARTICLE VII
BUDGETS AND ACCOUNTING

7.1 **Annual Plan.** Manager shall submit to County, for County's approval as a part of County's budget process, not later than 45 days subsequent to the Effective Date, and at least 60 days prior to the beginning of each Manager's Fiscal Year thereafter, an annual plan for the Expo Center (the "**Annual Plan**"), which shall include for the ensuing Fiscal Year, the following proposed budgets and programs setting forth:

(a) Manager's best estimate of Operating Revenues and Operating Expenses;

(b) Manager's best estimate of Capital Expenses for the Expo Center;

(c) Manager's estimate of catering expenses for the Expo Center;

(d) Manager's estimate of catering revenues for the Expo Center;

(e) a proposed schedule of rental rates for the use of the Expo Center, including fees for concessions, and objective criteria for deviating from such rates and fees;

(f) a summary of the prior year's operations and such other information that Manager deems beneficial to County;

(g) Information Necessary for County Budget and Financial Statements. Manager shall assist County in compiling information necessary for the County to prepare its annual budget and financial statements, to include but not be limited to providing annual revenue and expense projections for January 1 to December 31 of the following year by June 30 of each year, and providing annualized financial account details for January 1 to December 31 by February 28 of each year[; and

(h) the proposed Management Fee for the ensuing Fiscal Year, which shall comply with Section 3.1 hereof.

7.2 **Enterprise Fund.** The County shall establish an Enterprise Fund to track all expenditures of facilities and operations that make up the Veteran's Memorial Complex.

7.3 **Approval of Annual Plan.** County Administration shall notify Manager of its approval or rejection of Manager's proposed Annual Plan. If the proposed Annual Plan is disapproved by County Administration, then Manager and County shall enter into discussions in an attempt to determine mutually satisfactory budgets and programs. Until the Annual Plan is approved by County Administration, the Parties agree that Manager shall operate the Expo Center in accordance with the last County Administration approved Annual Plan. Manager shall operate the Expo Center in substantial accordance with the County Administration approved Annual Plan. During the initial three Fiscal Years, County authorizes Manager to deviate from the Operating Expenses or Capital Expenses as set forth in the County Administration approved Annual Plan, following notice to County and with the prior approval of County Administration if, in the reasonable judgment of Manager and County Administration, such deviation is necessary to achieve County's objectives to operate the Expo Center in accordance with the Standard.

7.4 **Amendments of Annual Plan.** Manager may notify County of a proposed change to the County Administration approved Annual Plan. Any such changes shall require County Administration preapproval. County Administration agrees to consider, in its reasonable judgment, modification of the County Administration approved Annual Plan to enable the Expo Center to be operated in accordance with the Standard.

7.5 **Public Works Projects.** Manager agrees to follow Wisconsin law as it applies to County regarding competitive bidding when the estimated cost of a Public Works project or Public Construction exceeds $25,000. Public contracts must follow the bidding requirements of Wis. Stat. Sec. 66.0901, and all relevant statutes, laws, rules and regulations, including Wis. Stat. Sec. 59.52(29), as they apply to counties, and as they exist now and may be modified in the future, shall be followed whenever a Public Works project or Public Construction in excess of $25,000 regarding the Expo Center is pursued.

7.6 **Obligation to Provide Funding to Operate and Maintain the Expo Center to the Standard.** Notwithstanding anything in this Agreement to the contrary, County agrees to provide funding to Manager, whether through approval and funding of the County Administration approved Annual Plan, or through approval and funding of amendments to the County Administration approved Annual Plan, in an amount sufficient to operate and maintain (whether such maintenance be categorized as Capital Expenses or Operating Expenses) the Expo Center and to the Standard throughout the Operating Term of this Agreement. In the event County fails to providing funding as required in this Section, Manager's sole remedy shall be to terminate this Agreement, whereupon Manager shall have the rights and obligations set forth in Section 4.2 of this Agreement. After such termination, neither Manager nor County shall have any further obligations to the others under this Agreement, except those obligations that expressly survive termination of this Agreement.

7.7 **Books and Records.** Manager shall establish and maintain for the benefit of County complete, current, and accurate records and books of account reflecting all transactions of

the Expo Center and of Manager with respect to the Expo Center that are separate from Manager's Other Businesses. Manager shall make such books and records available during normal business hours and at all other reasonable hours at the Expo Center for inspection, copying, and audit upon reasonable notice by County and its agents. County shall have the right to review any and all financial information that affects the income or expenses of the Expo Center, including agreements between Manager (including agreements entered into by or on behalf of Manager, Manager's Affiliates, and/or Manager's other entities such as PMI Entertainment Group, Inc.) and third parties, and Manager shall make any such financial information and agreements available to County for in-person review.

7.8 Financial Statements.

(a) Annual Statements. Manager shall prepare and deliver to County by the 90th day after the end of each Manager Fiscal Year the following financial statements and reports (the "**Financial Statements**") using GAAP, which are in reasonable detail covering Expo Center operations for such previous Fiscal Year: (i) balance sheet as of the last day of such Fiscal Year, which shall reflect the balances of the Operating Account and Capital Account as of the last day of such Fiscal Year; (ii) cash flow statement; and (iii) profit and loss statement. The profit and loss statement will include a comparison of the budgeted and actual revenues and expenses as well as a comparison to the prior Fiscal Year.

(b) Quarterly Statements. On or before 30 days after the end of each calendar quarter, Manager shall prepare and deliver to County a statement showing Operating Revenue and Operating Expenses for the previous calendar quarter and a Statement of Capital Expenditures.

7.9 Annual Audit. On or prior to 120 days after the end of each Fiscal Year, Manager shall provide, at County's cost and expense, a financial audit with respect to Expo Center operations to be made by an independent certified accounting firm selected by County and designated in the County Administration approved Annual Plan.

7.10 Survival Following End of Term. Manager's obligations under this Article shall continue as to all Fiscal Years occurring within the Operating Term notwithstanding that such performance may be due following the end of such term.

7.11 Extension of Certain Obligations to Subcontractors. Manager shall require all subcontractors that receive $25,000 or more in annual payments for performing services under this Agreement ("**Major Subcontractors**") to comply with all applicable Sections of this Agreement relevant to Major Subcontractors by including said requirements in a written agreement between Manager and such Major Subcontractors. Manager shall cooperate fully and will cause all Major Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to County from time to time whenever requested, in an expeditious manner, any and all such information, materials and data. For purposes of this section, the term "subcontractors" shall not include suppliers of utilities, food, beverages, supplies, equipment, and other goods, and those providing services ancillary thereto, and shall not include suppliers of temporary staffing.

ARTICLE VIII
ASSIGNMENT

8.1 Assignment by Manager.

(a) No assignment by Manager of this Agreement or any duties arising hereunder to any entity shall be allowed without the prior written consent and at the sole discretion of County, and assignment may only be made if the assignee or transferee agrees directly with County to be bound by all of Manager's obligations under this Agreement, and if County has received an Approving Tax Opinion.

8.2 Assignment by County. County's obligations under this Agreement shall not be assigned, and any purported assignment shall be void, without the prior written consent of Manager, which consent shall not be unreasonably withheld.

ARTICLE IX
INSURANCE

County shall either self-insure or self-fund or provide insurance equal or greater the following insurance requirements:

9.1 General Liability Insurance. County shall carry comprehensive general liability insurance, including contractual liability, personal and bodily injury, and property damage insurance, on the Expo Center, with a combined single limit in an amount sufficient to protect County and Manager, but in no event will such insurance be in an amount less than a combined single limit of $3,000,000 per occurrence. County shall provide Manager with a certificate of insurance evidencing such coverage no later than 30 days prior to the commencement of the Operating Term. County's insurance shall contain a clause stating that there shall be no reduction, cancellation, or non-renewal of coverage without giving Manager 30 days prior written notice.

9.2 Property Insurance. County shall procure and keep in effect during the Operating Term fire and extended coverage for the Expo Center and all personal property in the Expo Center, including rent loss or business interruption coverage for periods of no less than 12 months, written on an All-Risk Endorsement and Replacement Cost basis, with the replacement cost value reasonably acceptable to Manager. County shall provide Manager with a certificate of insurance evidencing such coverage no later than 30 days prior to the commencement of the Operating Term.

9.3 Operational Insurance. Manager shall procure and maintain the following insurance:

(a) Workers' Compensation and employer's liability insurance as may be required under applicable laws covering all Expo Center Employees, including Shared Employees, with such deductible limits as determined by Manager;

(b) Such other insurance and/or additional coverage in amounts as Manager in its reasonable judgment deems advisable for its protection against claims, liabilities and losses arising out of or connected with its performance under this Agreement.

(c) A fidelity bond for Manager's employees protecting against theft of County's funds.

9.4 Cost and Expense. Except with respect to insurance premiums that are paid by County other than with funds held in the Operating Account, insurance premiums and any costs or expenses with respect to the insurance described in this Article shall be an Operating Expense of the Expo Center. Any reserves, losses, costs, damages or expenses which are uninsured, or fall within deductible limits or self-insured retentions, shall be treated as a cost of insurance and shall be an Operating Expense.

9.5 Coverage. All insurance described in this Article may be obtained by endorsement or equivalent means under Manager's or County's blanket insurance policies, provided that such blanket policies substantially fulfill the requirements specified herein.

9.6 Policies and Endorsements.

(a) Where permitted, all insurance provided under this Article shall be carried in the name of County; any losses thereunder shall be payable to the County. The party procuring such insurance shall deliver to the other party certificates of insurance with respect to all policies so procured, including existing, additional and renewal policies and, in the case of insurance about to expire, shall deliver certificates of insurance with respect to the renewal policies not less than 10 days prior to the respective dates of expiration.

(b) All policies of insurance provided under this Article shall, to the extent obtainable, have attached thereto an endorsement that such policy shall not be canceled or materially changed without at least 30 days prior notice to County and Manager.

(c) County and Manager agree that with respect to any loss or claim which is covered by insurance then being carried or required to be carried by them under this Agreement, the party suffering such loss or claim and carrying or required to carry such insurance releases the other of and from any and all claims, defense costs and expenses with respect to such loss or claim. County and Manager further agree that each of their insurance policies shall provide for an appropriate waiver of subrogation reflecting this release.

9.7 Indemnification.

(a) Indemnification by County. County shall indemnify, defend, and hold harmless Manager and its affiliates and their respective officers, directors, agents, and employees, from and against any and all claims, liabilities, losses, damages, costs, and expenses of any kind or character, including without limitation court costs, reasonable attorneys' fees, interest, fees, and penalties, arising from or related to the management, operation, or maintenance of the Expo Center, in all cases to the fullest extent permitted by law, except to the extent such liabilities are finally determined by a court of competent jurisdiction to have been the result of the fraud, negligence or willful misconduct of Manager's personnel in the management, operation, or maintenance of the Expo Center.

(b) Indemnification by Manager. Manager shall indemnify and hold harmless County, and it's officers, officials, agents, and employees from and against any and all claims, liabilities, losses, damages, costs, and expenses of any kind or character, including without

limitation reimbursement of court costs, reasonable attorneys' fees, interest, fees, and penalties charged to the Expo Center, to the extent such liabilities are finally determined by a court of competent jurisdiction to have been the result of the fraud, negligence or willful misconduct of Manager's personnel in the management, operation, or maintenance of the Expo Center.

(c) Defense Costs. All costs and expenses, including without limitation reasonable attorneys' fees, of any legal proceeding that is instituted against the Expo Center, Manager, or both related to the operation, management, or maintenance of the Expo Center, including without limitation any employment-related claims of any nature, shall be charged as Operating Expenses or paid directly by County; provided, however, that Manager shall reimburse County on demand to the extent the fraud or negligence of the Manager's corporate office senior management personnel in the management, operation, or maintenance of the Expo Center is established in such proceeding.

(d) Good-faith Judgment. Notwithstanding any other provision of this Agreement, County shall not make any claim against Manager based on any alleged error of judgment if such judgment was made by Manager in good faith or based on any action taken by Manager at the express direction of County.

(e) Survival. This Section shall survive Termination.

ARTICLE X
GENERAL PROVISIONS

10.1 Actions of a Party. Except for any amendment of this Agreement or approval of an Annual Plan pursuant to Article VII hereof, each of the County and the Manager shall designate an individual in the County Administration approved Annual Plan to serve as the authorized designee of a party, with respect to all other matters hereunder, who is authorized to take any other actions for that party, as may be required from time to time hereunder; provided, however, that a party may change its designee at any time by a written notice to the other party. Unless the authorization conferred by a designation is expressly limited by its terms, such authorization may be presumed to authorize designee to act in behalf of a party for all other purposes of this Agreement.

10.2 Inspection of Expo Center. County and its agents, employees, and designees may go anywhere in the Expo Center for the purposes of inspecting the Expo Center and inspecting the performance by Manager of the terms and conditions hereof. Manager shall facilitate the access permitted under this Section upon request.

10.3 Use of Expo Center by County. Upon reasonable notice and request from the County Director of Administration to Manager, County may have use of the Expo Center Building from time to time for County events, functions and other County related purposes, as long as reasonably determined by Manager to have a minimal effect on Expo Center operations.

10.4 Amendments. The terms, covenants, conditions, and provisions of this Agreement may be modified or added to only in a writing signed by the Parties hereto provided, in addition, there shall have been delivered to County an Approving Tax Opinion.

10.5 Time of the Essence. Time is of the essence in this Agreement.

10.6 **Notices.** All notices hereunder or required by law shall be sent: (a) via US Mail, postage prepaid, certified or registered mail, return receipt requested; or (b) via any nationally recognized commercial overnight carrier with provisions for a receipt, in either case addressed to the Parties hereto at their respective addresses or numbers set forth below or as they will have theretofore specified by notice delivered in accordance herewith:

In case of the County to:

County Executive
Brown County, Wisconsin Address:
Northern Building
P.O. Box 23600
305 East Walnut Street
Green Bay, Wisconsin 54305-3600

[With a copy to:

_____
_____
_____
_____

In the case of Manager to:

PMI VENUE MANAGEMENT, LLC
1901 South Oneida Street
P.O. Box 10567
Green Bay, Wisconsin 54307-0567

[With a copy to:

_____
_____
_____
_____

10.7 **Entire Agreement.** This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and no alteration, modification or interpretation hereof shall be binding unless in writing and signed by the Parties hereto.

10.8 **Severability.** If any provision of this Agreement or its application to any party or circumstances will be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, will not be affected thereby, and each provision hereof will be valid and will be enforced to the fullest extent permitted by law.

10.9 **Computation of Time.** The time in which any act under this Agreement is to be done shall be computed by excluding the first day and including the last day. If the last day of any time period stated herein shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday. Unless preceded by the word "business", the word "day" shall mean a calendar day. The phrase "business day" or "business days" shall mean those days on which the banks located in Green Bay, Wisconsin are open for business.

10.10 **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.

10.11 **Waiver.** The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision,

option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party and an Approving Tax Opinion shall have been delivered to County.

10.12 Force Majeure. At Manager's option, Manager's performance under this Agreement shall be suspended to the extent Manager shall be delayed or hindered in or prevented from the performance of any act required by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, terrorism, insurrection, war or other reason of a like nature not the fault of Manager.

10.13 Headings. Headings of Articles and Sections are inserted only for convenience and are in no way to be construed as a limitation on the scope of the particular Articles or Sections to which they refer.

10.14 Third Party Beneficiaries. Except with respect to the CDA, as owner of the Expo Center, this Agreement shall not inure to the benefit of any third parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement under seal on the day and year first above written.

BROWN COUNTY, WISCONSIN

By_____

_____

County Executive

And_____

_____

County Clerk

PMI VENUE MANAGEMENT, LLC

By_____

_____

And_____

_____

[Signature Page to Expo Center Management Agreement]

/

'EXHIBIT A' TO EXPO CENTER MANAGEMENT AGREEMENT
EXPO CENTER NAMING RIGHTS AGREEMENT

This Agreement is entered into by and between Brown County (the "County") and PMI Entertainment Group, Inc., a Wisconsin nonstock corporation ("PMI") this __ day of May, 2019.

WHEREAS, the County has plans to construct a new exposition hall at the location of the existing Brown County Veterans Memorial Complex (the "Expo Hall");

WHEREAS, PMI wishes to assist the County in selling naming rights for the Expo Hall and the County wishes for PMI to provide such assistance; and

WHEREAS, the parties desire to set forth the terms and conditions concerning the financial arrangements for PMI's assistance in selling such naming rights.

NOW, THEREFORE, in exchange of the promises and consideration set forth herein, the parties agree as follows:

1. PMI's Services: PMI agrees to and shall assist the County in selling naming rights for the Expo Hall. PMI's assistance will include assisting the County in producing presentation materials, determining where naming/sponsor signage can be located, determining pricing, determining the length of naming contracts, assisting with presentations to potential sponsors, negotiating contracts with sponsor(s) and any other assistance necessary to promote and sell naming rights to sponsors.

2. Naming Rights: PMI and the County have identified the various naming rights that are available within the Expo Hall for which PMI will assist the County in promoting and selling to sponsors including the naming rights for the overall venue (i.e., the building), individual halls, plaza(s) and meeting rooms (the "Naming Rights").

3. Division of Naming Rights Income: The parties agree to split the Naming Rights income, which shall be defined as the gross revenues collected from the sale of any and all Naming Rights for the Expo Hall as follows:

   a. The first $8,000,000 in income shall go directly to Brown County (100%);

   b. Any income in excess of $8,000,000 would be split between the parties, 80% to the County and 20% to PMI.

4. Payment of PMI Commissions: The parties agree that PMI will become eligible for payment on its commissions immediately following the parties' securing commitments and contractual obligations with sponsors for the first $8,000,000 in Naming Rights income. The parties further agree that the County shall pay PMI's share of the Naming Rights income, as defined in Section 3, to PMI within thirty (30) days of the County's receipt of any installment payment from the sponsor(s) whose commitment causes the total Naming Rights income to exceed $8,000,000.

5. Payment for Sponsor Signage: The parties agree that the costs of production and installation of a sponsor's signage shall come out of and be part of the Expo Hall project costs. The parties further agree that the costs for any future repairs or changes in the sponsor's signage (including but not limited to creative rights) would be borne by the County and/or the sponsor, dependent on the terms agreed upon in an ultimate agreement between the County and naming rights sponsor.

6. Successors/Assigns. The provisions of this Agreement shall inure to the benefit of, and be binding upon the parties hereto, their respective successors and assigns.

7. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

8. Entire Agreement. This Agreement contains the entire agreement between the County and PMI and any subsequent agreement shall be ineffective to change or modify it, in whole or in part, unless such subsequent agreement is in writing and signed by both the County and PMI.

IN WITNESS WHEREOF, the parties have signed this Agreement.

PMI Entertainment Group, Inc.

By: _____

_____

Its: _____

Brown County

By: _____

_____

Its: _____

May 15, 2019

TO THE HONORABLE CHAIRMAN AND MEMBERS
OF THE BROWN COUNTY BOARD OF SUPERVISORS

Ladies and Gentlemen:

RESOLUTION AUTHORIZING RESCH CENTER LEASE AGREEMENT AND EXPO CENTER MANAGEMENT AGREEMENT

WHEREAS, due to the planned demolition of the Brown County Veterans Memorial Arena (Arena), and the planned construction of a new Exposition Center (Expo Center) in Brown County, there is a need for Brown County (County) to enter into Lease and Management Agreements; and

WHEREAS, the planned demolition of the Arena triggered the County's ability to renegotiate the current 2012 Resch Center Lease Agreement with PMI Entertainment Group, Inc., who desires to continue to lease, manage and operate the Resch Center, and who the County desires to contract with for said purpose, due to its proven expertise, experience, resources and knowledge gained locally managing and operating the Resch Center, the Arena, Shopko Exposition Hall, the Packer Hall of Fame and various parking lots; and

WHEREAS, the construction of the Expo Center causes the need for management and operational services to be provided, and the County desires to have PMI Venue Management, LLC provide said services by entering into a Management Agreement with the County, due to its proven expertise, experience, resources and knowledge gained locally managing and operating the Resch Center, the Arena, Shopko Exposition Hall, the Packer Hall of Fame and various parking lots; and

WHEREAS, regarding the Expo Center, it is desirable for the County to enter into a Management Agreement, as opposed to a Lease Agreement, as entering into a Management Agreement allows for the issuance of tax-exempt bonds, which substantially reduces the cost of the Expo Center project; and

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WHEREAS, the attached Resch Center Lease Agreement provides that PMI Entertainment Group, Inc. will assume the responsibility for any Resch Center Operating Deficits at no expense to the County, but in order to qualify for a tax-exempt bond issuance, which substantially reduces the cost of the Expo Center project, the County is required by law to enter into an Expo Center Management Agreement, and to be subject to realizing Expo Center profit or incurring Expo Center loss.

NOW THEREFORE BE IT RESOLVED, that the Brown County Board of Supervisors hereby authorizes Brown County Administration, including the County Executive, County Clerk and any other relevant County Officials and employees, to take any and all actions necessary to enter into a Resch Center Lease Agreement, and an Expo Center Management Agreement, with terms and conditions substantially similar to those in the Lease and Management Agreements attached to this Resolution, and as deemed acceptable to Brown County Administration and Corporation Counsel.

Fiscal Note: This resolution does not require an appropriation from the General Fund. This resolution requires the creation of a Veterans Memorial Enterprise Fund and a yearly budget approval of its oversight committee.

Respectfully submitted,

EXECUTIVE COMMITTEE

EDUCATION AND RECREATION COMMITTEE

Approved By:

_____

TROY STRECKENBACH
COUNTY EXECUTIVE

Date Signed: _____

19-043R
Authored by Corporation Counsel
Approved by Corporation Counsel

BOARD OF SUPERVISORS ROLL CALL #_____

_____

Motion made by Supervisor _____

Seconded by Supervisor _____

SUPERVISORS	DIST. #	AYES	NAYS	ABSTAIN	EXCUSED
SIEBER	1				
DE WANE	2				
NICHOLSON	3				
HOYER	4				
GRUSZYNSKI	5				
LEFEBVRE	6				
ERICKSON	7				
BORCHARDT	8				
EVANS	9				
VANDER LEEST	10				
BUCKLEY	11				
LANDWEHR	12				
DANTINNE, JR	13				

SUPERVISORS	DIST. #	AYES	NAYS	ABSTAIN	EXCUSED
BRUSKY	14				
BALLARD	15				
KASTER	16				
VAN DYCK	17				
LINSSEN	18				
KNEISZEL	19				
DESLAURIERS	20				
TRAN	21				
MOYNIHAN, JR.	22				
SUENNEN	23				
SCHADEWALD	24				
LUND	25				
DENEYS	26				

Total Votes Cast _____

Motion: **Adopted** _____ **Defeated** _____ **Tabled** _____

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CORPORATION COUNSEL

Brown County

305 EAST WALNUT STREET
P.O. BOX 23600
GREEN BAY, WISCONSIN 54305-3600

David P. Hemery
Corporation Counsel

PHONE: (920) 448-4006
FAX: (920) 448-4003
EMAIL: David.Hemery@co.brown.wi.us

RESOLUTION/ORDINANCE SUBMISSION TO COUNTY BOARD

DATE: 05-06-2019

REQUEST TO: Executive, Special Ed & Rec, and Co Board

MEETING DATE: 05-06-2019, 05-15-2019 and 05-15-2019 respectively

REQUEST FROM: Dave Hemery

Corp Counsel

REQUEST TYPE: ☒ New resolution ☐ Revision to resolution

☐ New ordinance ☐ Revision to ordinance

TITLE: RESOLUTION AUTHORIZING RESCH CENTER LEASE AGREEMENT AND EXPO CENTER MANAGEMENT AGREEMENT

ISSUE/BACKGROUND INFORMATION:

Need to enter into Agreements to manage and operate Resch and Expo Centers

ACTION REQUESTED:

Consideration

FISCAL IMPACT:

NOTE: *This fiscal impact portion is initially completed by requestor, but verified by the DOA and updated if necessary.*

1. What is the amount of the fiscal impact? $0
2. Is it currently budgeted? ☐ Yes ☐ No ☒ N/A *(if $0 fiscal impact)*
   a. If yes, in which account? _____
   b. If no, how will the impact be funded? *This resolution does not require an appropriation from the General Fund. This resolution requires the creation of a Veterans Memorial Enterprise Fund and a yearly budget approval of its oversight committee.*
   c. If funding is from an external source, is it one-time ☐ or continuous? ☐
3. Please provide supporting documentation of fiscal impact determination.

☒ **COPY OF RESOLUTION OR ORDINANCE IS ATTACHED**