GROUND LEASE AND LICENSE AGREEMENT

THIS GROUND LEASE AND LICENSE AGREEMENT ("**Agreement**"), is made as of the _____ of _____, 2006, by and between the Commissioners of Fairmount Park ("**Commission**"), a departmental commission of the City of Philadelphia ("**City**"), and the Philadelphia Museum of Art ("**Corporation**"), a Pennsylvania not-for-profit corporation.

BACKGROUND

A. By contract dated January 19, 1968, the Commission constituted the Corporation as the Commission's agent to administer the Philadelphia Museum of Art building ("**Museum**") and certain other buildings and to care for in those buildings pictures and objects of art belonging to the City and the Commission. The Contract has been amended by three Supplements, the first dated July 30, 1970, the second dated September 1, 1983, and the third dated March 13, 2000. The contract of 1968, together with the three supplements, is referred to collectively in this Agreement as the "**Contract**."

B. The Corporation desires to construct a multistory parking garage ("**Garage**") to create additional parking spaces for visitors to the Museum and to help the City in its municipal efforts to relieve parking congestion near the Museum and in East Fairmount Park.

C. The Corporation desires to cover the roof of the Garage with a landscaped sculpture garden ("**Sculpture Garden**"), to create an enclosed, above-ground vestibule for an elevator ("**Elevator Vestibule**") to serve patrons of the Garage, and to construct driveways to serve the Garage and to make other related improvements to the Site (as defined below).

D. By resolution dated June 5, 2006, the Commission approved the Corporation's final design plans for the Garage Facilities (as defined below).

E. Construction of the Garage will displace 84 existing surface parking spaces in the bed of a former section of Fairmount Avenue that extends north from Italian Fountain Circle ("**Fairmount Avenue Parking Spaces**"). Under a concession agreement dated September 22, 2005 ("**Concession Agreement**"), the City allowed the operator of a restaurant in the Water Works Engine House ("**Concessionaire**") to manage and control the Fairmount Avenue Parking Spaces. Under the Concession Agreement, the City has the right to relocate the parking spaces that the Concessionaire may use, but in that case the City must provide alternative spaces for the Concessionaire to use that are south of Kelly Drive and near Water Works Drive. The Corporation is willing to construct new surface parking areas and re-stripe the parking area around Italian Fountain Circle.

F. By an ordinance numbered Bill _____, approved _____ (and signed by the Mayor on _____), Philadelphia City Council authorized the

Commission President to execute this Agreement. A copy of Bill _____, is attached as **Exhibit B** to this Agreement.

G. By separate resolutions passed October 23, 2006, the Commission (1) authorized the President of the Commission to execute this Agreement, (2) approved the Corporation's final design plans for construction of a surface parking lot ("**Final Surface Parking Designs**"), and (3) approved a master plan ("**Master Plan**") for development, construction, and installation of public amenities in the vicinity of the Surface Lots. Copies of the Commission's resolutions are attached as **Exhibits C-1, C-2** and **C-3** to this Agreement.

ACCORDINGLY, the Commission and the Corporation, intending to be legally bound, agree as follows:

Definitions and Exhibits

In this Agreement, the words and phrases listed below are defined as follows:

"**Agreement**" has the meaning given it in the preamble and includes all amendments to the Agreement.

"**Alteration**" means a material change or replacement. "Alteration" includes, for example, a change to any structural or other capital element of a facility, a change to any building system, a change to the exterior appearance of the facility, and replacement of a facility. "Alteration" also means a change to any of the Approved Design Plans that would affect construction or installation of a capital element of the Garage Facilities or Surface Facilities. "Alteration" does not include a change in landscaping that has been approved in advance by the Executive Director or any change or relocation of any sculptures in the Sculpture Garden.

"**Applicable Laws**" means all present and future federal, state, and municipal laws, ordinances, codes, notices, orders, rules, regulations, and requirements, relating to the Site, this Agreement, the Corporation and its Contractors. Applicable Laws include but are not limited to: **(1)** all laws that govern or regulate the use, presence, treatment, and disposal of hazardous substances and environmental contamination, **(2)** the Philadelphia Home Rule Charter and the Philadelphia Code, and **(3)** the regulations of the Commission.

"**Approved Design Plans**" means the Final Designs and the Final Surface Parking Designs.

"**City**" has the meaning given it in the Preamble and includes all the City's departments, boards, commissions, agencies, officials, officers, employees, representatives, successors and assigns.

"**Commencement Date**" means the date of this Agreement.

"**Commission**" has the meaning given it in the Preamble.

"**Concession Agreement**" has the meaning given it in Background paragraph E.

"**Concessionaire**" has the meaning given it in Background paragraph E.

"**Construction License**" has the meaning given it in Section 1.5.1.

"**Contract**" has the meaning given it in Background paragraph A.

"**Contractor**" and "**Contractors**" mean all the Corporation's consultants, contractors and subcontractors, at all levels, involved in the design and construction of the Garage Facilities and the Surface Facilities and in the operation, management, maintenance, repair, and replacement of the Garage Facilities.

"**Corporation**" has the meaning given it in the Preamble.

"**Elevator Vestibule**" has the meaning given it in Background paragraph C.

"**EOP**" and "**Economic Opportunity Plan**" mean a plan for employment of Contractors owned by disadvantaged business enterprises, including businesses owned by women, minorities, or disabled persons. "EOP" and "Economic Opportunity Plan" also mean a plan regarding employment of persons in construction.

"**Event of Default**" has the meaning given it in Section 11.1.

"**Executive Director**" means the Executive Director of Fairmount Park.

"**Fairmount Avenue Parking Spaces**" has the meaning given it in Background paragraph E.

"**Final Designs**" means those design plans for the Garage Facilities approved by the Fairmount Park Commission by resolution on June 5, 2006.

"**Final Surface Parking Designs**" has the meaning given it in Background paragraph G.

"**Force Majeure**" means war, flood, lightening, earthquake, fire, hurricane, explosion, civil disturbance, act of God or public enemy, terrorist act, military action, epidemic, or action of a court. A Force Majeure exists only for as long as the party rendered unable to perform by it is reasonably unable to avoid or overcome the act or event by the exercise of due diligence.

"**Forebay**" has the meaning given it in Section 4.13.3.

"**Garage**" has the meaning given it in Background paragraph B above.

"**Garage Facilities**" means, collectively, the Garage, Sculpture Garden, Elevator Vestibule, new driveways connecting the Garage to Art Museum Drive and to the Italian Fountain Circle, and all other improvements to the Site made by the Corporation. Garage Facilities does not include any sculptures, statues or other works of art in the Sculpture Garden, and does not include the Surface Facilities (defined below).

"**Initial Term**" has the meaning given it in Section 2.1.

"**Master Plan**" means a plan for developing, constructing, and installing Public Amenities in the vicinity of the Surface Facilities. A copy of the Master Plan is attached as **Exhibit D** to this Agreement.

"**Museum**" has the meaning given it in Background paragraph A.

"**Native Species**" means trees, shrubs, flowers, ivy and other plants that historically have grown naturally in southeastern Pennsylvania and cultivated varieties derived from those species.

"**Partial Taking**" has the meaning given it in Section 10.1.

"**Permitted Improvements**" has the meaning given it in Section 4.13.3.

"**Project**" means construction of the Garage Facilities and the Surface Parking Facilities.

"**Public Amenities**" means, without limitation, development of the peninsula of land near Lloyd Hall that has accreted from silt deposited by the Schuylkill River; possible dredging to permit water flow all around the accreted land, making it an island; a bridge connecting the resulting island with the shore; a boardwalk around the island; outdoor and environmental sculpture; and a squirt park; all for the use and enjoyment of the general public.

"**Remedies**" has the meaning given it in Section 11.3.

"**Renewal Term**" has the meaning given it in Section 2.2.

"**Sculpture Garden**" has the meaning given it in Background paragraph C. The "Sculpture Garden" is, generally, the area on the landscaped roof of the Garage.

"**Site**" means the land leased to the Corporation under this Agreement. The Site is identified in the drawing attached as **Exhibit A**.

"**Street Closures**" means traffic restrictions imposed by the City that prevent vehicular access to roads and drives leading to the Museum and the Garage.

"**Surface Parking Lot**" means an open-air parking lot at grade.

"**Surface Facilities**" means the Surface Parking Lot together with new and relocated improvements installed or constructed in the vicinity of the Surface Parking Lot, as indicated in the Final Surface Parking Designs and as reasonably necessary to accommodate construction of the Surface Parking Lot. "Surface Facilities" include but are not limited to redesigned and improved landscaping, a portion of a public recreation path, light fixtures, benches, trash receptacles, underground conduits and cables, and re-striping of the parking lines around Italian Fountain Circle.

"**Term**" means the Initial Term and all Renewal Terms (if any).

Exhibit A – Site (Definition)
Exhibit B – Bill # _____ (Background paragraph F)
Exhibit C – Resolutions by Fairmount Park Commission (Background paragraph G)
Exhibit D – Master Plan for Public Amenities (Definition)
Exhibit E – Corporation Commitment for Future Capital Projects (Section 2.2)
Exhibit F – Certification of Non-Indebtedness (Section 13.5.2)
Exhibit G – Corporate Documents (Section 14.2)
Exhibit H – Corporation Resolution (Section 14.3)

Section 1.
Lease; Permitted Use; Prohibited Use; Condition of Site; No Financial Obligation on City

1.1 Lease. Subject to the other provisions of this Agreement, and commencing on the date of this Agreement, the Commission leases to the Corporation, and the Corporation leases from the City, the Site.

1.2 Use. The Corporation shall use the Site to construct, operate, and maintain the Garage Facilities in accordance with this Agreement. Without limiting the preceding sentence, the Corporation shall operate the Garage primarily for museum purposes (but may also provide parking for the general public) and may use the Sculpture Garden as an outdoor exhibition space.

1.3 Uses Prohibited. The Corporation shall not use the Site for any use not explicitly permitted by this Agreement.

1.4 Condition of Site. The Corporation accepts the Site in its "AS IS" condition with all patent and latent defects. The Corporation has entered into this Agreement based solely upon its investigation of the Site and without reliance upon any information provided by the City. The City expressly disclaims all representations and warranties about the Site, including its suitability for the Corporation's intended use of it under this Agreement.

1.5. Licenses For Construction and For Sculpture Garden.

1. In addition to the lease of the Site under Section 1.1 above, and subject to the provisions of this Agreement, the City gives the Corporation a non-exclusive, revocable license ("**Construction License**") for the Corporation's Contractors to come upon City land to construct the Project. It is a condition precedent to the effectiveness of the Construction License that, consistent with past practice, the Corporation obtain a permit from the Commission to come upon City land in Fairmount Park to construct the Project. The Corporation shall not come onto City land under the Construction License until the Corporation has obtained the required permit from the Commission and all other licenses, permits, and approvals required by Applicable Laws.

A. To the extent the Construction License relates to construction of the Surface Facilities, the Construction License will expire upon acceptance of the Surface Facilities under Section 5.1.

B. To the extent the Construction License applies to the Garage Facilities, the Construction License shall expire when the Corporation completes construction of the Garage Facilities.

C. The Construction License shall not apply to any other construction activities by the Corporation or its Contractors other than for construction of the Garage Facilities and the Surface Facilities under this Agreement.

2. In connection with the Corporation's use of the Site as a Sculpture Garden, the City gives the Corporation a nonexclusive license to come upon City land to install works of sculpture on and in the Sculpture Garden and to remove sculpture from the Sculpture Garden ("**Sculpture Garden License**"). It is a condition precedent to the effectiveness of the Sculpture Garden License that, consistent with past practice, the Corporation must first obtain a permit from the Commission to come upon land in Fairmount Park to conduct each installation and de-installation activity in the Sculpture Garden.

1.6. Final Description of Site. As an inducement to the City to expedite execution of this Agreement with the Site identified only by the drawing in Exhibit A, the Corporation has promised to obtain a final, legal description of the Site. Accordingly, the Corporation shall, at its sole cost and expense, obtain a final legal description of the Site as soon as reasonably practicable following the Commencement Date, but not later than 90 days following the Commencement Date. The Site legal description must be satisfactory to the Executive Director. Upon completion of the Site legal description, the City and the Corporation shall promptly execute a letter or agreement incorporating the description into this Agreement.

1.7. No Financial Obligation on City. **DESPITE ANY OTHER PROVISION OF THIS AGREEMENT, THIS AGREEMENT DOES NOT IMPOSE ANY OBLIGATION ON THE CITY TO APPROPRIATE OR SPEND MONEY AT ANY TIME, OR FOR ANY MATTER OR CAUSE, ARISING FROM OR RELATED TO THIS AGREEMENT.**

Section 2.
Term; Renewal

2.1. Initial Term. The "**Initial Term**" of this Agreement is 30 years and begins on the Commencement Date and expires on the day preceding the 30th anniversary of the Commencement Date.

2.2. Renewal Term. In consideration of the Corporation's commitment to undertake a substantial portion of the future improvements to the Museum as described in attached **Exhibit E**, and subject to Section 2.3 below, the Corporation may renew this Agreement for the following renewal terms (each a "**Renewal Term**"):

1. two 10-year renewal terms, **and then**
2. one renewal term that expires March 13, 2099.

2.3. Conditions Precedent to Renewals. It shall be a condition precedent to the effectiveness and commencement of each Renewal Term that:

1. as of the expiration of the Initial Term or then current Renewal Term, as the case may be, there is no Event of Default or condition that with notice or the lapse of time would constitute an Event of Default; **and**
2. if any damage or destruction occurred affecting the Site or the Garage Facilities, the Corporation must have committed to the City in writing to reconstruct and restore the Site and Facilities with reasonable promptness.

Section 3.
Construction; Selection of Contractors; Staging; Alterations; Completion

3.1. Construction. The Corporation shall design and construct the Project at its sole cost and expense and in strict accordance with the Approved Design Plans. The Corporation shall not make any Alteration to the Approved Design Plans unless the Corporation has first obtained approval for the proposed change from the Commission and all other approvals required by Applicable Laws.

3.2. Contractors. The Corporation shall hire all Contractors necessary to design and construct the Project, subject to the provisions of Section 13.5 and Section 13.6.

3.3. Inspection of Construction. The Corporation shall permit the City to inspect construction of the Project from time to time upon reasonable advance notice.

3.4. No Construction Before Required Permits Issued. The Corporation shall not commence construction of the Project until it has obtained all necessary permits, licenses, and approvals required under Applicable Laws. The Corporation shall, at its sole cost and expense, obtain all necessary permits, licenses, and approvals to construct the Project required

under Applicable Laws. Subject to Sections 12.1 and 12.2, the City shall assist the Corporation in obtaining all necessary permits, licenses, and approvals to construct the Project.

3.5. Parking Under the Concession Agreement.

1. The Corporation shall stage construction of the Project to enable the City at all times to meet its obligation to provide parking spaces to the Concessionaire under the Concession Agreement.

2. In meeting its obligation under Section 3.5.1, the Corporation may eliminate some or all of the Fairmount Avenue Parking Spaces if the City's obligation under the Concession Agreement can be satisfied by use of one or more of the following:

A. the Fairmount Avenue Parking Spaces,
B. Italian Fountain Circle, and
C. other areas that satisfy the City's obligations under the Concession Agreement;

provided, however, that the Corporation shall not

X. construct or install any temporary parking area, nor
Y. require the City to use parking spaces along Water Works Drive between Lloyd Hall and Italian Circle Fountain.

3. The City and Corporation acknowledge that, despite Section 5.12 of Concession Agreement, and with the Concessionaire's express consent, the City is obligated to provide 55 spaces to the Concessionaire from 11:00 a.m. to 5:00 p.m. each day.

3.6. City Cooperation With Approvals. Subject to Sections 12.1 and 12.2,

1. the Office of the Mayor of the City shall provide its support for the Project in City Council. The Office of the Mayor shall also cooperate with the Corporation in bringing the Project to City Council for final approval (including the adoption of any necessary Ordinance approving the terms of this Agreement) at the earliest possible date following Commission approval,

2. the Corporation and the City shall cooperate to obtain, as soon as possible, all other municipal approvals for the Project that are required by Applicable Laws (including any required approvals of the Philadelphia Art Commission or the Philadelphia Historical Commission).

3.7. Alterations. Following complete construction of the Garage Facilities, the Corporation shall not make any Alteration to the Garage Facilities without the prior approval of the Commission of all design plans for the Alteration, which shall not be unreasonably withheld. The Corporation shall permit the City to inspect construction and performance of all Alterations.

Section 4.
Garage Facilities: Ownership, Operation, Maintenance, Repair, Revenue, Signs

4.1. Ownership: Garage Facilities and Surface Lot Facilities. Throughout the Term, the Garage Facilities are the property solely of the Corporation, including during initial construction of the Garage Facilities. Throughout the Term, the Corporation has exclusive care, custody, and control of the Garage Facilities and the Site.

4.2. Safety. The Corporation, at its sole cost and expense, shall take all reasonably necessary and prudent measures to safely operate, manage, maintain, repair, replace, and improve the Garage Facilities. The Corporation, at its sole cost and expense, shall take all reasonably necessary and prudent measures to ensure the safety of persons and property in and on the Site, including but not limited to those that are entering, exiting, and in, the Garage, and art work in the Sculpture Garden.

4.3. Condition: Maintenance. The Corporation, at its sole cost and expense, shall perform all necessary and prudent maintenance to keep the Site, including but not limited to the Garage Facilities, attractive, in good order and repair, and free of graffiti, debris, and litter.

4.4. Condition: Capital Repairs, Replacements and Improvements. Without limiting Section 4.2 above, the Corporation, at its sole cost and expense, shall make all necessary and prudent capital repairs, replacements, and improvements to keep the Garage Facilities attractive, in good order and repair, and in good operating condition.

4.5. Contractors to Operate. Subject to Section 13.5 and Section 13.6, the Corporation may, at its sole cost and expense, hire one or more Contractors to help the Corporation fulfill its obligations under this Section 4.

4.6. Hours of Operation, Parking Rates, and Policies. Subject to the provisions of this Agreement, the Corporation may, in its sole discretion, decide all matters regarding operation of the Garage, including but not limited to hours of operation and parking rates.

4.7. Control of Revenue From Garage. The Corporation may, in its sole discretion, control all revenue it receives from operation of the Garage.

4.8. Signs. The Corporation shall not post, hang, or otherwise display any sign relating to the Garage that is visible from the exterior of the Garage without the advance approval of the Executive Director, which shall not be unreasonably withheld or delayed.

1. As a condition of the Executive Director's approval, the Executive Director may require the Corporation to include reference to Fairmount Park and to include the Fairmount Park logo. Without limiting the preceding provisions of this Section 4.8, the Corporation shall not post, hang, or otherwise display any sign relating to

the Garage until the Corporation has obtained all permits, licenses, and approvals required by Applicable Laws.

2. The Corporation and City shall cooperate to develop and post signs along roadways leading to the garage that emphasize Art Museum Drive as the primary route of access to and from the Garage.

4.9. Naming of Garage Facilities.

1. The Corporation has the right to name the Garage and the Sculpture Garden, subject to the approval of the Executive Director, which the Executive Director shall not unreasonably withhold or delay. Upon expiration or earlier termination of this Agreement, the City will have the exclusive right to name the Garage and the Sculpture Garden, except as provided in Section 4.9.2.

2. Despite earlier termination of this Agreement for any reason, any name that the Corporation designates for the Garage or for the Sculpture Garden will continue to be effective through the end of what would have been the full period of the Initial Term, and

A. if the Corporation renews this Agreement for the first Renewal Term before this Agreement is terminated, then the designated name will continue to be effective through the end of what would have been the full period of the first Renewal Term;

B. if the Corporation renews this Agreement for the second Renewal Term before this Agreement is terminated, then the designated name will continue to be effective through the end of what would have been the full period of the second Renewal Term.

C. if the Corporation renews this Agreement for the final Renewal Term before this Agreement is terminated, then the designated name will terminate upon termination of this Agreement.

3. This Section 4.9 will survive early termination of this Agreement until expiration of the period of the second Renewal Term.

4.10. Ownership of Garage Facilities At End Of Term. Upon expiration of the Term, title to the Garage Facilities shall automatically vest in the City without the need to execute any other document and without any obligation on the City to pay or otherwise compensate the Corporation. Nevertheless, the Corporation shall execute all appropriate documents as the City may reasonably request to confirm that title to the Garage Facilities has transferred to the City. The Corporation's obligation to execute those documents shall survive the expiration of this Agreement.

4.11. Control of Sculpture Garden At End Of Term. Upon expiration of the Term or earlier termination of this Agreement, the Corporation may, at its option, continue to use the Sculpture Garden as an outdoor exhibit space under the Contract for as long as the

Corporation has the right to administer or occupy the Museum. If the Corporation desires to continue using the Sculpture Garden after expiration or earlier termination of this Agreement, the Corporation must notify the Executive Director in writing on or before the expiration or earlier termination of this Agreement. For as long as the Corporation chooses to use the Sculpture Garden after expiration or termination of this Agreement, the Corporation shall, at its sole cost and expense, maintain and repair the Sculpture Garden. This Section 4.11 shall survive the expiration or earlier termination of this Agreement.

4.12. Native Species. In its construction, maintenance, and repair of the landscaped portions of the Garage Facilities, and in its restoration of the landscaped portions of the Site under Sections 9.2 and 10.3, the Corporation shall plant only Native Species.

4.13. Parking Spaces in Garage For Engine House Patrons.

1. Except as provided in paragraphs 2 and 3 below, during the term of the Concession Agreement, the Corporation shall permit the Concessionaire to use 14 spaces in the Garage from 5:00 p.m. until 11:00 p.m., seven days a week, at no charge, subject to the following conditions:

A. the Concessionaire must use the other parking spaces available to it before using the 14 spaces in the Garage; and

B. the Concessionaire must indemnify the Corporation and name the Corporation as an "additional insured" on the Corporation's insurance policies under the Concession Agreement.

2. The Corporation shall track the Concessionaire's use of the 14 spaces in the Garage under this Section 4.13 electronically (or by other means). The Concessionaire may also track its use of the 14 spaces. The City and the Corporation, together with the Concessionaire, shall review the arrangement for the Concessionaire's use of the 14 spaces every five years. If the Concessionaire's past use of the 14 spaces reasonably demonstrates that the Concessionaire still needs the 14 spaces, then the Corporation's obligation under this Section 4.13 will renew for an additional five-year period.

3. A. For purposes of this Section 4.13.3,

1. "**Forebay**" means the lawn area in proximity to Water Works Drive between Italian Fountain Circle and the surface parking area in front of the Water Works Pavilion, and

2. "**Permitted Improvements**" means improvements constructed after the date of this Agreement consisting of changes to curb lines, footings for signs, installation of any new sidewalk, and the installation of paved paths in the location of desire lines worn by foot traffic across any lawn area.

B. If the City paves or covers more than 750 square feet of the Forebay, then the Corporation may terminate its obligation to provide 14 spaces in the Garage for use of the Concessionaire, except that the 750 square foot limitation does not apply to any paving or covering resulting from the construction of Permitted Improvements, or any temporary covering for a special event or as necessary to make repairs to existing facilities in the Water Works, Forebay, and adjoining areas.

Section 5.
Surface Facilities: Completion and Ownership

5.1. Completion. The Surface Facilities will not be deemed complete until the Executive Director has accepted them in a written notice delivered to the Corporation.

1. As a condition of obtaining acceptance of the Surface Facilities by the Executive Director, the Corporation must request the Executive Director's acceptance of the final work. Within 30 days following receipt of the Corporation's request, the Executive Director shall inspect the Surface Facilities. The Corporation shall cooperate with the Executive Director and participate in his or her inspection.

2. The Executive Director may approve or disapprove the Surface Facilities in his or her reasonable discretion, but the Executive Director is not obligated to approve the Surface Facilities until the Corporation has finished or otherwise resolved all "punch list" items identified by the Executive Director. The Executive Director may, in his or her reasonable discretion, inspect the Surface Facilities one or more additional times with the Corporation to ensure that the Surface Facilities have been finished satisfactorily, including all punch list items.

3. Upon determining that the Corporation has satisfactorily constructed all the Surface Facilities, including all punch list items, the Executive Director shall promptly provide notice to the Corporation of the City's acceptance.

4. The Executive Director may, in his or her discretion, accept one or more portions of the Surface Facilities while the Corporation continues to construct the remainder of the Surface Facilities.

5.2. Ownership. Upon the Executive Director's acceptance of the Surface Facilities (or a portion of the Surface Facilities, as the case may be) in accordance with Section 5.1,

1. title to the accepted Surface Facilities will vest in the City without the need for executing any other document,

2. the City may operate, maintain, repair, replace and improve the accepted Surface Facilities in the City's sole discretion, and

3. the Corporation shall not have any continuing obligation under this Agreement for the operation, maintenance, repair, replacement, or improvement of the accepted Surface Facilities.

5.3. No Use of Surface Lots Until Acceptance. The Corporation shall not permit use of the Surface Lots until the Executive Director has accepted them in accordance with Section 5.1 above.

Section 6.
Master Plan for Public Amenities

6.1. Master Plan for Public Amenities. The Corporation has helped the City develop a Master Plan for design and installation of Public Amenities in the vicinity of the Surface Facilities. The purpose of the Public Amenities proposed by the Master Plan is to enhance and expand recreational opportunities for the public.

6.2. Corporation Support. The Corporation shall cooperate with the City and help the City obtain all necessary municipal approvals of the Master Plan. The Corporation's support will be non-financial in nature, except that the Corporation shall fund, or arrange the funding of, all design costs for the Master Plan, up to a maximum of $50,000. It is a condition precedent to the Corporation's right to start construction of the Garage Facilities under this Agreement that the Corporation has paid, or caused the payment of, the design costs of the Master Plan up to the Corporation's maximum commitment.

6.3. Corporation Not Liable For Public Amenities. Except as provided in Section 6.2, the Corporation shall not be liable for any other costs of design or construction of the Public Amenities.

Section 7.
Access to Garage.

7.1. City Road Closures. The City may close off or restrict access to and from the Garage Facilities by means of Water Works Drive, or Art Museum Drive, or both of them, only as follows ("**Road Closures**"):

1. in connection with the annual bicycle race (formerly sponsored by Wachovia Bank), the Thanksgiving Day Parade, Independence Day activities, and similar events as the City may from time to time determine in its sole discretion, but for not more than four days each year;
2. in the event of an emergency; and
3. as otherwise mutually agreed by the City and the Corporation.

7.2. City Will Try To Minimize Interference. To the extent reasonably possible as determined by the City in the exercise of its municipal functions for public safety and traffic control, the City will endeavor to schedule and implement the Road Closures in a manner that minimizes interference with visitors arriving at, and deliveries being made to, the Museum and the Corporation.

7.3. South Access to Museum Drive. If access to Water Works Drive and Art Museum Drive is closed by any Road Closure, then the City shall keep open the south access to Art Museum Drive (from Girard Avenue), unless the City determines in the exercise of its municipal functions for public safety and traffic control that it is prudent to close the south entrance.

7.4. No City Liability. The City shall not be liable to the Corporation for any damages, direct, indirect, special, consequential or otherwise, in connection with the Road Closures.

Section 8.
Liabilities, Indemnification, Release, Insurance

8.1. Liabilities. The Corporation shall bear all liabilities arising from or related to its ownership and operation of the Garage Facilities.

8.2. Indemnity. The Corporation shall promptly indemnify, defend, and hold harmless the City from and against all claims, suits, actions, damages, expenses (including but not limited to attorneys' and experts' fees and litigation costs), and liabilities, including but not limited to those in connection with loss of life, bodily and personal injury, damage to property (real or personal, and regardless of ownership), or contamination or adverse effect on the environment, which occur or arise, in whole or in part, directly or indirectly, as a result of or in connection with (1) any act or omission of the Corporation or any of its trustees, officers, directors, employees, agents, Contractors, invitees, licensees, successors and assigns under or related to this Agreement; or (2) the Corporation's breach of this Agreement. The Corporation's obligation to indemnify, defend, and hold harmless the City under this Section 8.2 does not apply to any claim or liability to the extent the claim or liability arises from the gross negligence or willful misconduct of the City.

8.3. Defense. If any action, proceeding, or claim is brought or asserted against the City for which the Corporation has agreed to indemnify, defend, and hold harmless the City pursuant to Section 8.2 above, then, upon the City's notice to the Corporation, the Corporation shall, at its sole cost and expense, promptly resist or defend such action, proceeding, or claim by counsel approved by the City in writing. The Corporation shall not be obligated to obtain the City's approval of counsel in each and every instance where the action, proceeding, or claim is resisted or defended by counsel of an insurance carrier obligated to resist or defend the action, proceeding, or claim.

8.4. Release. In consideration for the rights the City has given to the Corporation by this Agreement, the Corporation, for itself and its trustees, officers, directors, employees, agents, successors, assigns, and Contractors, and any person claiming by, through, or under the Corporation or any of them, does release and forever discharge the City from any and all, and all manner of, actions and causes of action, suits, claims and demands in law or in equity that the Corporation or any of them may have against the City relating in any way, directly or indirectly, to the Site and all conditions now or in the future existing in, on, or about the Site.

8.5. Defects In Surface Facilities and Garage.

1. Despite Section 4.10, the Corporation shall pay all costs and expenses arising from defects in the original construction of the Surface Facilities to the extent such defects are subject to construction warranties. The Corporation shall in good faith seek to obtain standard construction warranties of at least one year covering the Surface Facilities.

2. If the Corporation breaches any of its obligations under Section 4.3 and 4.4, then the Corporation shall pay the City for money damages in an amount equal to all the City's costs associated with any needed repairs.

8.6. Survival. The provisions of Sections 8.2, 8.3, 8.4 and 8.5 shall survive the expiration or earlier termination of this Agreement.

8.7. Insurance. The Corporation shall obtain and maintain insurance, and shall cause its Contractors to obtain and maintain insurance, as follows:

1. For the first three years of this Agreement, the Corporation shall maintain liability insurance in an amount not less than $5 million, garage keepers liability insurance in an amount not less than $1 million, and workers compensation insurance at statutory limits. In addition, the Corporation shall cause its Contractors to maintain general liability, auto liability, workers compensation, and professional liability insurance with limits appropriate for the type of work performed under this Agreement. The Corporation must cause the City to be named as additional insured under its insurance policies and must cause its Contractors to name the City as additional insured under their respective insurance policies.

2. After the first three years of this Agreement, the Corporation shall maintain the types and amounts of insurance appropriate and customary for operation, maintenance, and repair of a public parking garage.

3. The Corporation shall provide certificates of insurance to the City to evidence the Corporation's compliance with the requirements of this Section 8.7. In addition, prior to the expiration of each insurance policy, the Corporation shall deliver to the City a certificate of insurance evidencing the renewal or replacement policy(ies) that

will become effective immediately upon the expiration or termination of the previous policy. The Corporation shall cause all certificates of insurance required under this Section 8.7 to be delivered to the City of Philadelphia Risk Manager. The City reserves the right to require the Corporation to furnish copies of the original policies of all insurance required under this Section at any time upon 10 days prior written notice to the Corporation.

Section 9.
Damage to Garage Facilities

9.1. Damage. If the Garage Facilities suffer a casualty, then

1. the Corporation shall promptly take all necessary and prudent action to secure the undamaged portion of the Garage Facilities and to ensure the safety of persons and property in, on, and about the Garage Facilities, and

2. the Corporation shall decide whether to repair or replace the Garage Facilities or to remove the remaining portions of the Garage Facilities, and the Corporation shall notify the City of the Corporation's decision not later than 90 days following the casualty.

9.2. Repair or Replacement; Removal.

1. If the Corporation decides to repair or replace the Garage Facilities following a casualty, then the Corporation shall diligently and in good faith proceed to design and implement the repair or replacement. Any repair or replacement of some or all of the Garage Facilities by the Corporation following a casualty is an Alteration under this Agreement. The Corporation's repair or replacement of the Garage Facilities following any casualty is subject to the requirements of Section 3.7. The Corporation shall perform the repair or replacement at its sole cost and expense, which may include without limitation all insurance proceeds received by the Corporation following the casualty.

2. If the Corporation decides to remove the remaining Garage Facilities following a casualty, then

A. the Corporation shall diligently and in good faith proceed to demolish and remove the remaining portions of the Garage Facilities,

B. restore the Site substantially to its condition immediately before the Commencement Date to the reasonable satisfaction of the Executive Director, except that as part of the restoration the Corporation may use newly planted Native Species in place of mature plant materials, and

C. this Agreement will automatically terminate upon the Corporation's completion of the restoration of the Site.

9.3. Casualty At End Of Term. If a casualty to the Garage Facilities occurs during the last five years of the Term, and if the Corporation elects not to replace the Garage Facilities, then the City may, in its sole discretion, elect to replace the Garage Facilities. If the City decides to repair or replace the Garage Facilities and notifies the Corporation of the City's decision, then the Corporation shall pay for the repair or replacement up to the full amount of insurance proceeds received by the Corporation arising from or related to the casualty.

Section 10.
Condemnation

10.1. Condemnation. If some of the Garage Facilities are taken by eminent domain ("**Partial Taking**"), then

1. the Corporation shall promptly take all necessary and prudent action to secure the uncondemned portion of the Garage Facilities and to ensure the safety of persons and property in, on, and about the Garage Facilities, and

2. the Corporation shall decide whether to continue to use the remaining portions of the Garage Facilities or to demolish and remove the Garage Facilities altogether, and the Corporation shall notify the City of the Corporation's decision not later than 90 days following the condemnation.

10.2. Repair or Replacement; Removal.

1. If the Corporation decides to continue using the remaining portion of the Garage Facilities following a Partial Taking, then the Corporation shall diligently and in good faith proceed to design and implement all necessary and prudent Alterations. The Corporation's Alterations to the Garage Facilities following a Partial Taking is subject to the requirements of Section 3.7. The Corporation shall perform the Alterations at its sole cost and expense, which may include without limitation all condemnation proceeds received by the Corporation following the Partial Taking.

2. If the Corporation decides to remove the remaining Garage Facilities following a Partial Taking, then

A. the Corporation shall diligently and in good faith proceed to demolish and remove the remaining portions of the Garage Facilities,

B. restore the Site substantially to its condition immediately before the Commencement Date to the reasonable satisfaction of the Executive Director, except that as part of the restoration the Corporation may use newly planted Native Species in place of mature plant materials, and

C. this Agreement will automatically terminate upon the Corporation's completion of the restoration of the Site.

10.4. Total Taking. If all of the Garage Facilities are taken by eminent domain, then this Agreement will automatically terminate as of the effective date of the taking.

10.4. Condemnation Awards.

1. If some or all of the Garage Facilities are taken by eminent domain, the City may claim compensation from the condemning authority for the value of its interest in the Garage Facilities and any other items and interests to which the City is entitled under Applicable Law.

2. If some or all of the Garage Facilities are taken by eminent domain, the Corporation may claim compensation from the condemning authority for the value of its interest in the Garage Facilities and any other items and interests to which the City is entitled under Applicable Law. In no event, however, may the Corporation's claim or award reduce the City's claim and award arising out of the condemnation.

3. If some or all of the Garage Facilities are taken by eminent domain, then the City and Corporation may each appear in and defend against the condemnation as they deem proper in accordance with their own interests. To the extent possible, the City and Corporation shall cooperate to maximize the condemnation proceeds payable by reason of the condemnation. To avoid multiplicity of actions and to minimize their respective expenses, the City and Corporation shall join all issues between them that are required to be resolved pursuant to this Section in any condemnation proceeding to the extent permissible under Applicable Laws, including but not limited to procedural rules of the court.

10.5. Temporary Taking. If the temporary use of some or all of the Garage Facilities is taken by eminent domain, this Agreement will remain in effect. All awards, damages, compensation and proceeds payable by the condemnor by reason of the condemnation for periods prior to the expiration of the Agreement will be payable to the Corporation. All those awards, damages, compensation and proceeds for periods after the expiration of the Agreement will be payable to the City.

Section 11.
Default

11.1. Events of Default. The Corporation shall commit an "**Event of Default**" if it fails to comply with any provision of this Agreement.

11.2. Notice and Cure Period. Before the City may exercise any of its Remedies set forth in Section 11.3, the City must notify the Corporation of the Event of Default, and

1. if the Event of Default is of a nature that it reasonably can be cured within 60 days from delivery of the City's notice, the Corporation must have failed to cure the Event of Default on or before 60 days from delivery of the City's notice,

2. if the Event of Default is of a nature that it reasonably cannot be cured within 60 days from delivery of the City's notice, then

A. the Corporation must have failed to commence in good faith to cure the Event of Default within the 60-day period **or**

B. have failed to continuously and diligently pursue the cure to completion,

3. if the Event of Default is of a nature that it cannot be cured,

A. the Corporation must have failed to take all action and make all payments necessary to make the City whole within 60 days of delivery of the City's notice, **and**

B. the Corporation must have failed to give the City adequate assurance in writing within 60 days of delivery of the City's notice that the Corporation will not commit the Event of Default again.

11.3. Remedies. If the Corporation commits an Event of Default and fails to take the appropriate action required in Section 11.2 following the City's delivery of notice of the Event of Default, then the City may do one or more of the following ("**Remedies**"):

1. Suspend this Agreement;
2. Terminate this Agreement;
3. Sue the Corporation for damages or equitable relief or both.

Section 12.
Approvals By City Under This Agreement

12.1. City Approvals Not Approval Under Applicable Laws. The City's approval of any designs, plans, and specifications for the Project under this Agreement, including the Approved Design Plans, is not approval by any City department, board, or commission otherwise required under Applicable Laws. The City's help for the Corporation to obtain any approval required under Applicable Laws is not itself the approval required under Applicable Laws.

12.2. City Approvals Not A Representation or Warranty. The City's approval of the Corporation's designs, plans, and specifications under this Agreement is not a representation or warranty by the City regarding the accuracy or suitability, or any other quality, of the designs, plans, and specifications. The City's help for the Corporation to obtain any approval required under Applicable Laws is not a representation or warranty by the City regarding the accuracy, suitability, or any other quality of the matter for which the Corporation seeks approval. Throughout the Term, the Corporation is relying on its own independent investigation as to the accuracy, suitability, and quality of all the matters for which it seeks approval under Applicable Laws.

Section 13.
Applicable Laws; City Home Rule Charter and Philadelphia Code Requirements

13.1. Applicable Laws. In exercising all its rights and fulfilling all its obligations under this Agreement, the Corporation shall at all times comply with all Applicable Laws.

13.2. Non-Discrimination. In the Corporation's use of the Site and exercise of its rights under this Agreement, the Corporation shall not discriminate or permit discrimination against any person because of age, race, color, religion, national origin, physical disability, sex, sexual orientation, or gender identity.

13.3. Non-Indebtedness. By executing this Agreement, the Corporation represents and warrants that the Corporation is not currently indebted to the City for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan reasonably satisfactory to the City has been established. The Corporation shall not be indebted to the City at any time during the Term for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts.

13.4. No Gifts to City Officials.

1. The Corporation shall not offer or give, directly or indirectly, anything of value to any official or employee in the Executive or Administrative branch of the City, including any gift, gratuity, favor, entertainment or loan, the receipt of which would violate Executive Order No. 002-04 issued by the Mayor of Philadelphia on August 12, 2004, so long as that Executive Order remains in force and effect.

2. Any person who offers or gives anything of value to any City official or employee the receipt of which would violate Executive Order No. 002-04 may be subject to sanctions with respect to future City contracts to the extent expressly stated in that Executive Order.

13.5. Only Legally Qualified Contractors. Throughout the Term,

1. the Corporation shall hire only Contractors that

(a) are not delinquent to the City of Philadelphia for taxes,

(b) have made all disclosures regarding political contributions that would be required if those contractors bid for, or were awarded, contracts directly by the City, **and**

(c) are not otherwise disqualified from receiving any contract from the City;

2. the Corporation shall include the "Certification of Non-Indebtedness" set forth in **Exhibit F** in all its contracts for design, construction, and operation of the Garage Facilities, with appropriate adjustment to identify the parties; **and**

3. the Corporation shall cooperate with the City and share all information reasonably desired by City officials in order to ensure that the Corporation complies with this Section 13.5.

13.6. Economic Opportunity Plan. Consistent with past practice, the Corporation shall develop an EOP satisfactory to the City in the City's reasonable discretion. The Corporation shall implement the EOP plan for construction of the Project.

Section 14.
Representations and Warranties by Corporation

14.1. Good Standing of Corporation. The Corporation represents and warrants that, as of the Commencement Date, the Corporation is validly existing under Pennsylvania Law.

14.2. Corporation Documents. The Corporation represents and warrants that it is a tax-exempt charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The Corporation further represents and warrants that attached as **Exhibit G** are true and complete copies of the Corporation's articles of incorporation, by laws, and IRS letter confirming the Corporation's exempt status from tax under federal law.

14.3. Authority to Execute Agreement. The Corporation represents and warrants that the persons signing this Agreement in the name of the Corporation have been authorized to do so by resolution of the Corporation's trustees. The Corporation further represents and warrants that attached as **Exhibit H** is a true copy of a resolution passed by the Corporation's trustees authorizing the individuals to sign this Agreement on behalf of the Corporation, and that the resolution remains in effect without any modification.

Section 15.
Notice

15.1. Notice. To be effective, each notice, request, approval or consent by either party under this Agreement must be made in writing, addressed as provided in Section 15.2, and given by one or more of the following methods:

1. hand delivery by courier service with receipt obtained;
2. overnight delivery by a recognized national overnight delivery service, with receipt obtained;
3. registered or certified United States mail, with return receipt requested;
4. facsimile with additional service by one of the other methods allowed under this Section 15.1.

15.2. Addresses. All notices under this Agreement must be addressed as provided below or sent to other officials or addresses as either the City or Corporation may direct by notice to the other.

1. Notice by the Corporation to the City must be made as follows:

To: President
Fairmount Park Commission
One Benjamin Franklin Parkway – 10th Floor
1515 Arch Street
Philadelphia, PA 19102

and to City of Philadelphia Managing Director
Municipal Services Building – 14th Floor
1401 JFK Boulevard
Philadelphia, PA 19102

with a copy to: City Solicitor
City of Philadelphia Law Department
One Benjamin Franklin Parkway – 17th Floor
1515 Arch Street
Philadelphia, PA 19102

2. Notice by the City to the Corporation must be made as follows:

To: Director
Philadelphia Museum of Art
26th Street and Benjamin Franklin Parkway
Philadelphia, PA 19101

and to: Chief Operating Officer
Philadelphia Museum of Art
26th Street and Benjamin Franklin Parkway
Philadelphia, PA 19101

with a copy to: General Counsel
Philadelphia Museum of Art
26th Street and Benjamin Franklin Parkway
Philadelphia, PA 19101

15.3. Delivery. Notice given in any of the manners provided in Section 15.1 is effective upon delivery, except that notice by facsimile will be effective only upon delivery of the additional notice by other allowed means.

Section 16.
General Provisions

16.1. Background and Exhibits. The Background to this Agreement is part of this Agreement. Exhibit A is part of this Agreement. Unless otherwise stated, all references to sections, schedules, and exhibits are to the sections, schedules and exhibits of this Agreement. The captions used in this Agreement are for the purpose of convenience only and do not limit or extend the meaning of any part of this Agreement.

16.2. Severability. If any provision of this Agreement is invalid or illegal, then, provided the unenforceable provision is not a material part of the consideration for this Agreement, the remainder of this Agreement will remain in effect and the invalid or illegal provision will be enforceable if and to the extent reformed by court order.

16.3. No Assignment.

1. The Corporation shall not assign this Agreement or any of its rights under this Agreement and shall not delegate any of its obligations under this Agreement. Assignments and delegations prohibited by this Section 16.3 include assignments by merger or by operation of law. Any purported assignment or delegation by the Corporation in violation of this Section 16.3 is void.

2. Despite Section 16.3.1, the Corporation may be a party to any merger in which the Corporation is the surviving corporation. In addition, Section 16.3.1 does not limit the Corporation's power and right to contract with Contractors to perform or meet the Corporation's obligations under this Agreement, but any contract by Corporation with any Contractors does not relieve Corporation from its obligations under this Agreement or its liability for failure to meet those obligations.

16.4. Successors and Assigns. This Agreement binds and benefits the City and Corporation and their respective successors and assigns.

16.5. No Joint Venture; No Third Party Beneficiaries. This Agreement does not create a partnership, joint venture, association, or other relationship between the City and Corporation other than that of landlord and tenant. No person or entity is a third party beneficiary of this Agreement. All Contractors and other persons are notified by this Section 16.5 that they may not look to the City for payment or other compensation arising under or related to this Agreement. The City is not liable to any Contractors or other persons for payment or compensation arising under or related to this Agreement.

16.6. No Amendments. This Agreement may not be amended by oral agreement, custom, or course of conduct. This Agreement may only be amended by a written agreement signed by the authorized officers of the City and Corporation, and only if

1. the Corporation's board of trustees has passed a resolution authorizing the amendment, and
2. the Commission has passed a resolution authorizing the amendment and City Council of Philadelphia has passed an ordinance authorizing the execution of the amendment.

16.7. No Implied Consent. City's failure to respond orally or in writing to any request or offer from the Corporation to modify or waive any of the Corporation's obligations under this Agreement is not the City's consent to the Corporation's request or offer. The City and Corporation shall each comply with its obligations under this Agreement unless and until a request or offer to modify or waive any provision of this Agreement is explicitly accepted in writing by the party benefited by the required performance.

16.8. Time Of The Essence. Time is of the essence for the performance and observation of each covenant of this Agreement.

16.9. Force Majeure. Neither the City nor the Corporation will be in breach of this Agreement, or commit an Event of Default, if their respective performance of any obligation or observance of any requirement or limitation is rendered impossible by a Force Majeure.

16.10. Integration Clause. This Agreement represents the final and exclusive expression of the City's and Corporation's agreements regarding the matters contemplated by this Agreement. All prior negotiations and agreements between the City and Corporation regarding the matters contemplated by this Agreement are merged into this Agreement.

16.11. Independent Agreement. This Agreement applies solely to the Project and the Garage Facilities. This Agreement does not apply to any other real property or personal property administered by the Corporation pursuant to the Contract. This Agreement does not create any guidelines or precedent whatsoever for the Corporation's administration of any property under the Contract.

16.12. Interpretation. The City and the Corporation each participated in the negotiation and writing of this Agreement. Therefore, the rule of interpretation that any ambiguity in this Agreement must be construed against the drafter of the agreement does not apply to this Agreement.

16.13. Counterparts. This Agreement may be signed in one or more counterparts, each of which is an original and all of which together are one agreement.

16.14. Survival. Without limiting Section 8.6, the provisions of this Agreement that by their nature or context are intended to survive the expiration or earlier termination of this Agreement will survive the expiration or earlier termination of this Agreement.

16.15. Recording.

1. The Corporation may, at its sole cost and expense, record a memorandum of lease with respect to this Agreement in the Recorder of Deeds Office for Philadelphia. The Corporation must, however, obtain the approval of the City of the form of memorandum of lease prior to filing it.

2. If the Corporation does file a memorandum of lease, then the Corporation shall cooperate with the City to terminate the filing and recording promptly upon the expiration or earlier termination of this Agreement, including but not limited to signing any document the City may wish to file to terminate the memorandum of lease.

3. Any memorandum of lease filed by the Corporation will not affect any of the provisions of this Agreement. Any termination of the memorandum of lease will not terminate those provisions that this Agreement states will survive, or that otherwise are intended to survive, the expiration of the Agreement.

4. This Section 16.15 will survive the expiration or earlier termination of this Agreement.

16.16. Choice of Law, Venue. The laws of Pennsylvania govern all matters arising under or relating to this Agreement. The City and Corporation each shall file all claims under this Agreement in the Common Pleas Court for Philadelphia County.

16.17. Waiver of Jury Trial. **THE CORPORATION KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVES ITS RIGHT TO A JURY TRIAL IN ANY ACTION ARISING UNDER OR RELATED TO THIS AGREEMENT.**

[*Remainder of page intentionally left blank. Signature page follows.*]

AS EVIDENCE OF THEIR CONSENT TO THE PROVISIONS OF THIS AGREEMENT, the City and Corporation have each caused this Agreement to be executed by their duly authorized officers, as of the date in the preamble.

APPROVED AS TO FORM
Romulo L. Diaz, Jr.,
City Solicitor

Per: _____
Lawrence K. Copeland
Senior Attorney
City of Philadelphia Law Dept.

COMMISSIONERS OF FAIRMOUNT PARK

By: _____
Robert N. C. Nix, III, President

Attest: _____
Carol Roache, Secretary

PHILADELPHIA MUSEUM OF ART

By: _____
Name:
Title:

Attest: _____
Name
Title: Secretary

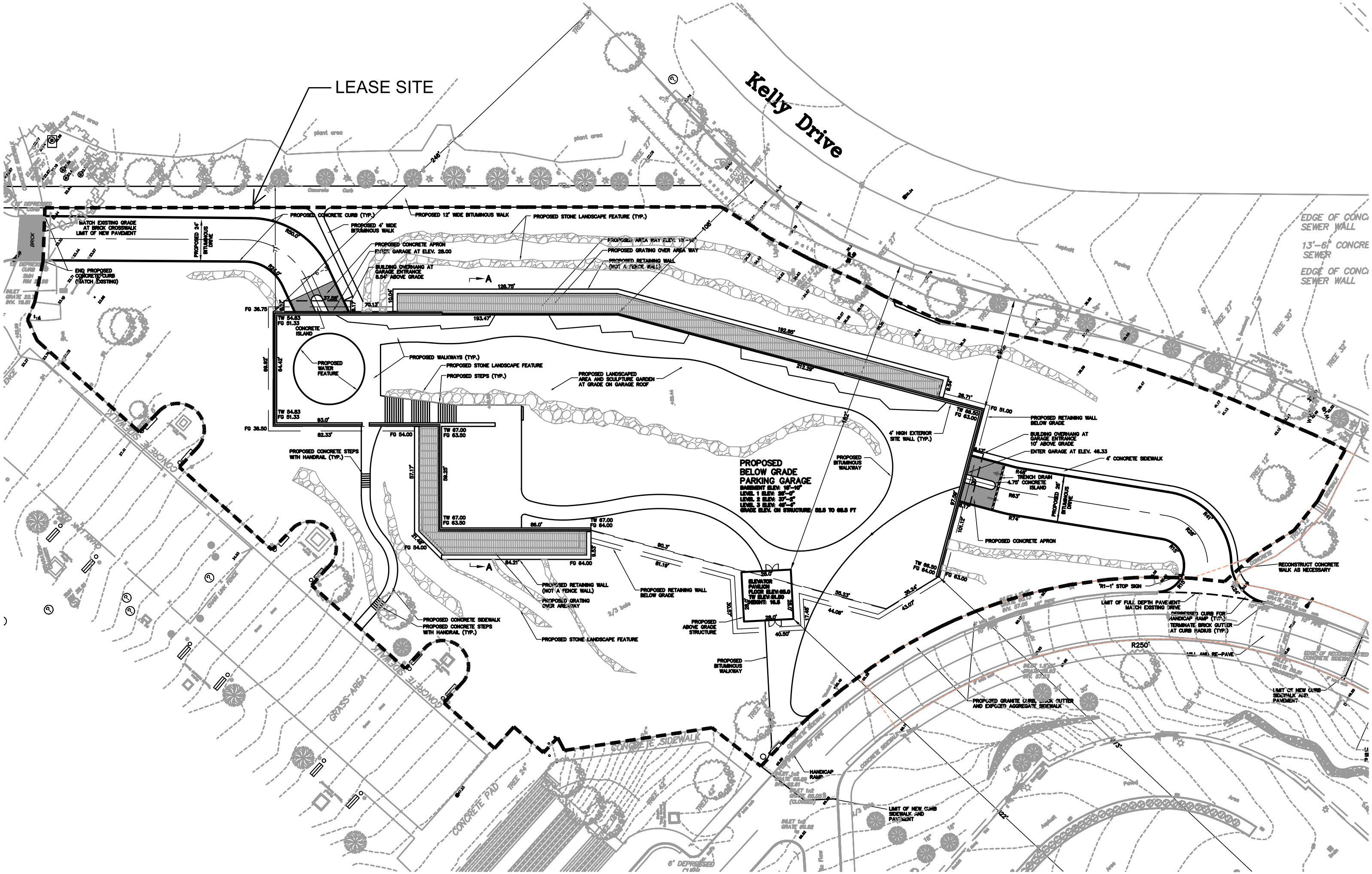
LEASE SITE
Kelly Drive
PROPOSED BELOW GRADE PARKING GARAGE
EMBEDMENT ELEV: 19'-10"
LEVEL 1 ELEV: 28'-0"
LEVEL 2 ELEV: 37'-4"
LEVEL 3 ELEV: 46'-4"
GRADE ELEV. ON STRUCTURE: 62.5 TO 68.5 FT
PROPOSED CONCRETE CURB (TYP.)
PROPOSED 4' WIDE BITUMINOUS WALK
PROPOSED 12' WIDE BITUMINOUS WALK
PROPOSED STONE LANDSCAPE FEATURE (TYP.)
MATCH EXISTING GRADE AT BRICK CROSSWALK LIMIT OF NEW PAVEMENT
END PROPOSED CONCRETE CURB (MATCH EXISTING)
PROPOSED 24' BITUMINOUS DRIVE
PROPOSED CONCRETE APRON
BUILDING OVERHANG AT GARAGE ENTRANCE 8.54' ABOVE GRADE
PROPOSED GRATING OVER AREA WAY
PROPOSED RETAINING WALL (NOT A FENCE WALL)
CONCRETE ISLAND
PROPOSED WATER FEATURE
PROPOSED WALKWAYS (TYP.)
PROPOSED STONE LANDSCAPE FEATURE
PROPOSED STEPS (TYP.)
PROPOSED LANDSCAPED AREA AND SCULPTURE GARDEN AT GRADE ON GARAGE ROOF
4' HIGH EXTERIOR SITE WALL (TYP.)
PROPOSED BITUMINOUS WALKWAY
PROPOSED RETAINING WALL BELOW GRADE
BUILDING OVERHANG AT GARAGE ENTRANCE 10' ABOVE GRADE
ENTER GARAGE AT ELEV. 46.33
4' CONCRETE SIDEWALK
R45' TRENCH DRAIN
4.75' CONCRETE ISLAND
PROPOSED 26' BITUMINOUS DRIVE
PROPOSED CONCRETE APRON
PROPOSED CONCRETE STEPS WITH HANDRAIL (TYP.)
PROPOSED RETAINING WALL (NOT A FENCE WALL)
PROPOSED GRATING OVER AREAWAY
PROPOSED RETAINING WALL BELOW GRADE
PROPOSED CONCRETE SIDEWALK
PROPOSED CONCRETE STEPS WITH HANDRAIL (TYP.)
PROPOSED STONE LANDSCAPE FEATURE
ELEVATOR PAVILION
FLOOR ELEV: 68.0
TW ELEV: 61.50
EMBEDMENT: 19.5
PROPOSED ABOVE GRADE STRUCTURE
PROPOSED BITUMINOUS WALKWAY
RECONSTRUCT CONCRETE WALK AS NECESSARY
'R1-1' STOP SIGN
LIMIT OF FULL DEPTH PAVEMENT MATCH EXISTING DRIVE
DEPRESSED CURB FOR HANDICAP RAMP (TYP.)
TERMINATE BRICK GUTTER AT CURB RADIUS (TYP.)
MILL AND RE-PAVE
LIMIT OF NEW CURB SIDEWALK AND PAVEMENT
PROPOSED GRANITE CURB, BRICK GUTTER AND EXPOSED AGGREGATE SIDEWALK
HANDICAP RAMP
LIMIT OF NEW CURB SIDEWALK AND PAVEMENT
EDGE OF CONC SEWER WALL
13'-6" CONCRE SEWER
EDGE OF CONC SEWER WALL
GRASS AREA
CONCRETE PAD
CONCRETE SIDEWALK
CHAIN LINK FENCE
plant area
Asphalt Paving
6' DEPRESSED CURB

Exhibit B

[To follow upon enactment of ordinance.]

By the Fairmount Park Commission

A resolution regarding The Philadelphia Museum of Art and Philadelphia Museum of Art Corporation – Monday, October 23, 2006 (#1 – Design of Surface Parking Facilities)

Background:

A. On December 14, 2005, the Commission passed a resolution approving in concept a proposal by the Philadelphia Museum of Art corporation ("**Corporation**") to construct a multi-story parking garage on the west side of Faire Mount, together with a landscaped roof, sculpture garden, above-ground vestibule serving an elevator for the garage, and other improvements (collectively, the "**Garage Facilities**").

B. On June 5, 2006, the Commission passed a resolution approving the Corporation's final design plans for the Garage Facilities. That resolution stipulated that the Commission's approval was conditioned upon the City, Commission and Corporation reaching a final agreement upon matters related to construction of the Garage Facilities, including supplementing available parking for the public and patrons of the Water Works, and other business terms.

C. Officials of Fairmount Park, the City, and the Corporation have developed plans to replace and to supplement surface parking that will be displaced by construction of the Garage Facilities.

Accordingly, the Fairmount Park Commission resolves:

1. The Commission approves the Corporation's final design plans presented to the Commission today for construction of a new surface parking lot, re-striping the parking lanes around Italian Fountain Circle, dedicating a portion of available parking in the forebay area of the Water Works for use of Engine House patrons, and performing landscaping and other improvements related to the surface parking.

2. The Commission authorizes the Commission President and the Executive Director of Fairmount Park, working with City officials and the City Solicitor, to incorporate the approval under this resolution into a written agreement between the City and the Corporation.

By the Fairmount Park Commission

A resolution regarding The Philadelphia Museum of Art and Philadelphia Museum of Art Corporation – Monday, October 23, 2006 (#2 -- Master Plan for Public Amenities)

Background:

A. On June 5, 2006, the Commission passed a resolution approving final plans of the Philadelphia Museum of Art Corporation ("**Corporation**") for new "**Garage Facilities**." That resolution stipulated that the Commission's approval was conditioned upon the City, Commission and Corporation reaching a final agreement upon other matters related to construction of the Garage Facilities.

B. Earlier this day the Commission passed a resolution approving the design of new surface parking improvements near Water Works Drive and the Fairmount Water Works.

C. During discussions about surface parking and possible business terms relating to the Garage Facilities, officials of the corporation proposed development of new public amenities ("**Public Amenities**") in the area between Lloyd Hall and the Water Works to make better use of the park land in that area and to offer more recreational opportunities to the public.

D. Fairmount Park staff, with promised financial support from the Corporation, have developed a master plan ("**Master Plan**") to develop the Public Amenities.

Accordingly, the Fairmount Park Commission resolves:

1. The Commission approves the Master Plan for Public Amenities in the area near Lloyd Hall and the Water Works.

2. The Commission directs the Commission President and Executive Director of Fairmount Park, working with City of Philadelphia officials, to diligently implement the Master Plan, to obtain the necessary funding, and to make the necessary improvements to accomplish the goals of the Master Plan.

By the Fairmount Park Commission

A resolution regarding The Philadelphia Museum of Art and Philadelphia Museum of Art Corporation – Monday, October 23, 2006 (#3 – Business Terms)

Background:

A. On June 5, 2006, the Commission passed a resolution approving the Corporation's final design plans for the Garage Facilities. That resolution stipulated that the Commission's approval was conditioned upon the City, Commission and Corporation reaching a final agreement upon business terms and other matters related to construction of the Garage Facilities.

B. Earlier this day the Commission passed a resolution approving the final design plans of the Philadelphia Museum of Art Corporation for surface parking improvements and a resolution approving a Master Plan for Public Amenities between Lloyd Hall and the Water Works.

C. City, Commission, and Corporation officials have reached agreement on business terms under which the Corporation would construct and operate the Garage Facilities and the surface parking improvements and have set forth those terms in a "**Summary of Key Business Terms**."

Accordingly, the Fairmount Park Commission resolves:

1. The Commission approves the Summary of Key Business Terms, dated October 19, 2006 ("**Key Business Terms**"), relating to construction, operation, and management of the Garage Facilities and construction of surface parking improvements.

2. The Commission authorizes the Commission President and Executive Director of Fairmount Park, working with City of Philadelphia officials, to negotiate and execute a final agreement with the Corporation that governs the Garage Facilities and incorporates the provisions of the Key Business Terms as approved by the Commission.

3. The City Solicitor is authorized to incorporate additional provisions in the final agreement with the Corporation for the Garage Facilities as the City Solicitor determines are in the best interests of the Commission and the City, except that any provision that the Commission President determines would be a material change from the approved Key Business Terms is subject to the prior review and approval of the Commission by resolution.

4. The Commission President and Executive Director, together with the City Solicitor and other City officials, are authorized to take all actions necessary and desirable to complete the agreement authorized by this resolution, including but not limited to obtaining authorization from City Council.

SCHUYLKILL
RIVER DAM
MOUND DAM
NEW MILL
HOUSE
AQUARIUM
DRIVE

Exhibit E

Future Capital Improvements Planned for Philadelphia Museum of Art Facilities

In February 2005, the Board of Trustees of the Philadelphia Museum of Art approved the Integrated Master Plan ("Master Plan"), which provides for the renovation and expansion of the Philadelphia Museum of Art facilities in phases over a ten-year period. The next phase of the Master Plan includes the following projects:

- Landscaped Parking Facility and Sculpture Garden
- Repairs and Renovations to the Main Museum Building Façade and Roof
- Relocation of the Loading Dock for the Main Museum Building
- New Central Utility Plan for the Main Museum Building

The preliminary budget estimate for the above scope of work is $128 million.

Future phases of work for the Master Plan are expected to include the following projects:

- Special Exhibition and Contemporary Art Galleries
- Restored Kelly Drive Entrance and Tunnel
- New Auditorium and Education Center
- Renovated Art Storage and Support Facility
- New American and Asian Art Galleries
- Expanded Modern Art Galleries
- New Museum Restaurant and Store
- Visitor Orientation Center

Certification of Non-Indebtedness

By entering into this [agreement / contract] Contractor represents, warrants, certifies and covenants the following:

1. Contractor and all entities under common control with Contractor, or controlled by Contractor, are not currently indebted to the City of Philadelphia.
2. Contractor and all entities under common control with Contractor, or controlled by Contractor, will not at any time during the term of this [agreement / contract] (including any extensions to this [agreement / contract]) be indebted to the City of Philadelphia, for or on account of any
    a. delinquent taxes (including but not limited to taxes collected by the City on behalf of the School District of Philadelphia),
    b. water bills,
    c. sewer bills,
    d. liens,
    e. judgments,
    f. fees or
    g. other debts for which no written agreement or payment plan satisfactory to the City of Philadelphia has been established.
3. Contractor shall remain current during the term of this [agreement / contract] with all taxes and payments it owes the City and shall inform the [Corporation] and City in writing of Contractor's receipt of any notices of delinquent payments within five (5) days after receipt.
4. Contractor acknowledges that any breach or failure by it to conform to this representation, warranty, certification, and covenant is a breach of this [agreement / contract].
5. Contractor expressly acknowledges that its misrepresentation, breach of warranty, or false certification regarding its indebtedness to the City of Philadelphia is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

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APPLICANT'S ACCOUNT NO. _____

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3-1-74.47 794

Articles of Amendment–Domestic Nonprofit Corporation

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
CORPORATION BUREAU

Filed this 9th day of December, A.D. 1974.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

C. DeLores Tucker
SECRETARY OF THE COMMONWEALTH

dag

In compliance with the requirements of 15 Pa. S. § 7905 (relating to articles of amendment), the undersigned nonprofit corporation, desiring to amend its Articles, does hereby certify that:

1. The name of the corporation is:

Philadelphia Museum of Art

2. The address of its registered office in this Commonwealth is (the Department of State is hereby authroized to correct the following statement to conform to the records of the Department):

Benjamin Franklin Parkway at Twenty-sixth Street
(NUMBER) (STREET)

Philadelphia Pennsylvania 19101
(CITY) (ZIP CODE)

3. The statute by or under which it was incorporated is: Act of April 29, 1874, P.L. 73 (by Decree of Court of Common Pleas No. 3 for the County of Philadelphia as of December Term 1875 No. 1041).

4. The date of its incorporation is: February 27, 1876

5. (Check, and if appropriate, complete one of the following):

☒ The amendment shall be effective upon filing these Articles of Amendment in the Department of State.

☐ The amendment shall be effective on:

_____ at _____
(DATE) (HOUR)

6. (Check one of the following):

☒ The amendment was adopted by the members pursuant to 15 Pa. S. § 7904(a).

☐ The amendment was adopted by the board of directors pursuant to 15 Pa. S. § 7904(b).

7. The amendment adopted by the corporation, set forth in full, is a follows: (Restated Articles of Incorporation)

1. The name of the Corporation is PHILADELPHIA MUSEUM OF ART.

2. The Corporation was incorporated by Decree of the Court of Common Pleas No. 3 for the County of Philadelphia, December Term 1875, No. 1041.

3. The address of the Corporation's principal office is The Parkway, Philadelphia, Pennsylvania.

4. The purposes of the Corporation are to maintain and develop a museum of art and to promote the appreciation of art in the City of Philadelphia and the Commonwealth of Pennsylvania.

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5. The Corporation does not contemplate pecuniary gain or profit. No part of its net earnings shall inure to the benefit of, or be distributable to, its members, trustees, officers or other private persons, except that the Corporation may pay reasonable compensation for services rendered and make payments in furtherance of its purposes.

6. The Corporation is to exist perpetually.

7. The Corporation has members as provided in the By-Laws. The Corporation has no stocks or shares.

8. The Corporation is governed by a Board of Trustees as provided in the By-Laws.

9. In the event of the dissolution of the Corporation, the Board of Trustees shall dispose of the assets of the Corporation exclusively for the purposes aforesaid.

RECEIVED '74 DEC 9 PM 8:37 DEPARTMENT OF STATE

IN TESTIMONY WHEREOF, the undersigned corporation has caused these Articles of Amendment to be signed by a duly authorized officer and its corporate seal, duly attested by another such officer, to be hereunto affixed this second day of December, 1974.

PHILADELPHIA MUSEUM OF ART
(NAME OF CORPORATION)

By: [signature]
(SIGNATURE)

President
(TITLE: PRESIDENT, VICE PRESIDENT, ETC.)

Attest: [signature]
(SIGNATURE)

Assistant Secretary
(TITLE: SECRETARY, ASSISTANT SECRETARY, ETC.)

(CORPORATE SEAL)

INSTRUCTIONS FOR COMPLETION OF FORM:

A. Any necessary copies of Form DSCB: 17.2 (Consent to Appropriation of Name) or Form DSCB: 17.3 (Consent to Use of Similar Name) shall accompany Articles of Amendment effecting a change of name.

B. Any necessary governmental approvals shall accompany this form.

C. If the action was authorized by a body other than the board of directors Paragraph 6 should be modified accordingly.

D. 15 Pa. S. § 7906(c) requires that the corporation shall advertise its intention to file or the filing of Articles of Amendment. Proofs of publication of such advertising should not be delivered to the Department, but should be filed with the minutes of the corporation.

C O M M O N W E A L T H O F P E N N S Y L V A N I A

D E P A R T M E N T O F S T A T E

JUNE 05, 2000

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

PHILADELPHIA MUSEUM OF ART

I, Kim Pizzingrilli, Secretary of the Commonwealth of Pennsylvania do hereby certify that the foregoing and annexed is a true and correct photocopy of Articles of Amendment restating the Articles of Incorporation in their entirety

which appear of record in this department

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the Secretary's Office to be affixed, the day and year above written.

Kim Pizzingrilli

Secretary of the Commonwealth

JSOW

AS AMENDED
10/19/06

Philadelphia Museum of Art
Bylaws

Article I *Offices and Fiscal Year*

Section 1.01. ***Registered Office***. The registered office of the corporation in the Commonwealth of Pennsylvania shall be at 26th Street and Benjamin Franklin Parkway, Philadelphia, Pennsylvania until otherwise established by a vote of a majority of the Board of Trustees in office, and a statement of such change is filed in the Department of State; or until changed by an appropriate amendment of the articles of the corporation.

Section 1.02. ***Fiscal Year***. The fiscal year of the corporation shall begin on the first day of July of each year.

Article II *Members*

Section 2.01. ***Members of the Corporation***. The "Members of the Corporation" shall consist of (i) the members of the Board of Trustees, (ii) the Honorary Trustees, and (iii) those persons who have contributed services, property or funds to the corporation in such minimum amount or value as the Board of Trustees may establish from time to time by resolution of the Board.

Section 2.02. ***Other Members***. The Board of Trustees may from time to time establish one or more classes of persons who, upon payment of such dues or satisfaction of such other requirements as the Board may from time to time fix, shall be entitled to such admission and other benefits as the Board or the Director may specify. Such persons may be called "members" of the Museum, but unless they meet the requirements of Section 2.01, such persons shall not be deemed Members of the Corporation for any purposes of these Bylaws or the Nonprofit Corporation Law of 1988, as amended.

Article III *Meetings of Members of the Corporation*

Section 3.01. ***Annual Meeting***. An annual meeting of the Members of the Corporation shall be held in October at the Philadelphia Museum of Art at such date and time as the Board of Trustees shall determine.

Section 3.02. ***Special Meetings***. Special meetings of the Members of the Corporation for any purpose or purposes may be called at any time by the Board of Trustees, the Executive Committee, the Chair of the Board, the Chair of the Executive Committee, the Director, or upon written request delivered to the Secretary of at least 10% of all the Members of the Corporation.

At any time, upon written request of any person or persons who have duly called a special meeting, which written request shall state the object of the meeting, it shall be the duty of the Secretary to fix the time of the meeting, which shall be held at such date and time as the Secretary may fix, not less than five (5) nor more than sixty (60) days after the receipt of the

request, and to give due notice thereof. If the Secretary shall neglect or refuse to fix the date and time of such meeting and give notice thereof, the person or persons calling the meeting may do so.

Section 3.03. ***Quorum.*** Twenty-five (25) Members of the Corporation, at least fifteen of whom must be Trustees, shall constitute a quorum at any regular or special meeting of the Members of the Corporation.

Section 3.04. ***Notice of Meetings.*** Written notice of every meeting of the Members of the Corporation, whether annual or special, shall be given to each Member of the Corporation at least ten (10) days prior to the day named for the meeting. Every notice of a special meeting shall state briefly the purpose or purposes thereof, and no business, other than that specified in such notice and matters germane thereto, shall be transacted at any special meeting without further notice to the Members of the Corporation not present.

Section 3.05. ***Organization.*** At every meeting of the Members of the Corporation, the Chair of the Board, or in the case of a vacancy in office or absence of the Chair of the Board, one of the following officers present in the order stated: the Chair of the Executive Committee (if a person other than the Chair of the Board), one of the Vice Chairs of the Board (in order of seniority by years of service on the Board), the Director, a Chair chosen by a majority of the Board of Trustees or the Chief Operating Officer, shall act as presiding officer. The Secretary, or, in the absence of the Secretary, an Assistant Secretary, or in the absence of both the Secretary and Assistant Secretaries, a person appointed by the presiding officer, shall act as Secretary.

Article IV *Board of Trustees*

Section 4.01. ***Powers; Personal Liability.***

(a) The Board of Trustees shall have full power to conduct, manage, and direct the business and affairs of the corporation; and all powers of the corporation are granted to and vested in the Board of Trustees. No work of art may be acquired by purchase, gift, or otherwise, or may be lent or disposed of, except in such manner as may be approved by the Board of Trustees.

(b) A Trustee of the corporation shall not be personally liable, as such, for monetary damages for any action taken, or any failure to take any action, unless the Trustee has breached or failed to perform the duties of his office under 15 Pa.C.S.A. Subch. 57B and the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness. The provisions of this subsection shall not apply to the responsibility or liability of a Trustee pursuant to any criminal statute or the liability of a Trustee for the payment of taxes pursuant to local, state or Federal law.

Section 4.02. ***Number and Terms.*** The Board of Trustees shall consist of not greater than sixty (60) elected Trustees and the Trustees Ex-Officio set forth in Section 4.05. Each elected Trustee shall serve for a term of three years. Each elected Trustee whose term is expiring shall be eligible for election for a new term of three years, without limitation on the number of such three year terms. The elected Trustees shall be divided into three (3) classes approximately

equal in number and at each annual meeting of Members, nominees to fill one of such classes shall be elected as provided in Section 4.03.

Section 4.03. ***Qualification and Election.*** The elected Trustees shall be elected by the Members of the Corporation at the annual meeting of the Members of the Corporation. Notice of such annual meeting shall be given at least ten (10) days prior to the date of such meeting. To qualify, and to continue to serve, as a member of the Board of Trustees, each Trustee shall adhere to, and when so required by the Board of Trustees sign, such ethics and other policies as the Board of Trustees may adopt from time to time.

Section 4.04. ***Nominations.*** Candidates for elected Trustees shall be proposed by the Committee on Trustees, which shall submit its nominations for election to the Board of Trustees to the Secretary at least fifteen (15) days prior to the annual meeting of the Members of the Corporation. Other nominations for elected Trustees may be made by Members of the Corporation upon ten (10) days prior written notice to the Secretary signed by not less than fifteen (15) Members of the Corporation. The Secretary shall make all nominations available for inspection by any Member of the Corporation ten (10) days prior to such annual meeting. No person shall be eligible for election to the Board of Trustees except nominees nominated in compliance with this Section 4.04.

Section 4.05. ***Trustees Ex-Officio.*** The Governor of Pennsylvania, the Mayor of Philadelphia, the President of the City Council of Philadelphia, the Director of the corporation, the Chief Operating Officer of the corporation, the President of the Fairmount Park Commission, the President of the Samuel S. Fleisher Art Memorial, the President of the Women's Committee of the Philadelphia Museum of Art, the Chair or Co-Chairs (if two) of the Museum Associates, and the Chair of the Corporate Partners shall each be Trustees Ex-Officio. Trustees Ex-Officio may participate in all meetings of the Board of Trustees and shall have all the rights and privileges of elected Trustees, including the right to vote. The Governor, the Mayor, the President of City Council, and the President of the Fairmount Park Commission may each designate a representative to attend any meeting in his or her place, but such representative shall not have the right to vote.

Section 4.06. ***Honorary Trustees.*** From time to time the Board of Trustees may establish such honorary trustee positions or classifications as the Board deems appropriate and may name to such positions or classifications individuals who, as a result of their extraordinary work, dedication or support of the corporation, are deserving of distinguished recognition. Such positions or classifications may be for life or have such term or other limits as the Board of Trustees may determine. Individuals named to such positions or classifications shall be considered "Honorary Trustees" and may participate in all meetings of the Board of Trustees, but individuals holding such honorary positions or classifications shall not be entitled to vote as members of the Board of Trustees and shall not, by virtue of such position or classification, have any legal responsibilities in the conduct of the affairs of the corporation. As provided in Section 2.01, the Honorary Trustees shall be Members of the Corporation and entitled to vote as such.

Section 4.07. ***Organization.*** At every meeting of the Board of Trustees, the Chair of the Board, if there be one, or, in the case of a vacancy in the office or absence of the Chair of the Board, one of the following officers present in the order stated: the Chair of the Executive

Committee, the Vice Chairs of the Board (in order of seniority by years of service on the Board), the Director, the Chief Operating Officer, or a Chair chosen by a majority of the Trustees present, shall preside, and the Secretary, or, in the absence of the Secretary, an Assistant Secretary, or in the absence of the Secretary and the Assistant Secretaries, any person appointed by the Chair of the meeting, shall act as Secretary.

Section 4.08. ***Resignations***. Any Trustee of the corporation may resign at any time by giving written notice to the Chair of the Board or the Secretary of the corporation. Such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.09. ***Vacancies***. The Board of Trustees, upon recommendation of the Committee on Trustees, may declare vacant the office of an elected Trustee if such Trustee is declared of unsound mind by an order of court, or convicted of felony, or for any other proper cause as determined by the Board. If within 90 days after notice of election to the Board of Trustees is given, the person elected does not accept such office either in writing or by attending a meeting of the Board of Trustees, the Board of Trustees may declare his office vacant.

Any vacancy in the office of an elected Trustee for any reason (including the failure of the Members to elect persons to all available positions) may be filled upon recommendation of the Committee on Trustees by a majority of the remaining members of the Board of Trustees at any regular or special meeting. Each person so elected shall be an elected Trustee to serve for the balance of the unexpired term. No election to fill a vacancy may be held unless notice of the election is given to the Board of Trustees at least fifteen days prior to the date of the meeting at which such election is to be held.

Section 4.10. ***Organization Meeting***. Promptly following the meeting of the Members of the Corporation for the election of elected Trustees, the newly elected Board of Trustees shall meet for the purpose of organization, election of officers, and the transaction of other business. Notice of such meeting need not be given.

Section 4.11. ***Regular Meetings***. Regular meetings of the Board of Trustees shall be held not less frequently than four (4) times per year at such time and place as the Board of Trustees determines. Notice of regular meetings need not be given unless otherwise required by law or these bylaws.

Section 4.12. ***Special Meetings***. Special meetings of the Board of Trustees shall be held whenever called by the Chair of the Board, the Executive Committee, the Chair of the Executive Committee, the Director or by six or more members of the Board of Trustees. Notice of each such meeting shall be given to each member of the Board of Trustees by telephone or in writing at least 24 hours (in the case of notice by telephone) or 48 hours (in the case of notice by telecopier, e-mail or other electronic means) or five days (in the case of notice by mail) before the time at which the meeting is to be held. Every such notice shall state the time and place of the meeting.

Section 4.13. ***Quorum, Manner of Acting, and Unanimous Consent.*** Twenty (20) members of the Board of Trustees in office shall be present at meetings of the Board in order to constitute a quorum for the transaction of business. Every member of the Board of Trustees shall be entitled to one vote. Except as otherwise specified in the articles or these bylaws or provided by statute, the acts of a majority of the members of the Board of Trustees present at a meeting at which a quorum is present shall be the acts of the Board of Trustees. Any action which may be taken at a meeting of the Board of Trustees (or any committee thereof) may be taken without a meeting, if a consent or consents in writing setting forth the action so taken shall be signed by all of the Trustees in office (or of such committee) and shall be filed with the Secretary of the corporation.

Section 4.14. ***Fees.*** No fees shall be paid to any Trustee for services rendered to the corporation as a Trustee.

Article V *Notice - Waivers - Meetings*

Section 5.01. ***Notice, What Constitutes.*** Whenever written notice is required to be given to any person under the provisions of the articles, these bylaws, or the Nonprofit Corporation Law of 1988, as amended, it may be given to such person, either personally or by sending a copy thereof by first class mail, postage prepaid, or by telecopier, e-mail or other electronic means, to the address of the person appearing on the books of the corporation, or in the case of Trustees, supplied by the Trustees to the corporation for the purpose of notice. If the notice is sent by mail, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail, and when sent if the notice is sent by telecopier, e-mail or other electronic means. A notice of meeting shall specify the place, day and hour of the meeting and any other information required by law or these bylaws.

When a meeting is adjourned, it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which such adjournment is taken.

Section 5.02. ***Waivers of Notice.*** Whenever any written notice is required to be given under the provisions of the articles, these bylaws, or the Nonprofit Corporation Law, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Except as otherwise required by this section and by Section 13.05, neither the business to be transacted at nor the purpose of a meeting need be specified in the waiver of notice of such meeting. In the case of a special meeting of members such waiver of notice shall specify the general nature of the business to be transacted.

Attendance of a person at any meeting shall constitute a waiver of notice of such meeting, except where a person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

Section 5.03. ***Modification of Proposal Contained in Notice.*** Whenever the language of a proposed resolution is included in a written notice of a meeting, the meeting considering the

resolution may without further notice adopt it with such clarifying or other amendments as do not enlarge its original purpose.

Section 5.04. ***Conference Telephone Meetings.*** One or more persons may participate in a meeting of the Board of Trustees or of a committee of the Board of Trustees or of the Members of the Corporation by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

Article VI *Officers*

Section 6.01. ***Number, Qualifications and Designation.*** The officers of the corporation shall be the Chair of the Board; the Chair of the Executive Committee (if a person other than the Chair of the Board), the Vice Chairs (elected by the Board of Trustees from time to time pursuant to Section 6.11); the Director; the Chief Operating Officer; the Chief Financial Officer; and the Secretary. Any number of offices may be held by the same person, except that one person may not serve as both the Director and the Secretary, and one person may not serve as the Chair of the Board and as the Director.

Section 6.02. ***Election, Appointment and Terms of Office.*** Except as expressly provided otherwise in this Article VI, the officers of the corporation shall be elected annually for a term of one (1) year and until a successor shall have been elected and qualified, or until death, resignation or removal.

Section 6.03. ***Nominations.*** Candidates for elected officers and for members of the Executive Committee and the Committee on Trustees shall be proposed by the Committee on Trustees, which shall submit its nominations to the Secretary at least ten (10) days prior to the meeting at which such elections are to be held. Other nominations of officers and of members of the Executive Committee and the Committee on Trustees may be made by any Trustee upon written notice to the Secretary at least two (2) weeks prior to such meeting. The Secretary shall notify the Board of Trustees of all nominations ten (10) days prior to the meeting. The Committee on Trustees shall, and any member of the Board of Trustees at any meeting may, make nominations to fill vacancies in such offices or committee memberships.

Section 6.04. ***Other Officers and Agents.*** The Board of Trustees may from time to time elect such other officers, employees or agents as the business of the corporation may require. The Director may appoint one or more Associate or Assistant Directors, and Assistant Secretaries, each of whom shall hold office for such period, have such authority, and perform such duties as the Director may from time to time determine.

Section 6.05. ***Resignations.*** Any officer or agent may resign at any time by giving written notice to the Board of Trustees, or to the Chair of the Board, the Director or the Secretary of the corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.06. ***Removal.*** Any officer, employee or other agent of the corporation may be removed, either for or without cause, by the Board of Trustees or other authority which elected,

retained or appointed such officer, employee or other agent whenever in the judgment of such authority the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights of any person so removed.

Section 6.07. ***Vacancies.*** Any vacancy in any office because of death, resignation, removal, disqualification, or any other cause, shall be filled by the Board of Trustees or by the officer to which the power to fill such office has been delegated pursuant to Section 6.04 of this Article, as the case may be, and if the office is one for which these bylaws prescribe a term, shall be filled for the unexpired portion of the term.

Section 6.08. ***General Powers.*** All officers of the corporation, as between themselves and the corporation, shall respectively have such authority and perform such duties in the management of the property and affairs of the corporation as may be determined by resolutions or orders of the Board of Trustees, or, in the absence of controlling provisions in resolutions or orders of the Board of Trustees, as may be provided in these bylaws.

Section 6.09. ***The Chair of the Board.*** The Board of Trustees shall elect a Chair of the Board, who shall preside at meetings of the Members of the Corporation and of the Board of Trustees. The Chair shall also be a member ex-officio of all committees of the Board, except the Committee on Trustees. In case of a vacancy in office, or in the absence or incapacity of the Chair of the Board, the duties of the Chair shall be performed by one of the following in the order stated: the Chair of the Executive Committee (if a person other than the Chair of the Board) or one of the Vice Chairs (in order of seniority by years of service on the Board).

Section 6.10. ***The Chair of the Executive Committee.*** The Chair of the Board shall be the Chair of the Executive Committee, unless the Chair of the Board appoints another Trustee to serve as Chair of the Executive Committee. Any such appointment shall not be effective unless approved by the Board. The Chair of the Executive Committee shall preside at all meetings of the Executive Committee and shall have such other duties and responsibilities as the Chair of the Board may delegate to such office consistent with these bylaws. In the case of a vacancy in office, or in absence or incapacity of the Chair of the Executive Committee, the duties of the Chair of the Executive Committee shall be performed by one of the following in the order stated: the Chair of the Board or one of the Vice Chairs (in order of seniority by years of service on the Board).

Section 6.11. ***The Vice Chairs.*** The Board of Trustees shall elect not more than six Vice Chairs, as the Board shall from time to time determine. Each Vice Chair shall be elected for a term of three (3) years and until a successor shall have been elected and qualified, or until death, resignation or removal. A Vice Chair who has served two or more consecutive terms may not succeed himself or herself. Each Vice Chair shall perform such duties as the Chair may from time to time designate after consultation with the Chair of the Executive Committee and the Director.

Section 6.12. ***The Director.*** The Director shall be the chief executive officer and principal professional officer of the corporation. The Director shall give direction to the formulation of and provide leadership to the fulfillment of the corporation's artistic and educational mission, and bear responsibility for the achievement of its financial objectives. The

Director shall report to the Chair of the Board, the Executive Committee and the Board of Trustees. The Director shall be an ex-officio member of all other committees, except the Committee on Trustees and the Director or his or her delegate shall generally attend meetings of such committees.

Section 6.13. ***The Chief Operating Officer.*** The Chief Operating Officer shall report to the Director and with the Director to the Board of Trustees. The Chief Operating Officer shall provide leadership for the financial, human resources and business operations of the corporation and shall generally attend meetings of all committees.

Section 6.14. ***The Chief Financial Officer.*** The Chief Financial Officer shall report to the Chief Operating Officer and, as appropriate, to the Director and the Board of Trustees. From time to time the Chief Financial Officer shall provide a report to the Board of Trustees on the financial condition of the Corporation and annually shall provide such a report to the Members.

Section 6.15. ***The Secretary.*** The Secretary shall be responsible for maintenance of the corporate records of the corporation. The Secretary or the Secretary's delegate shall keep the minutes of meetings of the Board of Trustees and of the Members of the Corporation.

Section 6.16. ***Honorary Officers.*** From time to time the Board of Trustees may establish such "Honorary Officer" positions as the Board deems appropriate and may name to such positions individuals who, as a result of their extraordinary work, dedication or support of the corporation, are deserving of distinguished recognition. Such positions may be for life or have such term or other limits as the Board of Trustees may determine. Honorary Officers shall not, by virtue of such position, have any legal duties to the corporation.

Article VII *Committees*

Section 7.01. ***Committees.*** The corporation shall have an Executive Committee, an Audit Committee, Buildings Committee, a Finance Committee, a Committee on Collections, a Committee on Trustees, an Investment Committee, and such other standing, departmental advisory and special committees as the Board of Trustees shall determine. In addition, the Chair of the Board may, from time to time, establish one or more ad hoc committees (including a development committee and a capital campaign committee) and appoint the members thereof.

Section 7.02. ***The Executive Committee.*** The Executive Committee shall consist of the Chair of the Executive Committee; the Chair of the Board (if a person other than the Chair of the Executive Committee), the Vice Chairs; the respective Chairs of the Audit, Finance, Trustees, Collections, Investment and Buildings Committees; the Director; the Chief Operating Officer; and not more than six (6) other members of the Board of Trustees who shall be elected by the Board of Trustees for three (3) year staggered terms. No elected member of the Executive Committee may succeed himself or herself unless such member has been an elected member of the Executive Committee for less than one year. The Executive Committee shall have the powers of the Board of Trustees in the management of the affairs of the corporation between meetings of the Board of Trustees, shall oversee the financial and administrative affairs of the corporation, review the budget, and consider and take action on such other matters as it may

deem appropriate; except that the Executive Committee shall not have any power or authority as to the following:

(a) The submission to the Members of the Corporation of any action requiring approval of "members" under the Nonprofit Corporation Law of 1988, as amended;

(b) The creation or filling of vacancies on the Board of Trustees;

(c) The adoption, amendment or repeal of the bylaws;

(d) The amendment or repeal of any resolution of the Board of Trustees; and

(e) Action on matters committed by the bylaws or resolution of the Board of Trustees to another committee of the Board.

No committee of the Board of Trustees, other than the Executive Committee, shall, pursuant to resolution of the Board of Trustees or otherwise, exercise any of the powers or authority vested by the bylaws or the Nonprofit Corporation Law in the Board of Trustees as such, but any other committee of the Board of Trustees may make recommendations to the Board of Trustees or Executive Committee concerning the exercise of such powers and authority.

Section 7.03. ***The Audit Committee.*** The Audit Committee shall consist of at least five (5) members of the Board of Trustees who shall have such duties and responsibilities as are set forth in the Audit Committee charter as adopted and as may be amended from time to time by the Board of Trustees.

Section 7.04. ***The Finance Committee.*** The Finance Committee shall consist of the Chair of the Executive Committee, the Director, the Chief Operating Officer, the Chief Financial Officer and such additional number of members of the Board of Trustees as may be determined from time to time by the Chair of the Board. It shall be the responsibility of the Committee to review financial matters. Each year the Committee shall submit to the Executive Committee a recommended budget for the following fiscal year. Such submission shall be made in sufficient time to enable the Executive Committee to approve the budget prior to submission to the Board of Trustees for final approval. Any approved budget may be amended from time to time by the Executive Committee or Board of Trustees.

Section 7.05. ***The Committee on Trustees.*** The Committee on Trustees shall consist of seven (7) members of the Board of Trustees, other than the Chair of the Board, the Chair of the Executive Committee, the Director and the Chief Operating Officer. They shall be appointed by the Board of Trustees for terms of four (4) years, in such manner that the terms of two members of the Committee expire in each of three successive years and one in the fourth successive year. No member of the Committee on Trustees may succeed himself or herself unless such member has been a member of the Committee for less than one year. The Committee on Trustees shall submit its nominations for elected Trustees, officers, and members of the Executive Committee and the Committee on Trustees prior to the annual meeting of the Members of the Corporation held for the election of elected Trustees. Nominations of elected Trustees, officers, and members of the Executive Committee and the Committee on Trustees to fill vacancies occurring at other times shall be made by the Committee on Trustees to the Board of Trustees as the occasion

requires. The Chair of the Committee on Trustees shall be selected by the Chair of the Board, in consultation with the Director, from among the elected members of such committee. The selection by the Committee on Trustees of a person for nomination to the Board of Trustees or for re-election shall be based on criteria formulated by the Committee and reviewed, from time to time, by the Board of Trustees. The Committee on Trustees may also establish and oversee policies concerning attendance and other responsibilities and commitments of Trustees as the Committee deems appropriate.

Section 7.06. ***The Investment Committee.*** The Investment Committee shall consist of at least five members of the Board of Trustees, plus such other members as the Chair of the Board, in consultation with the Chair of the Committee, may appoint from time to time. The Committee shall have responsibility to recommend overall investment policies and monitor investment performance, except that the Committee, by action of those of its members who are Trustees, shall have the authority to approve all investment management contracts.

Section 7.07. ***The Buildings Committee.*** The Buildings Committee shall consist of such number of members as the Chair of the Board may determine from time to time, at least a majority of whom shall be members of the Board of Trustees. The Committee shall serve in an advisory capacity to the Board and have responsibility to advise the Board on matters involving buildings and grounds owned or occupied or to be acquired by the corporation.

Section 7.08. ***Committee Membership.*** Except as otherwise provided in this Article VII, the Chair of the Board shall, in consultation with the Director, appoint the members and the Chair of each Committee. Neither the Chair of the Board nor the Chair of the Executive Committee shall be eligible to serve as Chair of the Audit Committee or the Finance Committee. All such appointments shall be reported to the Board of Trustees. Persons appointed by the Chair shall serve at the discretion of the Chair, and a policy of reasonable rotation of Committee Chairs and members shall be followed. Only elected members of the Board of Trustees shall be eligible to serve as Chair of a Committee.

Section 7.09. ***The Departmental Advisory Committees.*** The Departmental Advisory Committees shall consist of such number of members as the Director may determine from time to time. The Director shall appoint the members and the Chair of each such committee. The Chair of each such Committee must be a Trustee but the other members need not be. Each such committee shall serve in an advisory capacity to the Board of Trustees with respect to the activity and support of the department with which it is related. The Curatorial Department Advisory Committees shall also provide advice concerning acquisitions, deaccessions and exhibitions.

Section 7.10. ***The Committee on Collections.*** The Committee on Collections shall consist of the Chairs of all the Curatorial Department Advisory Committees, the Chair of the Board, and the Director. The Committee shall serve in an advisory capacity to the Board of Trustees with respect to matters involving the collections of the Corporation. The Committee shall have the responsibility to make recommendations to the Board of Trustees regarding the deaccessioning of any work of art, including a method of disposition for the deaccessioned work of art, whether it is to be *(a)* given to another public institution; *(b)* exchanged; *(c)* sold; or, *(d)* if there is no other alternative, destroyed.

Section 7.11. ***Quorum.*** A majority of the Members of a Committee shall be present at a meeting of the Committee to constitute a quorum.

Article VIII *The Women's Committee of the Philadelphia Museum of Art*

Section 8.01. ***The Organization.*** The corporation, through its appropriate officers and committees, will cooperate with and accept support from The Women's Committee of the Philadelphia Museum of Art, a separately incorporated, nonprofit Pennsylvania corporation, having among its stated objects the encouragement, support, and increase of public interest in the corporation and its programs. The corporation shall have no control over, nor custody of, any funds or endowments of the Women's Committee. The activities of the Women's Committee on behalf of the corporation shall be subject to the approval of the Director.

Section 8.02. ***Craft Show.*** The Craft Show Committee is organized by The Women's Committee of the Philadelphia Museum of Art to support the corporation through support of the Women's Committee.

Article IX *The Museum Associates*

Section 9.01. ***The Organization.*** The Museum Associates is a group of supporters of the corporation organized for support of the operations of the corporation, whose officers are selected by the Director and whose activities shall be subject to the control of the corporation.

Article X *The Young Friends of the Philadelphia Museum of Art*

Section 10.01. ***The Organization.*** The Young Friends of the Philadelphia Museum of Art is a group of supporters of the corporation organized for the purpose of providing funds for the acquisition of works of art and stimulation of interest in the Museum as provided in the bylaws of the Young Friends of the Philadelphia Museum of Art. The funds of the Young Friends of the Philadelphia Museum of Art shall be applied as designated by the officers and executive committee of the Young Friends, subject to the control of the corporation.

Article XI *The Corporate Partners*

Section 11.01. ***The Organization.*** The Corporate Partners is a group of business and professional organizations dedicated to supporting Museum operations and whose officers are selected by the Director. There shall be a Corporate Partners Executive Board to provide leadership support to the Corporate Partners program. Members of the Corporate Partners Executive Board shall be appointed by the Chair of the Corporate Partners after consultation with the Chair of the Board of Trustees and the Director.

Article XII *Indemnification of Trustees, Officers and Other Authorized Representatives*

Section 12.01. ***Scope of Indemnification.***

(a) The corporation shall indemnify an indemnified representative against any liability incurred in connection with any proceeding in which the indemnified representative may be involved as a party or otherwise, by reason of the fact that such person is or was serving in an

indemnified capacity, including without limitation liabilities resulting from any actual or alleged breach or neglect of duty, error, misstatement or misleading statement, negligence, gross negligence, or act giving rise to strict or products liability, except:

(1) where such indemnification is expressly prohibited by applicable law;

(2) where the conduct of the indemnified representative has been determined pursuant to Section 12.06 or otherwise

(i) to constitute willful misconduct or recklessness within the meaning of 15 Pa.C.S. §5713 or any superseding provision of law sufficient in the circumstances to bar indemnification against liabilities arising from the conduct, or

(ii) to be based upon or attributable to the receipt of a personal benefit from the corporation to which the authorized representative is not legally entitled; or

(3) to the extent such indemnification has been finally determined in a final adjudication pursuant to Section 12.06 to be otherwise unlawful.

(b) If an indemnified representative is entitled to indemnification in respect of a portion, but not all, of any liabilities to which such person may be subject, the corporation shall indemnify such indemnified representative to the maximum extent for such portion of the liabilities.

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the indemnified representative is not entitled to indemnification.

(d) For purposes of this Article:

(1) "indemnified capacity" means any and all past, present and future service by an indemnified representative in one or more capacities as a Trustee, officer, employee or agent of the corporation; or, at the request of the corporation, as a trustee, officer, employee, agent, or fiduciary of another corporation, partnership, joint venture, trust, employee benefit plan or other entity or enterprise;

(2) "indemnified representative" means any and all Trustees and officers of the corporation and any other person designated as an indemnified representative by the Board of Trustees of the corporation (which may, but need not, include any person serving at the request of the corporation as a trustee, officer, or fiduciary of another corporation, partnership, joint venture, trust, employee benefit plan or other entity or enterprise);

(3) "liability" means any damage, judgment, amount paid in settlement, fine, penalty, punitive damages, excise tax assessed with respect to an employee benefit plan, or cost or expense of any nature (including, without limitation, attorneys fees and disbursements); and

(4) "proceeding" means any threatened, pending or completed action, suit, appeal, or other proceeding of any nature, whether civil, criminal, administrative or investigative, whether formal or informal, and whether brought by or in the right of the corporation, a class of its security holders, if any, or otherwise.

Section 12.02. ***Proceedings Initiated by Indemnified Representatives.*** Notwithstanding any other provision of this Article, the corporation shall not indemnify under this Article an indemnified representative for any liability incurred in a proceeding initiated (which shall not be deemed to include counter-claims or affirmative defenses) or participated in as an intervenor or *amicus curiae* by the person seeking indemnification unless such initiation of or participation in the proceeding is authorized, either before or after its commencement, by the affirmative vote of a majority of the Board of Trustees in office. This Section does not apply to reimbursement of expenses incurred in successfully prosecuting or defending an arbitration under Section 12.06 or otherwise successfully prosecuting or defending the rights of an indemnified representative granted by or pursuant to this Article.

Section 12.03. ***Advancing Expenses.*** The corporation shall pay the expenses (including attorneys' fees and disbursements) incurred in good faith by an indemnified representative in advance of the final disposition of a proceeding described in Section 12.01 or the initiation of or participation in which is authorized pursuant to 12.02 upon receipt of an undertaking by or on behalf of the indemnified representative to repay such amount if it shall ultimately be determined pursuant to Section 12.06 that such person is not entitled to be indemnified by the corporation pursuant to this Article. The financial ability of an indemnified representative to repay an advance shall not be a prerequisite to the making of such advance.

Section 12.04. ***Securing of Indemnification Obligations.*** To further effect, satisfy or secure the indemnification obligations provided herein or otherwise, the corporation may maintain insurance, obtain a letter of credit, act as self-insurer, create a reserve, trust, escrow, cash collateral or other fund or account, enter into indemnification agreements, pledge or grant a security interest in any assets or arrangement whatsoever in such amounts, at such costs, and upon such other terms and conditions as the Board of Trustees shall deem appropriate. Absent fraud, the determination of the Board of Trustees with respect to such amounts, costs, terms, and conditions shall be conclusive and shall not be subject to voidability.

Section 12.05. ***Payment of Indemnification.*** An indemnified representative shall be entitled to indemnification within thirty (30) days after a written request for indemnification has been delivered to the Secretary of the corporation.

Section 12.06. ***Arbitration.*** Any dispute related to the right to indemnification or advancement of expenses as provided under this Article shall be decided only by arbitration in the metropolitan area in which the principal executive offices of the corporation are located at

the time, in accordance with the commercial arbitration rules then in effect of the American Arbitration Association, before a panel of three arbitrators, one of whom shall be selected by the corporation, the second of whom shall be selected by the indemnified representative, and the third of whom shall be selected by the other two arbitrators. In the absence of the American Arbitration Association, or if for any reason arbitration under the arbitration rules of the American Arbitration Association cannot be initiated, or if one of the parties fails or refuses to select an arbitrator, or the arbitrators selected by the corporation and the indemnified representative cannot agree on the selection of the third arbitrator within thirty (30) days after such time as the corporation and the indemnified representative have each been notified of the selection of the other's arbitrator, the necessary arbitrator or arbitrators shall be selected by the presiding judge of the court of general jurisdiction in such metropolitan area. The party or parties challenging the right of an indemnified representative to the benefits of this Article shall have the burden of proof. The corporation shall reimburse an indemnified representative for the expenses (including attorneys' fees and disbursements) incurred in successfully prosecuting or defending such arbitration. Any award entered by the arbitrators shall be final, binding and nonappealable and judgment may be entered thereon by any party in accordance with the applicable law in any court of competent jurisdiction, except that the corporation shall be entitled to interpose as a defense in any such judicial enforcement proceeding any prior final judicial determination adverse to the indemnified representative under Section 12.01 (a)(2) in a proceeding not directly involving indemnification under this Article. This arbitration provision shall be specifically enforceable.

Section 12.07. ***Contribution.*** If the indemnification provided for in this Article or otherwise is unavailable for any reason in respect of any liability or portion thereof, the corporation shall contribute to the liabilities to which the indemnified representative may be subject in such proportion as is appropriate to reflect the intent of this Article or otherwise.

Section 12.08. ***Mandatory Indemnification.*** To the extent that an authorized representative of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 5741 or 5742 of the Nonprofit Corporation Law of 1988, as amended, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees and expenses) actually incurred by such person in connection therewith.

Section 12.09. ***Contract Rights; Amendment or Repeal.*** All rights to indemnification under this Article shall be deemed a contract between the corporation and the indemnified representative pursuant to which the corporation and each indemnified representative intend to be legally bound. Any repeal, amendment or modification hereof shall be prospective only and shall not affect any rights or obligations then existing.

Section 12.10. ***Scope of Article.*** The indemnification of indemnified representatives, as authorized by this Article, shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any statute, agreement, vote of Members of the Corporation or disinterested members of the Board of Trustees or otherwise, both as to action in an official capacity and as to action in any other capacity. The indemnification and advancement of expenses provided by or granted pursuant to this Article shall continue as to a person who has ceased to be an indemnified representative in

respect of matters arising prior to such time, and shall inure to the benefit of the heirs, executors, administrators and personal representatives of such person.

Section 12.11. ***Reliance on Provisions.*** Each person who shall act as an indemnified representative of the corporation shall be deemed to be doing so in reliance upon the rights of indemnification provided by this Article.

Section 12.12. ***Interpretation.*** The provisions of this Article have been approved and ratified by the Members of the Corporation and are intended to constitute Bylaws authorized by the Nonprofit Corporation Law of 1988, as amended.

Article XIII *Miscellaneous*

Section 13.01. ***Corporate Seal.*** The corporation shall have a corporate seal in such form as may be approved by the Board of Trustees.

Section 13.02. ***Checks.*** All checks, notes, bills of exchange, or other orders in writing shall be signed by such person or persons as the Board of Trustees may from time to time designate.

Section 13.03. ***Contracts.*** Except as otherwise provided in these bylaws, the Board of Trustees may authorize any officer or officers, agent or agents, to enter into any contract or to execute or deliver any instrument on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 13.04. ***Deposits.*** All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositaries as the Board of Trustees may approve or designate, and all such funds shall be withdrawn only upon checks signed by such one or more officers or employees as the Board of Trustees shall from time to time determine.

Section 13.05. ***Amendment of Bylaws.*** These bylaws may be amended or repealed, or new bylaws may be adopted, either:

(a) by the vote of the Members of the Corporation, or

(b) with respect to those matters which are not by statute reserved exclusively to the Members of the Corporation, by vote of the Board of Trustees of the corporation at any regular or special meeting of Trustees.

Such proposed amendment, repeal or new bylaws, or a summary thereof, shall be set forth in any notice of such meeting, whether annual, regular or special.

Internal Revenue Service

Date: May 12, 2004

Philadelphia Museum of Art
P.O. Box 7646
Philadelphia, PA 19101-7646

Department of the Treasury
P. O. Box 2508
Cincinnati, OH 45201

Person to Contact:
Ms. Smith #31-07262
Contact Representative
Toll Free Telephone Number:
8:00 a.m. to 6:30 p.m. EST
877-829-5500
Fax Number:
513-263-3756
Federal Identification Number:
23-1365388

Dear Sir or Madam:

This is in response to your request of May 12, 2004, regarding your organization's tax-exempt status.

In October 1943 we issued a determination letter that recognized your organization as exempt from federal income tax. Our records indicate that your organization is currently exempt under section 501(c)(3) of the Internal Revenue Code.

Based on information subsequently submitted, we classified your organization as one that is not a private foundation within the meaning of section 509(a) of the Code because it is an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).

This classification was based on the assumption that your organization's operations would continue as stated in the application. If your organization's sources of support, or its character, method of operations, or purposes have changed, please let us know so we can consider the effect of the change on the exempt status and foundation status of your organization.

Your organization is required to file Form 990, Return of Organization Exempt from Income Tax, only if its gross receipts each year are normally more than $25,000. If a return is required, it must be filed by the 15th day of the fifth month after the end of the organization's annual accounting period. The law imposes a penalty of $20 a day, up to a maximum of $10,000, when a return is filed late, unless there is reasonable cause for the delay.

All exempt organizations (unless specifically excluded) are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of $100 or more paid to each employee during a calendar year. Your organization is not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

Organizations that are not private foundations are not subject to the excise taxes under Chapter 42 of the Code. However, these organizations are not automatically exempt from other federal excise taxes.

Donors may deduct contributions to your organization as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to your organization or for its use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Philadelphia Museum of Art
23-1365388

Your organization is not required to file federal income tax returns unless it is subject to the tax on unrelated business income under section 511 of the Code. If your organization is subject to this tax, it must file an income tax return on the Form 990-T, Exempt Organization Business Income Tax Return. In this letter, we are not determining whether any of your organization's present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

Section 6104 of the Internal Revenue Code requires you to make your organization's annual return available for public inspection without charge for three years after the due date of the return. The law also requires organizations that received recognition of exemption on July 15, 1987, or later, to make available for public inspection a copy of the exemption application, any supporting documents and the exemption letter to any individual who requests such documents in person or in writing. Organizations that received recognition of exemption before July 15, 1987, and had a copy of their exemption application on July 15, 1987, are also required to make available for public inspection a copy of the exemption application, any supporting documents and the exemption letter to any individual who requests such documents in person or in writing.
For additional information on disclosure requirements, please refer to Internal Revenue Bulletin 1999 - 17.

Because this letter could help resolve any questions about your organization's exempt status and foundation status, you should keep it with the organization's permanent records.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,

Janna K. Skufca

Janna K. Skufca, Director, TE/GE
Customer Account Services

Philadelphia Museum of Art

Resolutions of the Board of Trustees

December 15, 2005

WHEREAS, the Board of Trustees deems it to be in the best interest of the Philadelphia Museum of Art (the "PMA"), and in furtherance of its mission and its long-term relationship with the City of Philadelphia (the "City"), for the PMA to engage in the project described below which constitutes Phase II of the Master Plan (the "Project");

WHEREAS, the Project consists of certain renovations to and an expansion of the main Museum building, located at 26th Street and Benjamin Franklin Parkway, Philadelphia, Pennsylvania, as well as development and construction of a new landscaped parking facility and sculpture garden, located adjacent to the main Museum building, (the "Facilities"); and the development, use, occupancy and management by the PMA of the Facilities for one or more Museum-related purposes, including art galleries, art storage, art conservation, visitor and employee parking, and administrative offices;

WHEREAS, it is currently anticipated that the cost of the Project will be in an amount not to exceed $128,000,000;

WHEREAS, although the majority of the costs of the Project for which the PMA is responsible will be paid from the proceeds of fund raising, including government grants, and the proceeds from the Series 2000 and Series 2005 tax-exempt bond issues, this Board deems it advisable and in the best interest of the PMA to consider financing a portion of the total costs of the landscaped parking facility and sculpture garden

component of the Project from the proceeds of tax-exempt bonds, notes or bond anticipation notes (collectively referred to herein as "Tax-Exempt Borrowings") to be issued by the Philadelphia Authority for Industrial Development ("PAID") or another authority, public agency or instrumentality authorized to issue tax-exempt debt (each, an "Issuer");

WHEREAS, on September 24, 2004, the Executive Committee adopted resolutions (the "Prior Resolutions") which expressed the official intent of PMA, pursuant to United States Treasury Regulation §1.150-2(e), that the PMA be eligible to be reimbursed from proceeds of one or more Tax-Exempt Borrowings (as defined in the Prior Resolutions) for any and all expenditures relating to this Project and other projects made by PMA prior to the date of issuance of such Tax-Exempt Borrowings, and the Board of Trustees wishes to reaffirm the official intent expressed in the Prior Resolutions and to affirm that said official intent should also apply to all other portions of the Project described in these resolutions; and

WHEREAS, in addition, the Project may also require the use of short-term credit facilities to finance a portion of the gifts and grants pledged to fund the Project, which will be received over several years;

NOW THEREFORE:

BE IT RESOLVED, that it is desirable and in the best interest of the PMA to undertake the Project and to finance a portion of the total costs of the landscaped parking facility and sculpture garden component of the Project, which are expected not to exceed $30,000,000 and which are to be born by the PMA from the proceeds of one or more

Tax-Exempt Borrowings, which will be in an aggregate amount not to exceed $10,000,000;

RESOLVED, further, that this Board hereby states its intention that the PMA be eligible to be reimbursed from proceeds of one or more Tax-Exempt Borrowings for any and all expenditures relating to the landscaped parking facility and sculpture garden component of the Project made by the PMA prior to the date of issuance of such Tax-Exempt Borrowings, including, without limitation, (a) the repayment of any taxable borrowings of the PMA, (b) proceeds of capital campaigns heretofore or hereafter applied to costs of the Project, and (c) all development costs and expenses and all architectural, engineering, consulting, legal and other professional fees, costs and expenses incurred by the PMA in connection with the development and financing of the Project;

RESOLVED, further, that this statement of the PMA's intent is hereby declared to be a declaration of official intent as required by the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, including, without limitation, United States Treasury Regulation §1.150-2(e);

RESOLVED, further, that the proper officers of the PMA are hereby authorized, empowered and directed to take any action required under federal or state law or regulations to qualify the Project for Tax Exempt Borrowings (including, without limitation, making an application to PAID for a Tax-Exempt Borrowing), and to take such other action as they may deem necessary or desirable to carry out the purposes and intent of these resolutions with the understanding that the amounts to be borrowed through this bond issue shall be presented to and approved from time to time by the

Executive Committee of the Board of Trustees after review by the Finance Committee;

RESOLVED, further, that the proper officers of the PMA are hereby authorized, empowered and directed to take such action as they may deem necessary or desirable to carry out the purposes and intent of these resolutions with the understanding that the amounts to be borrowed under any short-term facilities shall be presented to and approved from time to time by the Executive Committee of the Board of Trustees after review by the Finance Committee; and

RESOLVED, further, that all acts of officers of the PMA, whether heretofore or hereafter taken or done, which are in conformity with the purposes and intent of these resolutions, shall be in all respects ratified, approved and confirmed.