

LEASE AGREEMENT

This Lease Agreement (this "Agreement") is executed effective as of January 1, 1984 (the "Effective Date") by the Estate of Ben H. Powell III, Deceased ("Lessor"), and the County of Walker, a political subdivision of the State of Texas (the "County").

1. Grant. In consideration of the covenants, conditions and stipulations herein contained, Lessor hereby leases, demises and lets unto the County, for the term hereinafter set forth, the following property (collectively, the "Leased Premises"):

That certain tract of land out of Block 2, City of Huntsville, Walker County, Texas, as more particularly described in Exhibit A attached hereto and incorporated herein, together with all buildings thereon and improvements thereto, and being otherwise known as the Powell family residence, 1228 11th Street, Huntsville, Texas.

Such existing buildings and improvements, together with any permitted additions thereto or permitted alterations thereof as shall be permitted and made pursuant to this Agreement, are herein collectively called the "Powell House".

2. Use; Disclaimer of Warranties.

(a) The County shall use the Leased Premises exclusively for the purpose of operating a historical museum to house artifacts, books, documents, photographs, prints, furniture and other materials pertaining to the history of Walker County, Texas, for the sole use and benefit of the public; provided, however, that the County may make the Powell House available from time-to-time on a temporary basis to other public or not-for-profit organizations for the purpose of holding meetings, receptions and similar gatherings in the Powell House, but only if and to the extent that such meetings, receptions and gatherings are consistent with, and do not interfere with, the primary use of the Powell House as a historical museum.

(b) This Agreement is executed by Lessor and accepted by the County without warranty of any kind, either expressed or implied. The County accepts the Leased Premises AS-IS, in its present condition, and without any representation by Lessor as to the condition of the Leased Premises or as to the use which may be made thereof.

3. Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate fifty years thereafter, unless sooner terminated in accordance with this Agreement. With the consent of the Commission (as defined in Paragraph 18(a) below), the County may terminate this Agreement upon sixty (60) days written notice to Lessor.

4. Rent.

(a) The County shall pay to Lessor, at the address for Lessor provided herein, rent (hereinafter called the "Base Rent") for the Leased Premises in the amount of \$1.00 per year. The Base Rent shall be paid yearly in advance. Lessor acknowledges payment and receipt of the Base Rent for the first year of the Term.

(b) All taxes, charges, costs and expenses which the County is obligated to pay under this Agreement, together with all interest and penalties that may accrue thereon in the event of the County's failure to pay such amount, and all damages, costs and expenses which Lessor may incur by reason of any default of the County or failure on the County's part to comply with the terms of this Agreement, shall all be deemed to be additional rent (hereinafter called "Additional Rent") and, in the event of nonpayment by the County, Lessor shall have all the rights and remedies with respect thereto as Lessor has for the nonpayment of the Base Rent.

5. Default.

(a) As used herein, the term "Act of Default" shall mean the occurrence of any one or more of the following: (1) the failure of the County to pay when due any Base Rent or Additional Rent required to be paid under this Agreement, (2) the failure of the County after sixty (60) days written notice from the Lessor of the County's default in the performance of any of the County's obligations, covenants or agreements under this Agreement, to do, observe, keep and perform with diligence and continuity any of such obligations, covenants or agreements, (3) the complete destruction of the Powell House, (4) the removal of the Powell House from the Leased Premises or the adoption by the County of any plan to remove the Powell House from the Leased Premises, or (5) the termination or amendment of the Management Agreement between the County and the Commission as referenced in Section 18 of this Agreement, without the prior written consent of the Lessor.

(b) If an Act of Default occurs, then the Lessor may terminate this Lease at any time after the occurrence of such Act of Default and thereafter prior to the curing of such Act of Default and without waiving any other rights herein available to Lessor at law or in equity.

6. Alterations and Improvements.

(a) The County shall not make any alterations or improvements to the Leased Premises or the Powell House except with the prior written consent of Lessor. The County shall not remove the Powell House or any portion thereof from the Leased Premises. All such improvements and alterations shall be made and installed at the sole cost and expense of the County. All such improvements and alterations shall be the property of the Lessor and shall not be removed by County either during or after the end of the Term without the express written approval of Lessor. The County shall not permit any mechanics', materialmen's or other liens to be fixed or placed against the Leased Premises or the Powell House, and the County agrees immediately to discharge (either by payment or by filing of the necessary bond, or otherwise) any mechanics', materialmen's or other

lien which is allegedly fixed or placed against any of the foregoing.

(b) The two Powell Family Representatives on the governing board of the Commission (as referenced in Paragraph 18 below) shall have authority on behalf of Lessor to give the consent required by the first sentence of Paragraph 6(a) above. Such consent must be evidenced in writing executed by such Powell Family Representatives or other duly authorized representatives of Lessor. It is specifically understood and agreed that minutes of meetings of the governing board of the Commission shall not constitute evidence of such consent.

7. Maintenance. The County, at its sole expense, shall maintain and repair the Leased Premises and the Powell House and otherwise keep the same in good order and repair and in a manner reasonably attractive and presentable to the public as a historical museum. Lessor shall have no responsibility for the maintenance or repair of the Leased Premises or the Powell House.

8. Utilities and Government Charges. The County shall pay all water, sewer, gas, electric, and other utility and governmental charges made or incurred in connection with the operation, ownership or leasing of the Leased Premises. The County shall pay all costs related to making such utilities operational and functional, including all connection charges and deposits.

9. Eminent Domain. If all or any part of the Leased Premises shall be taken by reason of condemnation proceeding or any other exercise of the power of eminent domain so as to make the continued operation of the historical museum on the Leased Premises impracticable or undesirable, then this Agreement shall terminate unless the Lessor and the County agree by amendment hereto on a new historic use of the Leased Premises by the County, and in such event the County shall continue in possession of that part of the Leased Premises not appropriated under the terms and conditions hereof. In the event of any partial or complete taking of the Leased Premises as a result of the exercise of the power of eminent domain, Lessor shall be entitled to receive and retain any and all compensation, damages, income, rent, and awards with respect thereto, including compensation for the taking of the leasehold estate of the County. The County shall have no claim against Lessor for the value of any unexpired Term.

10. Assignment and Subletting.

(a) Lessor shall have the right to transfer and assign, by operation of law or otherwise, its rights and obligations hereunder.

(b) The County shall not assign or otherwise transfer, mortgage, pledge, hypothecate or otherwise encumber this Agreement or the leasehold estate created hereby or any of its rights hereunder or any interests herein, and shall not sublet the Leased Premises or any part thereof, or any right or privilege appurtenant thereto, or permit any other party to occupy or use the Leased Premises (except as stated in Section 2(a) above), or any portion thereof, without the express written consent of Lessor. Any such consent by Lessor shall not release the County from any of

the County's obligations hereunder or be deemed to be a consent to any subsequent assignment, transfer, encumbrance, subletting, occupation or use by any other person. The County shall not have right or power to grant or suffer any lien, encumbrance, easement or other interests or right with respect to the Leased Premises. Subject to the foregoing, the rights and obligations of the parties hereunder shall inure to the benefit of and be binding on the parties hereto and their respective successors, assigns, heirs and legal representatives.

(c) Lessor consents to the execution and performance of the Management Agreement by and between the County and the Commission as referenced in Section 18 of this Agreement.

11. Lessor's Access. Lessor shall have the right at all reasonable times to enter the Leased Premises and the Powell House to inspect the condition thereof, to determine if the County is performing its obligations under this Agreement, to cure any defaults of the County hereunder that Lessor elects to cure, and remove from the Leased Premises any improvements thereto or property therein placed in violation of this Agreement.

12. Insurance.

(a) During the Term of this Agreement, the County, at its sole cost and expense shall keep and maintain the following types of insurance:

- (1) Insurance on the Powell House, together with all contents and personal property therein located (other than furniture owned by Lessor or the Powell family), against loss or damage by fire and against loss or damage by other risks now insured against by "extended coverage" provisions of policies generally in force on buildings of like type in Huntsville, Texas, in amounts sufficient to provide coverage for the full insurable value of the Powell House. The term "full and insurable value" shall mean actual replacement. Such "full and insurable value" shall be determined from time-to-time (but not more frequently than once in any twelve calendar month period). During the first year of such insurance on the Powell House (excluding contents), the value shall be \$100,000.00, without prejudice to such valuations in subsequent years.
- (2) General public liability insurance protecting and indemnifying Lessor and the County against any and all claims for damages to person or property or for loss of life or of property occurring upon, in, or about the Leased Premises, with coverage limits to be not less than those customarily obtained by the County from time to time during the Term with respect to the Walker County Courthouse building.

(3) Insurance on all of the furniture listed on a separate schedule initialled by Lessor and the County for identification herewith, being certain furniture owned by Lessor or the Powell family and left in the Powell House, such insurance to cover all risks normally covered by fire and extended coverage policies.

(b) All insurance to be provided by the County shall name Lessor and the County as insureds. Upon request by Lessor from time to time during the term, the County shall furnish to Lessor certificates issued by the insurance companies providing the above described insurance coverage, stating that such insurance is in full force and effect throughout the Term of this Agreement.

(c) If the Leased Premises suffers damage for which insurance compensation is received, any such proceeds will be used to restore the Leased Premises, unless otherwise provided herein. If the Leased Premises suffers damages that cause the County to believe that restoration would be uneconomical, all proceeds of the insurance shall be paid to Lessor, except for an amount to be paid to the County equal to the costs of any improvements to the Leased Premises made by the County which have increased the market value of the Leased Premises and which amount has been recovered by such insurance loss settlement. If any insurance proceeds are received for damage done to personal property located at the Leased Premises, these proceeds shall be paid to the owner of the personal property.

13. Damage or Destruction. If, at any time during the Term of this Agreement, the Leased Premises or the Powell House or any part thereof shall be damaged or destroyed by fire or other casualty, the County shall give immediate written notice thereof to the Lessor. If the damage or destruction is so extensive that such damage or destruction or its repair would render the Powell House and the Leased Premises unusable as a historical museum as contemplated by this Agreement, then this Agreement shall thereupon automatically terminate. If the damage or destruction is not so extensive that such damage or destruction or its repair would render the Leased Premises or the Powell House unusable as a historical museum, then the County shall at its sole cost and expense commence and thereafter proceed with reasonable diligence to repair, restore and rebuild the same to its condition prior to the damage or destruction.

14. Taxes and Assessments.

(a) The County shall use its best efforts to obtain exemptions for the Leased Premises from all ad valorem and property taxes with respect thereto. The County shall pay to Lessor currently and immediately upon request by Lessor, as Additional Rent, an amount equal to any and all ad valorem and property taxes and any other governmental charges or assessments which shall be assessed or charged against the Leased Premises during the Term of this Agreement. Any such ad valorem taxes and assessments for the calendar year in which the Effective Date occurs shall be prorated between Lessor and the County as of the Effective Date, based upon the actual taxes for such year.

(b) Without limiting the generality of the obligations stated elsewhere in this Agreement, if following the termination of this Lease (other than termination resulting from breach of this Agreement by Lessor) any taxing authority imposes or attempts to impose any charges or liabilities against the Lessor or the Leased Premises by reason of the Lessor's ownership of the Leased Premises during the Term, then in such event the County shall pay any and all such charges and liabilities as Additional Rent and shall indemnify the Lessor against all costs and expenses (including attorneys fees) incurred by the Lessor with respect thereto.

15. Surrender. On the last day of the Term, or upon the earlier termination of this Agreement, the County shall peaceably and quietly surrender the Leased Premises to Lessor in as good a condition as when delivered to the County, excepting only normal wear and tear resulting from normal use and damage by fire or other casualty covered by the insurance required to be carried pursuant to this Agreement. Prior to the surrender of the Leased Premises to Lessor, the County, at its sole cost and expense, shall remove all liens and other encumbrances which have resulted from the acts or omissions of the County.

16. Indemnity. The County shall indemnify and hold harmless Lessor and Lessor's executors, legal representatives, officers, and employees from and against all claims, losses, costs, damages and expenses (including, but not limited to attorney's fees) relating to injury or death of any person or damage to the property resulting from or arising in connection with any breach by the County of any provision hereof, the County's use or occupancy of the Leased Premises, or any act, omission or neglect of the County relating to the Leased Premises.

17. Non-Waiver. No consent or waiver, express or implied, by Lessor to or of any breach in the performance or observance by the County of any of its obligations under this Agreement shall be construed as or constitute a consent or waiver to or of any other breach in the performance or observance by the County of such obligation or any other obligation of the County.

18. Commission; Powell Family Representatives.

(a) Contemporaneously with the execution of this Agreement, the County and the Walker County Historical Commission, a commission created and appointed by the Commissioners' Court of Walker County, Texas, under authority of Tex. Rev. Civ. Stat. Ann. Art. 6145.1 (Vernon 1982) (the "Commission"), have entered into that certain Management Agreement covering the Leased Premises and the leasehold estate created by this Agreement (the "Management Agreement"). Any notices or other communications to be given by Lessor to the County under this Agreement may be given to the Commission alone. The County hereby appoints the Commission as its agent with full authority to receive and give notices and make any elections or decisions to be made by the County under this Agreement.

(b) Pursuant to the Management Agreement, the Commission shall appoint a governing board to supervise the operation and affairs of the historical museum contemplated by this Agreement. Such governing board shall consist of

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nine (9) members, two of whom shall be Powell Family Representatives (as defined and selected in accordance with the provisions of the Management Agreement).

19. Notices. Any notice to be given hereunder shall be in writing and delivered personally or mailed, registered or certified mail, return receipt requested, postage prepaid, to the parties hereto at the following addresses:

If to Lessor:

Estate of Ben H. Powell III, Deceased
3451 Del Monte
Houston, Texas 77019

If to the County:

1100 University Ave.
Huntsville, Texas 77340

Any such notice, request, instruction or other document shall be deemed to have been given as of the date of receipt at the address listed above for the receiving party. Each party shall have the right to change its address at any time, and from time to time, by giving written notice thereof to the other party in the manner herein provided.

20. Entire Agreement. This Agreement constitutes the whole agreement of Lessor and the County, and shall in no way be conditioned, modified, or supplemented except by a written agreement executed by proper representatives of each of the Lessor and the County or their respective successors in interests.

21. Quiet Possession. Lessor covenants that the County, upon paying the rent as herein provided and performing the covenants and agreements herein contained, shall and may peaceably and quietly, have, hold and enjoy the exclusive right to the Leased Premises. It is agreed and understood that any holding over by the County of the Leased Premises at the expiration of the Term or upon the earlier termination of this Agreement shall be construed as a tenancy from month-to-month and the monthly rental to be paid thereunder shall be the amount set forth in this Agreement immediately prior to the end of the Term or termination of this Agreement.

22. Historical and Archeological Designations. The Commission has advised Lessor that the Powell House qualifies for designations of "Texas Historical Landmark", "National Register of Historical Places", and "Texas Archeological Landmark" (collectively, the "Designations"). The Commission has agreed to assist Lessor in preparing and filing the necessary documents to apply for and obtain the Designations as soon as practicable. On August 5, 1983, Lessor filed an application with the Texas Antiquities Commission for the Designation of the Powell House as a Texas Archeological Landmark, and the Texas Antiquities Committee evaluated and nominated the Powell House for such Designation at its regular meeting on September 12, 1983, with final action by the Committee scheduled for the next regular meeting of that Committee. The County agrees to comply with all the requirements to maintain all of the Designations in good standing after they are so awarded to

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the Powell House. After the award of the Designations, funding for the maintenance, operation and restoration of the Powell House as a museum may be available from the State of Texas and the federal government, and additional income may be obtained from charging a nominal admission fee of persons who tour the Powell House, from donations made by agencies and interested parties from the revenue generated by the sale of Commission art prints, and from various money-raising projects underwritten by the Commission.

23. Furniture, Household Items and Personal Property. During the Term of this Agreement, the County shall keep on permanent display in the Powell House any and all furniture, household items and other personal property owned by the Lessor or the Powell family, which the Lessor has placed and left in the Powell House. However, the Lessor and members of the Powell family shall have the right to withdraw and remove any of such furniture, household items and personal property at any time and from time to time during the Term, upon reasonable notice to the County.

24. Compliance with laws and other regulations. The County at its sole cost and expense promptly shall comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, with the requirements of any board of fire underwriters or other similar body now or hereafter constituted, and with any direction or occupancy certificate issued pursuant to any law by any public officer or officers insofar as any thereof relate to or affect the condition, use or occupancy of the Leased Premises.

25. Section Headings. The section headings contained in this Agreement are provided for convenient reference only and shall not be considered for any purpose in analyzing or construing the intention of the parties with respect to this Agreement.

26. Recordation, Short Form. Lessor agrees, upon the County's request, to execute a short form of this Agreement, entitled "Memorandum of Lease." The County may record such short form at its sole cost. The provisions of this Agreement shall control, however, in regard to any omissions from such short form lease or in respect to any provisions hereof which may be in conflict with such short form lease.

EXECUTED in multiple counterpart originals as of the Effective Date.

LESSOR:

ESTATE OF BEN H. POWELL, DECEASED

By: Ben H. Powell, Jr., Ind. Exec.
Ben H. Powell, Jr.,
Independent Executor

By: Kitty King Powell, Ind. Exec.
Kitty King Powell,
Independent Executor

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EXHIBIT "A"

MURRAY & MOORER, INC.
REGISTERED PUBLIC SURVEYORS
HUNTSVILLE, TEXAS 77340

THE STATE OF TEXAS §

COUNTY OF WALKER §

I, the undersigned J. S. MOORER, Registered Public Surveyor No. 1572, do hereby certify that the following field notes represent a survey made on the ground of the following described tract(s) or parcel(s) of land located in Walker County, Texas.

Being 0.466 acre (20,280 square feet) of land, more or less, situated in Block No. 2 of the City of Huntsville, P. GRAY LEAGUE, Abstract No. 24, Walker County, Texas, and being all of the remaining unsold balance of a tract or parcel of land described in a Deed from Jasper B. Gibbs, et al to B. H. Powell dated May 26, 1897 and recorded in Volume 13, Page 322, Deed Records of Walker County, Texas, said 0.466 acre being more definitely described as follows:

BEGINNING at the southwest corner of said Powell tract, same being the southwest corner of said Block No. 2, a point for corner at the intersection of the north line of 11th Street (also U. S. Highway No. 190 and State Highway No. 19) with the east line of Avenue M (formerly Bell Street);

THENCE N00°06'25"W, with the west line of Block No. 2, same being the west line of said Powell tract, and with the east line of Avenue M, a distance of 199.55 feet to the southwest corner of a parcel of land described in a Deed from Elizabeth O. White, et al to the First National Bank of Huntsville dated June 14, 1960 and recorded in Volume 167, Page 412, Deed Records, a 5/8" iron rod with aluminum cap found for corner in a fence line;

THENCE S89°23'40"E, with the south line of said First National Bank tract, same being along a wire fence line, a distance of 103.25 feet to the northwest corner of a 0.688 acre tract described in a Deed from First National Realty Corp. to the City of Huntsville dated June 10, 1980 and recorded in Volume 360, Page 387, Deed Records, found a 5/8" iron rod for corner at a fence corner post;

THENCE S00°50'00"W, with the west line of said City of Huntsville 0.688 acre tract, a distance of 199.65 feet to the southwest corner of said 0.688 acre, found a 5/8" iron rod for corner in the north line of 11th Street;

THENCE N89°19'00"W, with the north line of said 11th Street, same being the south line of said Powell tract and the south line of said Block No. 2, a distance of 100.00 feet to the PLACE OF BEGINNING.

Surveyed in December, 1978 and August, 1983.

Field Notes compiled December, 1983.

Signed: _____

J. S. MOORER
Reg. Public Surveyor No. 1572

