

October 18, 2019

William F. Lee

Courtney M. Aladro, Esq.  
Chief, Non-Profit Organizations/Public Charities Division  
Massachusetts  
Attorney General's Office  
One Ashburton Place  
Boston, MA 02108

+1 617 526 6556 (t)  
+1 617 526 5000 (f)  
william.lee@wilmerhale.com

Re: Trustees of the Berkshire Museum

Dear Ms. Aladro,

I write on behalf of the Trustees of the Berkshire Museum (the "Museum") to provide you with the Museum's final report pursuant to the reporting agreement described in its February 9, 2018 Verified Complaint in Equity (SJ-2018-0065, Dkt. 1) (the "Complaint") at ¶ 48, and in response to your April 29, 2019 letter.

The Berkshire Museum has made progress on many fronts since our last update in August 2018, with a number of significant accomplishments, and many projects, programs, and initiatives on the horizon. The funds the Museum has raised have had an immediate impact, enabling the Museum to become even more accessible to the community it serves: beginning in academic year 2018-2019, school groups can visit the Museum free of charge; in 2020, admission will be free to all children under the age of 18.

## I. Current Operations

### A. Community Engagement

The Museum continues to engage visitors of all ages from across the community and the region with interdisciplinary programming and special exhibits exploring the arts, science, and history. On February 8, 2019, the Museum opened the interactive exhibit, *Leonardo DaVinci: Machines in Motion*. The exhibit, which ran through September 8, provided visitors a hands-on experience of the genius of artist and inventor Leonardo da Vinci. As part of the exhibit, guests tested Leonardo's inventions, stepped inside a wooden battle tank, and discovered his flying machines, including the ornithopter and flying bicycle. Forty full-size, true-to-design working models of Leonardo's Renaissance inventions were on display. This exhibit proved to be one of the most popular in the Museum's recent history, attracting nearly 32,000 visitors.

On October 4, 2019, the Museum opened *She Shapes History*, a celebration of the ratification of the 19<sup>th</sup> Amendment granting women the right to vote. The exhibit explores the many accomplishments of women in the fields of Art, History and Natural Science. *She Shapes*

October 18, 2019

Page 2

*History* relies heavily on the Museum's collection. Highlights include the Museum's extensive holdings of portraits of women from the 1800's to early 1900's, protest and wartime posters, and works by renowned artist Nancy Graves. The exhibit also features numerous objects on loan from other regional institutions and private collections, such as Shaker clothing and suffrage era toys.

In mid-November, the Museum will open its annual Festival of Trees, an exhibit aimed at energetically engaging the community. Local companies and individuals sponsor and then decorate nearly 100 trees in response to a theme. The decorated trees remain on display throughout the holiday season and serve as a backdrop to community events held in the Museum at that time of year. This year's theme is *Heroes: A celebration of those who inspire us*.

In January 2020, the Museum will host the traveling exhibit *The Art of Warner Brothers*. Featuring 160 hand-drawn animation cells and proof sheets, the exhibit explores animation in America from the 1930's to 1960's. The Museum will augment *The Art of Warner Brothers* with objects from its own collection. These will include natural science specimens for visitors to compare to their drawn/animated counterparts and mechanical machines that served as inspiration for some of the comical mishaps in many of Warner Brothers' more famous animations.

In the summer of 2020, the Museum will open its second *Art of the Hills* exhibit. Featuring jury selected works of regional artists, the first *Art of the Hills* exhibit in the summer of 2018 attracted more than 230 artists submitting work for consideration. Given the popularity of the 2018 exhibit, the Museum anticipates an even larger submission pool of regional artists for the summer ahead.

In addition to its formal exhibits, the Museum engages with the community in many other ways. The Museum recently launched a new program, "*Voices and Visionaries*," that brings experts to the Museum to discuss topics related to the Museum's collections. The first in this series was a discussion on climate change and a collaboration with the Berkshire Eagle's Community Conversations program. In a news article about the event, Fred Rutberg, the Berkshire Eagle's publisher, noted, "We're delighted to collaborate with the Berkshire Museum. It's an important institution in our community, as is The Eagle." The event itself featured Pulitzer Prize winning journalist Elizabeth Kolbert, climate scientist Kim Cobb, and City as Living Laboratory Director Olivia Georgia.

In total, the Museum offers over 500 public programs specifically designed to meet the various needs of its multigenerational audience. These include public animal feedings where aquatic and reptilian adaptations are discussed; WeeMuse, a suite of programming for early learners and their caregivers; and Pecha Kuchas, the fast paced "global" presentation method where presenters use 20 PowerPoint slides presented for 20 seconds each to tell a story or share an idea.

October 18, 2019

Page 3

## **B. Fundraising & Grants**

The Berkshire Museum completed the 2018 fiscal year raising more money from donors than in any previous year. This fundraising success was the result of several one-time gifts from donors who wanted to support the Museum's work to bring the collection to the public in new interdisciplinary ways, a successful July 2018 Gala, and ongoing support from members, donors, and other institutional supporters. In total, the Museum raised \$1.3 million during its 2018 fiscal year.

The fundraising momentum has continued into 2019. The Museum's 2019 *Women in Wine Gala* grossed more than \$311,000 through this celebration of women winemakers and supported the Berkshire Museum's innovative educational programs. A portion of the funds raised at this event will support free admission for all children under 18 years of age in 2020. In addition, the Museum is currently working with a Berkshires-based art collector who has offered to make an unrestricted gift of 223 pieces of art valued at over \$1,000,000 from his personal collection.

The Museum is also proud to have received multiple important grants that have deepened its ties to other peer institutions and increased its visibility across the Commonwealth. In December 2018, the Museum confirmed a grant from Berkshire Bank to allow statewide distribution of *In Kindergarten*, the Museum's award-winning guide for incoming kindergarten students. Working with other museums, libraries, and the state's Coordinated Family and Community Engagement Coordinators, including the Boston Children's Museum, the EcoTarium in Worcester, and the Heritage Museum and Gardens in Sandwich, a copy of *In Kindergarten* was available this academic year to every incoming kindergarten student in the Commonwealth of Massachusetts.

The Museum is pleased to have been selected by the Berkshire Taconic Community Foundation (BTCF) to participate with six other arts and culture nonprofit organizations in Berkshire County in an intensive yearlong training program, Arts Build Initiative. The program uses a curriculum designed to help address barriers to participation in the arts, experiment with new approaches, and foster resource-sharing. The BTCF's Arts Build Initiative is funded by the Boston-based Barr Foundation. The other participating organizations include Community Access to the Arts (CATA); IS183 Art School of the Berkshires; MASS MoCA; the Mount, Edith Wharton's Home; Shakespeare & Company; and WAM Theatre. As part of this program, the Museum has received two separate grants from BTCF to support the development of the Museum's Diversity and Inclusion policies and training program, and as seed support to develop a mobile museum and substitute teacher program that brings Museum resources directly to classrooms.

## **C. Engagement With Community Of Museums & Recognition**

The Museum also continues to be actively engaged in the national museum community. In August 2018, the Museum was pleased to renew its Museum Tier 2 membership with the

October 18, 2019

Page 4

American Alliance of Museums (AAM). This summer, the Museum also received a request to loan Gertrude Greene's *Composition* (1937) from its collection to the Museum of Modern Art (MoMA) in New York City for MoMA's upcoming Sophie Taeuber-Arp exhibit.

Finally, for the ninth year in a row, the Berkshire Museum was named the Best Museum in the Berkshires by the Berkshire Eagle's readership in the newspaper's annual Best of the Berkshires competition.

## **II. Update Regarding Art Sales**

At its November 26, 2018 Meeting, the Board of Trustees voted to cease further sales of art that was deaccessioned from the Museum's collection in 2017. The Museum sold a total of 22 of the 40 deaccessioned works raising \$53.25 million for the Museum. The remaining works have been returned to the Museum but have not been reaccessioned.

Consistent with the Museum's agreement with the Office of the Attorney General, any proceeds beyond \$50 million will be dedicated to support expenses related to the Museum's collection. Accordingly, the Museum allocated approximately \$3.25 million for that purpose to a dedicated account held at Lee Bank. Another \$5 million is being held in a separate account at Lee Bank intended to fund upcoming capital projects. The remaining \$45 million has been invested by Northern Trust Company, a firm engaged to be the Museum's investment manager as set forth below, with the interest generated from these funds supporting operating expenses, funding a building reserve, and covering increased costs related to inflation.

## **III. Leadership**

### **A. Executive Director**

Beginning in July 2018, the Board embarked on a search for a new Executive Director. This process included the appointment of a Board-led Executive Director Search Committee, which ultimately engaged the executive search firm Brent D. Glass LLC to assist in the search for a new Executive Director.

The Museum received 32 applications for the Executive Director position. Brent Glass and his team reviewed all of the applications and conducted phone interviews with 16 applicants, then selected 12 people for further consideration by the Executive Director Search Committee. The Search Committee convened and discussed the candidates and their qualifications with Brent Glass. Five of those 12 candidates were selected for in-person interviews. The Search Committee then invited three candidates back for second interviews and asked Brent D. Glass LLC to conduct additional due diligence on those three candidates.

October 18, 2019

Page 5

In January 2019, two candidates returned to the Museum. Each met with members of the Board, attended a senior staff meeting, a full staff meeting, a meeting with a Community Stakeholder group, and a final meeting with the Executive Director Search Committee. Each candidate also was interviewed by Board Treasurer Stephen Bayne, with a focus on each candidate's financial knowledge and financial management experience.

After completing the interviews, reviewing the information provided by Brent D. Glass LLC, and receiving input from the staff members, community members, and Board members who met the candidates, the Executive Director Search Committee voted unanimously to recommend that the Museum make an offer to Jeffrey Rodgers as the new Executive Director. At the January 18, 2019 Board of Trustees meeting, the Board voted to accept the recommendation of the Search Committee and make an offer to Mr. Rodgers.

Mr. Rodgers accepted the position and joined the Museum as its new Executive Director on April 1, 2019, the exact anniversary of the Museum's original opening in 1903.

Mr. Rodgers brings more than 26 years of experience in science education, as well as museum, program, and executive management. Most recently, Mr. Rodgers was the Provost and Chief Operating Officer (COO) of the Bishop Museum of Science and Nature in Bradenton, Florida, where he was a preeminent change leader. In this role, he led his team to successfully reimagine the museum's exhibits, programming, and brand to incorporate the museum's natural history, aquarium, planetarium, cultural, and historical assets into a unified experience. Before being named Provost and COO, he served as Director of the Bishop Planetarium and Director of Education. Mr. Rodgers came to the Bishop Museum from the Children's Science Center in Cape Coral, Florida, where he served as Executive Director and was also CEO of the Math, Science, and Technology Foundation of Florida. Prior to his work in Florida, Mr. Rodgers held several high-level positions in education and program management at the American Museum of Natural History, where he led its Moveable Museum Program.

## **B. Senior Management**

In September 2019, Miriam Kronberg joined the Museum as Chief Operating Officer, a new leadership position. Ms. Kronberg has more than 20 years of nonprofit finance experience which began when she co-founded Luna Sea, an award-winning performance space and gallery in San Francisco. She went on to provide nonprofit finance and operations services to numerous nonprofits and startups. Most recently, Ms. Kronberg served as Director of Finance for Jacob's Pillow Dance Festival, Inc.

From January through September 2019, Bridget Rigas served as Chief Engagement Officer for the Museum. Before leaving to pursue other opportunities, Ms. Rigas helped build a new development team, with Amanda Nardini joining the staff as Development Manager and Allegra

October 18, 2019

Page 6

Chin as Development Associate. The Museum is presently working on restructuring its Engagement Department, with a focus on bolstering the current team with grants, major gifts, and communications positions.

### **C. Board Composition**

At its Annual Meeting on September 23, 2019, the Board elected new trustees Dennis Egan, Evan Hickok, Judy Rush, and Brian Tremblay. The new trustees bring expertise in financial management, education, planning, leadership, law, and project management. They work for important organizations across the Berkshires, including the Pittsfield Public Schools and General Dynamics. At the same time, trustees Michael Addy, William Hines, Jr., Donna Krenicki, Jeffrey Noble, and Lydia Rosner rotated off the Board due to term limits.

Also at the Annual Meeting, Ethan Klepetar was elected president of the Board; Elizabeth McGraw and Melissa Scarafoni were elected as vice-presidents; Stephen Bayne was re-elected as treasurer; and Rachel Melendez Mabee was elected as secretary.

### **D. Board Training**

The Board engaged Casner & Edwards, LLP, a law firm with deep expertise in nonprofit law and governance, to provide corporate governance best practices training to the Board on a pro bono basis, which included best practices relating to conflict of interest policies. Attorney Anita Lichtblau, a partner at her firm and an expert in the area of nonprofit governance, conducted the board training on October 5, 2018. The PowerPoint presentation Ms. Lichtblau used during that presentation has been shared with the new Trustees who recently joined the Board.

## **IV. Vision For The Future**

During the past year, the Museum continued to make progress implementing its long-term plans.

### **A. Financial Planning**

As noted in my August 2018 letter, Interim Executive Director Dr. David Ellis developed a five-year business outlook that includes projected operating income and expense and capital budgets, and a detailed operating budget for 2019. The budget has proven useful to the Museum in analyzing its operations and has created a strong baseline for the new senior staff team as they plan for the future and begin preparing the 2020 Annual Budget.

Beginning in Fall 2018, Dr. Ellis also reviewed and updated the Museum's Financial Governance Policy. The document reflects the Museum's current procedures for spending approval and reporting as well as other checks and balances policies. The policy was reviewed by a Financial Governance Subcommittee, the Finance Committee, and the Executive

October 18, 2019

Page 7

Committee. The Finance Committee voted to recommend the policy to the Board, which voted and approved the policy at its September 23, 2019 meeting.

The Financial Governance Policy recognizes the importance of long-range planning and has built five-year financial models into the Museum's annual budget process. The Museum intends to refresh the five-year Financial Plan each year to aid strategic decisions, investment draw decisions, and the operating and capital budgeting process.

The Board also hired a consultant, Portfolio Evaluations Inc. ("PEI") to assist in the selection of a long-term manager for the Museum's investments. Following a diligent search, the Museum engaged the Northern Trust Company to manage the \$45 million the Museum intends to hold as primarily endowment. In order to guide the Board and Northern Trust as to how best to invest those funds, the Board formed a new Investment Subcommittee that included Mike Addy, Michael Christopher, and Jeffrey Weber. All three have substantial experience in finance and investing. Mike Addy is an Operations Executive at Cerberus Capital; Michael Christopher is the retired Chief Operating Officer of Legacy Bancorp, Inc.; and Jeffrey Weber is the retired President and Member of the Senior Management Committee at York Capital Management in New York City.<sup>1</sup> That subcommittee developed an investment policy, which the full Board approved at its July 22, 2019 meeting.

## **B. Business Planning**

The Museum has engaged Anne Engel to assist the Museum in developing a business plan. Ms. Engel was the Museum's lead consultant for the Master Planning Process that occurred from December 2015 to July 2017. The Board and staff of the Museum believe Ms. Engel's historical knowledge of and familiarity with the Museum make her an invaluable resource for this process. Ms. Engel has agreed to provide her consulting services pro bono.

## **C. Fundraising Planning & Community Consultation**

Moving forward, fundraising for the Museum will continue to provide support for programming, the annual budget, and future capital projects. The Museum is in the process of creating a comprehensive strategic fundraising plan based on data, research, cultivation of donors, and donor-focused work. The plan will build the Museum's brand, individually engage donors, and increase program and mission awareness, allowing the Museum to connect with new donors and more deeply with existing donors in order to sustain and increase support for the Museum.

---

<sup>1</sup> As noted above, Mr. Addy recently rotated off the Board, and has been replaced on the Investment Subcommittee by Brian Tremblay, who serves as Managing Director at Berkshire Fairfield Financial Services and Insurance.

October 18, 2019

Page 8

To support its data-driven fundraising and community outreach efforts, the Museum recently distributed a survey by email to 7,000 members and constituents and has made the survey available to Museum visitors via tablets located in the Museum lobby. The Museum also continues to engage in informal, face-to-face discussions with Museum patrons to learn more about visitor demographics, motivations, brand perceptions, and program interests. Information from the survey and informal discussions is aiding the Museum staff in the development of a new and engaging Membership program for 2020.

#### **D. Architectural Planning**

With respect to infrastructure, the Museum issued an RFP in November 2018 seeking a vendor to complete a thorough assessment of the Museum's building structure and major equipment and systems. The Museum received five bids and ultimately decided to engage Strategic Building Solutions, LLC d/b/a Colliers International ("Colliers") to complete the building assessment. The Museum received a draft of a Life Cycle Costing Analysis from Colliers in July 2019. The report, which includes condition reports for major infrastructure components and systems, recommended maintenance and replacement schedules, and cost projections for the next three decades. It is currently under review by the Museum's Facilities and Finance Committees.

The Museum has started the process of repairing and improving its facilities as well as its collection storage and care capabilities. Although not glamorous, the initial work is critical to the successful operation of the Museum, and must necessarily precede any other structural work. This first phase will include replacing and relocating the Museum's 100-year-old sewer line, waterproofing the exterior walls surrounding the collections area, repairing the underground drainage systems, and improving the loading dock, which will allow for safer and more effective movement of collections and exhibit items through the Museum. This work was detailed in an RFP to which eight firms responded, of which five firms attended a mandatory walk-through meeting at the Museum. Of the five firms who attended the walk-through, two submitted formal proposals. After reviewing the proposals, the Facilities Committee recommended to the Board the engagement of Hill-Engineers, Architects, Planners, Inc. ("Hill Engineers") as the selected vendor. Work on the loading dock is anticipated to begin in late winter 2019. Sewer line, drainage system, and waterproofing work will begin in early spring 2020.

As you are aware, Jeffrey Noble, who until September 23, 2019 served on the Board of Trustees, is the President of Hill Engineers. Recognizing this conflict of interest, the Board took diligent efforts to follow its Conflict of Interest Policy and ensure that engaging Hill Engineers was truly in the best interests of the Museum. Specifically, prior to any discussions related to the proposal submitted by Hill Engineers, Mr. Noble again reported to Board President Elizabeth McGraw that he was the President of Hill Engineers. Mr. Noble left the room during any discussions the Facilities Committee, Executive Committee, or the Board had during meetings related to the Museum's potential engagement of Hill Engineers. Mr. Noble also left the room and did not

October 18, 2019

Page 9

participate in any votes related to the Museum engaging Hill Engineers. Before any discussions at Board meetings related to engaging Hill Engineers, the Executive Committee discussed and addressed Mr. Noble's conflict of interest. The Executive Committee determined that the Facilities Committee had used an objective bidding process by requesting proposals from multiple firms and reviewing the proposals without Mr. Noble being present. Both the Facilities Committee and the Executive Committee found that hiring Hill Engineers was in the best interests of the Museum, because Hill Engineers had provided the most favorable pricing terms, as well as a shorter timeline for completion of the work. Ms. McGraw reported the Executive Committee's findings to the full Board, which voted unanimously to hire Hill Engineers (again, Mr. Noble was recused from this vote).

#### **E. Interpretative Plan Implementation**

The Museum's aim to be a visitor-centered institution also is reflected in recent staffing decisions. The Museum has hired two new educators, created a position that includes volunteer recruitment and training, and enabled security and guest service staff to have a greater role in visitor experiences.

Internally designed and visiting exhibits currently reflect the interdisciplinary experience the Museum envisions for its guests. With a renewed focus on telling stories connecting the arts, science and history, the Museum has refreshed nearly 15,000 square feet of exhibit space with new interpretation of objects from its collection. The combined effect of new interpretation and the ability to support larger traveling shows, such as the previously mentioned *Machines in Motion*, has resulted in a 5% year-over-year increase in general museum visitation since August 1, 2018. The Museum also has begun to experiment with delivering content to audiences through nontraditional means including short videos featuring objects from our collection. These videos will soon be available on the Museum's website, social media feeds, and, when appropriate, on screen in the Museum's galleries or during Museum programs such as the Museum's Little Cinema preshow.

#### **F. Inclusion**

The Museum continues to focus on removing financial and cultural barriers for the communities it serves, most notably through free admission for school groups beginning in 2018/2019 and free admission in 2020 for all children under 18. The Museum also offers free admission during themed-community events, including Free Community Play Night in February, Free Community Science Night in July, Free Community Kindergarten Day in late summer, and Free Community Pajama Night, held in conjunction with state-wide literacy awareness month in November. Free admission is also available for the City of Pittsfield's Third Thursday summer programming held on North Street, for EBT card holders, and for junior and high school students during after-

October 18, 2019

Page 10

school hours. (Complimentary admission for EBT card holders has been possible since 2015 and middle and high school students have been welcome for free since 2016.)

Both Dr. Ellis and Mr. Rodgers spent the first few months of their respective tenures reaching out to the community and meeting with those who wanted to share their opinions about the Museum. Mr. Rodgers has been continuing and intends to continue these efforts going forward.

\* \* \*

The path forward agreed on by the Museum and the Attorney General and approved by the SJC has allowed the Museum to continue fulfilling its mission of promoting art, history, and science for this and future generations across the diverse community and region it serves. We have repeatedly said the Museum's most valuable assets are its open doors. We thank you for working with us to open those doors even more widely and to ensure they remain open into the future.

Sincerely,



William F. Lee