

OPTION TO LEASE

THIS OPTION TO LEASE AGREEMENT, dated as of February 23, 2022 (this "Agreement"), between City of Grand Island, a body corporate and politic and a political subdivision of the State of Nebraska (Lessor), having an address at 100 East First Street, Grand Island, NE 68801, and Grand Island Children's Museum, Inc., a Nebraska nonprofit corporation (Lessee), having an address at P.O Box 1545, Grand Island, NE, 68802.

Article I. Option to Lease.

1. For good and valuable consideration, receipt of which is acknowledged, the undersigned Lessor gives an option to lease the premises described in Schedule A for such lease terms as set forth in Article II, below.
2. Exercise of the option to lease granted by this Article I shall be subject to and contingent upon Lessee's receipt of funds and pledges totaling not less than Seven Million Dollars (\$7,000,000.00) on or prior to January 1, 2023, to be confirmed by the Lessor's City Administrator or designee.
3. Lessor shall grant and permit Lessee's representatives and agents access to the premises to conduct inspections and studies to determine suitability of the premises for Lessee's intended development and use.
4. Subject to Article I, Sec. 2 above, this option is exercisable by written notice provided by the Lessee and received by the Lessor on or prior to March 1, 2023.

Article II. Lease Terms Upon Lessee's Exercise of Option to Lease.

Upon Lessee's exercise of the option to lease as set forth in Article I above, the following lease terms shall apply:

1. *Demise of Premises.* In consideration of the rents and covenants herein stipulated to be paid and performed, Lessor hereby demises and lets to Lessee and Lessee hereby demises and lets from Lessor, for the respective terms hereinafter described and upon the terms and conditions hereinafter specified, the premises consisting of a. the parcel or parcels of land described in Schedule A hereto, b. all improvements constructed and to be constructed on such parcels, and c. all easements, rights, and appurtenances relating to such parcels (collectively, the Leased Premises).
2. *Commencement. Title and Condition.* The Leased Premises are demised and let subject to a. the existing state of the title thereof as of the commencement of the term of this Lease, b. any state of facts which an accurate survey or physical inspection thereof might show, c. all zoning regulations, restrictions, rules, and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction, and d. with respect to buildings, structures, and other improvements

located on the Leased Premises, their condition as of the commencement of the term of this Lease, without representation or warranty by Lessor. Lessee represents that it has examined the title to the Leased Premises prior to the execution and delivery of this Lease and has found the same to be satisfactory for all purposes hereof. The Lease shall commence on the first day of the second calendar month following written notice of exercise of the option to lease by Lessee to Lessor (the "effective date").

3. *Use of Leased Premises; Quiet Enjoyment.*

- a. Lessee may occupy and use the Leased Premises for operation of a Children's Museum to benefit the residents of the City by providing year-round, family-oriented, multicultural, educational, recreational, and amusement activities focused on children and youths. All activities are to be provided in a non-discriminatory manner consistent with applicable federal, state, and local law, rules, regulations, and ordinances.
- b. Lessee may charge admission fees or membership fees for admission to the museum. Revenues obtained through admission and membership fees shall be solely the property of the Lessee for the benefit of the museum.
- c. If and so long as Lessee shall observe and perform all covenants, agreements, and obligations required by it to be observed and performed hereunder, Lessor warrants peaceful and quiet occupation and enjoyment of the Leased Premises by Lessee; provided that Lessor and its agents may enter upon and examine the Leased Premises at reasonable times. Any failure by Lessor to comply with the foregoing covenant shall not give Lessee any right to cancel or terminate this Lease, or to abate, reduce, or make deduction from or offset against any Basic Rent, as hereinafter defined, or additional rent or other sum payable under this Lease, or to fail to perform or observe any other covenants, agreement, or obligations of Lessee hereunder.

4. *Terms.* Subject to the terms, covenants, agreements, and conditions contained herein, Lessee shall have and hold the Leased Premises for an initial ten (10)-year term (the Initial Term) commencing on the effective date. Thereafter, Lessee shall have the right and option to extend the terms of this Lease for two (2) consecutive extended terms of ten (10) years each (the Extended Terms) unless and until the terms of this Lease shall be sooner terminated pursuant hereto. The first such Extended Term shall commence on the day immediately succeeding the expiration date of the Initial Term and shall end at midnight of the day immediately preceding the fifth anniversary of the first (1) day of such Term. The subsequent Extended Term shall commence on the day immediately succeeding the expiration date of the next preceding Extended Term, and shall end at midnight on the day immediately preceding the fifth anniversary of the first (1) day of such Term. Lessee shall exercise each such option to extend the terms of this Lease by giving notice in writing to Lessor at least sixty (60) days prior to the end of the term of this Lease then in effect. The giving of such written notice by Lessee to Lessor shall automatically extend the terms of this Lease for an Extended Term, and no instrument of renewal need be executed. In the event that Lessee fails to give such notice to Lessor, this Lease shall automatically terminate at the end of the term of this Lease then in effect and Lessee shall have no further option to extend the terms of this Lease.

5. *Rent.*

- a. Lessee covenants to pay to Lessor, as installments of rent for the Leased Premises during the term of this Lease, ONE HUNDRED DOLLARS (\$100.00) per lease year payable in advance on the first day of each lease year and each lease year of the Extended Terms (the "Basic Rent") at Lessor's address set forth above or at such other place as Lessor from time-to-time may designate to Lessee in writing.
- b. Lessee covenants to pay and discharge when the same shall become due, as additional rent, all other amounts, liabilities, and obligations which Lessee assumes or agrees to pay or discharge pursuant to this Lease (except that amounts payable as the purchase price for the Leased Premises pursuant to the provision of this Lease shall not constitute additional rent), together with every fine, penalty, interest, and cost which may be added for non-payment or late payment thereof. In the event of any failure by Lessee to pay or discharge any of the foregoing, Lessor shall have all rights, powers, and remedies provided herein, by law or otherwise, in the case of non-payment of the Basic Rent. Lessee will also pay to Lessor on demand as additional rent, interest at the rate of eight (8)% per annum or a rate equal to two percentage points above the index of market yields of long-term government bonds adjusted to a thirty (30) year maturity by the U. S. Department of the Treasury, whichever is less, on all overdue installments of Basic Rent from the due date thereof until paid in full and on all overdue amounts of additional rent relating to obligations which Lessor shall have paid on behalf of Lessee.

6. *Net Lease; Non-Terminability.*

- a. This is a net lease, and the Basic Rent, additional rent, and all other sums payable hereunder by Lessee, whether as the purchase price for the Leased Premises or otherwise, shall be paid without notice or demand, and without set-off, counterclaim, abatement (except as provided in paragraph 14.c., suspension, deduction, or defense.
- b. This Lease shall not terminate, nor shall Lessee have any right to terminate this Lease (except as otherwise expressly provided in paragraphs 14.b., 15.b., 16, 17.a., or 17.b. of this Lease), nor shall Lessee be entitled to any abatement or reduction of rent hereunder (except as otherwise expressly provided in paragraph 13.c., nor shall the obligations of Lessee under this Lease be affected by reason of (i) any damage to or the destruction of all or any part of the Leased Premises from whatever cause, (ii) the taking of the Leased Premises or any portion thereof by condemnation, requisition, or otherwise for any reason, (iii) the prohibition, limitation or restriction of Lessee's use of all or any part of the Leased Premises, or any interference with such use, (iv) any default on the part of Lessor under this Lease or under any other agreement to which Lessor and Lessee may be parties, or (v) any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the intention of the parties hereto that the obligations of Lessee hereunder shall be separate and independent covenants and agreements, that the Basic Rent, the additional rent, and all other sums payable by Lessee hereunder shall continue to be payable in all events, and that the obligations of Lessee hereunder shall continue unaffected, unless the

requirement to pay or perform the same shall have been terminated pursuant to an express provision hereof.

- c. Lessee agrees that it will remain obligated hereunder in accordance herewith, and that it will not take any action to terminate, rescind, or avoid this Lease, notwithstanding (i) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Lessor or any assignee of Lessor in any such proceeding and (ii) any action with respect hereto which may be taken by any trustee or receiver of Lessor or of any assignee of Lessor in any such proceeding or by any court in any such proceeding.
- d. Lessee waives all rights which may now or hereafter be conferred by law (i) to quit, terminate, or surrender this Lease or the Leased Premises or any part thereof, or (ii) to any abatement, suspension, deferment, or reduction of the Basic Rent, additional rent, or any other sums payable hereunder, except as otherwise expressly provided herein.
- e. The Lessee shall keep and maintain the Leased Premises in compliance with, and shall not cause or permit the Leased Premises to be in violation of, any federal, state, or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions (Hazardous Materials Laws) on, under, about, or affecting the Leased Premises. The Lessee shall not use, generate, manufacture, store, or dispose of on, under or about the Leased Premises or transport to or from the Leased Premises any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including without limitation any substances defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, or toxic substances under any applicable federal or state laws or regulations (collectively referred to hereinafter as Hazardous Materials).

The Lessee shall be solely responsible for, and shall indemnify and hold harmless the Lessor, its directors, officers, employees, agents, successors, and assigns from and against, any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under or about the Leased Premises, including without limitation: (i) all foreseeable consequential damages; (ii) the costs of any required or necessary repair, cleanup, or detoxification of the Leased Premises, and the preparation and implementation of any closure, remedial, or other required plans. The Lessee shall, upon the request of the Lessor, provide the Lessor with a bond or letter of credit, in form and substance satisfactory to the Lessor, in an amount sufficient to cover the costs of any required cleanup.

The Lessee shall, at its expense, take all necessary remedial action(s) in response to the presence of any Hazardous Materials on, under, or about the Leased Premises.

7. Taxes and Assessments; Compliance with Law.

- a. Subject to paragraph 20, Lessee shall pay, when due: (i) all taxes, assessments (including assessments for benefits from public works or improvements, whether

- or not begun or completed prior to the commencement of the term of this Lease and whether or not to be completed within said term), levies, fees, water and sewer rents and charges, and all other governmental charges, general and special, ordinary and extraordinary, whether or not the same shall have been within the express contemplation of the parties hereto, together with any interest and penalties thereon, which are, at any time, imposed or levied upon or assessed against (a) the Leased Premises or any part thereof, (b) any Basic Rent, additional rent reserved or payable hereunder, or any other sums payable by Lessee hereunder, or (c) this Lease or the leasehold estate hereby created or which arise in respect of the operation, possession, occupancy, or use thereof, (ii) any gross receipts or similar taxes imposed or levied upon, assessed against, or measured by the Basic Rent, such additional rent, or such other sums payable by Lessee hereunder, (iii) all sales and use taxes which may be levied or assessed against or payable by Lessor or Lessee on account of the acquisition, leasing, or use of the Leased Premises or any portion thereof, and (iv) all charges for water, gas, light, heat, telephone, electricity, power, and other utility and communications services rendered or used on or about the Leased Premises. Notwithstanding the foregoing provisions of this paragraph 7.a., Lessee shall not be required to pay any franchise, corporate, estate, inheritance, succession, transfer, income, profits, or revenue taxes of Lessor (other than any gross receipts or similar taxes imposed or levied upon, assessed against, or measured by, the Basic Rent, additional rent, or any other sums payable by Lessee hereunder) unless any such tax, assessment, charge, or levy is imposed or levied upon or assessed against Lessor in substitution for or in place of any other tax, assessment, charge, or levy referred to in this paragraph 7.a. Lessee agrees to furnish to Lessor, within thirty (30) days after written demand therefor, proof of the payment of all such taxes, assessments, levies, fees, rents, and charges, and all such utility and communication charges which are payable by Lessee as provided in this paragraph 7.a. In the event that any assessment levied or assessed against the Leased Premises becomes due and payable during the Initial or any Extended Term and may be legally paid in installments, Lessee shall have the option to pay such assessment in installments; and in such event, Lessee shall be liable only for those installments which become due and payable during the Initial and Extended Terms.
- b. Subject to paragraph 20, Lessee shall, at its expense, comply with and cause the Leased Premises to comply with all governmental statutes, laws, rules, orders, regulations, and ordinances affecting the Leased Premises or any part thereof, or the use thereof, including those which require the making of any structural, unforeseen, or extraordinary changes, whether or not any of the same, which may hereafter be enacted, involve a change of policy on the part of the governmental body enacting the same. Lessee shall, at its expense, comply with the requirements of all policies of insurance which at any time may be in force with respect to the Leased Premises, and with the provisions of all contracts, agreements, and restrictions affecting the Leased Premises or any part thereof or the ownership, occupancy, or use thereof.
 - c. Lessee shall, at its sole cost and expense, comply with and cause the Leased

Premises to comply with all covenants, terms, and conditions of all presently existing documents which are recorded in the land records in Hall County, Nebraska, and which affect the Leased Premises or the use thereof and any such documents which hereafter come into existence, provided, in the latter case, that Lessee is either a party to such document or has given its written consent to the substance thereof.

8. *Liens.* Lessee will not, directly or indirectly, create or permit to be created or to remain, and will promptly discharge, at its expense, any mortgage, lien, encumbrance, or charge on, pledge of, or conditional sale or other title retention agreement with respect to, the Leased Premises or any part thereof or Lessee's interest therein or the Basic Rent, additional rent, or other sums payable by Lessee hereunder. The existence of any mechanics', laborers', materialman's, supplier's, or vendor's lien, or any right in respect thereof, shall not constitute a violation of this paragraph 8 if payment is not yet due upon the contract or for the goods or services in respect of which any such lien has arisen. Nothing contained herein shall be construed as constituting the consent or request of Lessor, expressed or implied, to or for the performance of any labor or services or the furnishing of any materials for any construction, alteration, addition, repair, or demolition of or to the Leased Premises or any part thereof by any contractor, subcontractor, laborer, materialman, or vendor. Notice is hereby given that Lessor will not be liable for any labor, services, or materials furnished or to be furnished to Lessee, or to anyone holding the Leased Premises or any part through or under Lessee, and that no mechanics' or other liens for any such labor, services, or materials shall attach to or affect the interest of Lessor in and to the Leased Premises. Lessee shall require of any contractor performing work upon the Premises to provide a payment bond for the prompt and faithful payment of all performance of any labor or services or the furnishing of any materials for any construction, alteration, addition, repair, or demolition of or to the Leased Premises.
9. *Required Improvements.* Lessee, at Lessee's cost and expense and as provided by paragraph 12 shall be responsible for the performance of any labor or services or the furnishing of any materials for any construction, alteration, addition, repair, or demolition of or to the Leased Premises useful or required to adapt the premises for use as a children's museum including, but not limited to, updated HVAC, electric, plumbing, and other building systems, restrooms, elevator, and parking lot improvements.
10. *Indemnification.* Lessee agrees to pay, and to protect, indemnify, and save Lessor harmless from and against, any and all liabilities, losses, damages, costs, expenses (including all reasonable attorney's fees and expenses of Lessee and Lessor), causes of action, suits, claims, demands, or judgments of any nature whatsoever arising from (i) any injury to, or the death of, any person, or any damage to property on the Leased Premises or upon adjoining sidewalks, streets, or ways, or in any manner growing out of or connected with the use, non-use, condition, or occupancy of the Leased Premises or any part thereof, or resulting from the condition thereof or of adjoining sidewalks, streets, or ways, (ii) violation of any agreement or condition hereof, and (iii) violation by Lessee of any contract or agreement to which Lessee is a party, or any restriction, statute, law, ordinance, or regulation, in each case affecting the Leased Premises or any part thereof, or the ownership, occupancy, or use thereof, or (iv) any negligence or tortious act on the part of Lessee or

any of its agents, contractors, sublessees, licensees, or invitees. In case any action, suit, or proceeding is brought against Lessor by reason of any occurrence herein described, Lessee will, at its own expense, defend such action, suit, or proceeding with counsel reasonably acceptable to Lessor.

11. *Maintenance and Repair.*

- a. Lessee acknowledges that it has received the Leased Premises in good order and condition. Lessee agrees that it will, at its expense, keep and maintain the Leased Premises, including any altered, rebuilt, additional, or substituted buildings, structures, and other improvements thereto in good repair and appearance, except for ordinary wear and tear, and will with reasonable promptness make all structural and non-structural, foreseen and unforeseen, and ordinary and extraordinary changes and repairs of every kind and nature which may be required to be made upon or in connection with the Leased Premises or any part thereof in order to keep and maintain the Leased Premises in such good repair and appearance. Lessor shall not be required to maintain, repair, or rebuild the Leased Premises or any part thereof in any way, or to make any alterations, replacements, or renewals of any nature or description to the Leased Premises or any part thereof, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, and Lessee hereby expressly waives any right to make repairs at the expense of Lessor, which right may be provided for in any statute or law in effect at the time of the execution and delivery hereof or of any other statute or law which may thereafter be enacted.

12. *Improvements and Alterations.*

- a. Lessee may, at its expense, make improvements, additions to, and alterations of and substitutions and replacements for the buildings, structures, or other improvements to the Leased Premises, provided that (i) the market value of the Leased Premises shall not thereby be lessened, (ii) the foregoing actions shall be performed in a good and workmanlike manner, (iii) such additions, alterations, substitutions, and replacements shall be expeditiously completed in compliance with applicable laws, ordinances, orders, rules, regulations, and requirements, and (iv) Lessor was provided with prior written notice of and consented to such substitution and replacement for the buildings, structures, or other improvements to the Leased Premises. All work done in connection with each such addition, alteration, substitution, or replacement shall comply with the requirements of any insurance policy required to be maintained by the Lessee hereunder. In the case of any demolition of any building, structure, or improvement pursuant to this paragraph 12, Lessee shall, prior to the commencement thereof, furnish Lessor with a surety bond or bonds or other security, acceptable to Lessor, to assure the rebuilding of the building, structure, or improvement to be demolished. Lessee shall promptly pay all costs and expenses of, and shall procure and pay for, all permits and licenses required in connection with each such addition, alteration, substitution, or replacement, and shall discharge all liens filed against the Leased Premises arising out of the same. Title to all such additions, alterations, substitutions, and replacements shall immediately rest in Lessor, and all thereof shall be part of the Leased Premises.

- b. Lessee may, at its expense, (i) construct upon the Leased Premises any additional buildings, structures, or other improvements and (ii) install, assemble, or place upon the Leased Premises any items of machinery or equipment used or useful in Lessee's business, in each case upon compliance with paragraph 12.a. All such buildings, structures, and other improvements shall be and remain the property of the Lessor. Such machinery or equipment shall be and remain the property of Lessee. Lessee may remove the same from the Leased Premises at any time prior to the expiration or earlier termination of the term hereof, provided that Lessee shall be required to repair any damage to the Leased Premises resulting from such removal.
13. *Parking Lot.* Lessee shall permit the parking areas upon the Leased Premises to be utilized by Lessor's city park visitors and patrons without charge to Lessor or its park visitors and patrons. Said parking shall be subject to reasonable regulations as necessary for the protection of persons and property upon the Premises.
14. *Condemnation.*
- a. Subject to the rights of Lessee set forth in this paragraph 14, Lessee hereby irrevocably assigns to Lessor any award or payment to which Lessee may be or become entitled by reason of any taking of the Leased Premises or any part thereof in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of the temporary requisition of the use or occupancy of the Leased Premises or any part thereof by any governmental authority, civil or military, whether the same shall be paid or payable in respect of Lessee's leasehold interest hereunder or otherwise. Lessor shall be entitled to participate in any such proceedings.
 - b. If (i) the entire Leased Premises shall be taken in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or (ii) any substantial portion of the Leased Premises which is sufficient to render the remaining portion thereof unsuitable for Lessee's continued use or occupancy in Lessee's business shall be taken in or by such proceedings, then Lessee shall, not later than ninety (90) days after any such taking, give notice to Lessor of its intention to terminate this Lease on any business day specified in such notice which occurs not less than 60 nor more than ninety (90) days after the giving of such notice by Lessee. This Lease shall terminate on such date, except with respect to obligations and liabilities of Lessee hereunder, actual or contingent, which have arisen on or prior to such date, upon payment by Lessee of all installments of Basic Rent and all other sums then due and payable under this Lease to and including such termination date; provided that if such termination date occurs on a Basic Rent Payment, Lessee shall not be obligated to pay the installment of Basic Rent due on such Date. In the event of the termination hereof pursuant to this subparagraph b., and if Lessee shall not have purchased the Leased Premises, Lessor, shall be entitled to the Net Award in its entirety.
 - c. If (i) a portion of the Leased Premises shall be taken in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, which taking is not sufficient to authorize or require that Lessee give notice of its intention to

terminate this Lease as provided in paragraph 14.b. or (ii) the use or occupancy of the Leased Premises or any part thereof shall be temporarily requisitioned by any governmental authority, civil or military, then this Lease shall continue in full effect without abatement or reduction of Basic Rent, additional rent, or other sums payable by Lessee hereunder, notwithstanding such taking or requisition. Lessee shall, promptly after any such taking or requisition and at its expense, repair any damage caused by any such taking or requisition in conformity with the requirements of paragraph 12.a., so that, after the completion of such repair, the Leased Premises shall be, as nearly as possible, in a condition as good as the condition thereof immediately prior to such taking or requisition, except for ordinary wear and tear. In the event of any such lesser taking in or by condemnation or other eminent domain proceedings, Lessee shall be entitled to receive the Net Award payable in connection with such taking, but such payment shall be made only against certificates of Lessee, signed by the President or a Vice President of Lessee, delivered to Lessor from time-to-time as such work of repair progresses or is completed, each such certificate describing such work of repair for which Lessee is requesting payment, the cost incurred by Lessee in connection therewith, and stating that Lessee has not theretofore received payment for such work of repair. Any proceeds of such award remaining after the final payment has been made for such work of repair shall be retained by Lessor. In the event of such temporary requisition, Lessee shall be entitled to receive the entire net award payable by reason of such temporary requisition. If the cost of any repairs required to be made by Lessee pursuant to this paragraph 14.c. shall exceed the amount of such Net Award, the deficiency shall be paid by Lessee. No payments shall be made to Lessee pursuant to this paragraph 14.c. if any default shall have happened and be continuing hereunder.

- d. For the purposes hereof, all amounts payable pursuant to any agreement with any condemning authority which has been made in settlement of or under threat of any condemnation or other eminent domain proceeding affecting the Leased Premises shall be deemed to constitute an award made in such proceeding.

15. *Insurance.*

- a. Lessee will maintain, at its expense, insurance on the Leased Premises of the following character:
 - i. Insurance against loss or damage by fire, lightning, windstorms, hail, explosion, aircraft, smoke damage, vehicle damage, and other risks from time-to-time included under extended coverage policies and such other risks as are or shall customarily be insured against with respect to property that is similar to the Leased Premises, in amounts sufficient to prevent Lessor or Lessee from becoming a co-insurer of any loss under the applicable policies, but, in any event, in amounts not less than the full insurable value of the Leased Premises. The term "full insurable value," as used herein, means actual replacement value less physical depreciation.
 - ii. General public liability insurance against claims for bodily injury, death, or property damage occurring on, in, or about the Leased Premises and the

adjoining streets, sidewalks, and passageways, such insurance to afford protection to Lessor of not less than \$1,000,000.00 with respect to bodily injury or death to any one person, not less than \$5,000,000.00 with respect to any one accident, and not less than \$2,500,000 with respect to property damage; all such insurance may be maintained under general contractual liability policies, which policies shall cover the obligations of Lessee under paragraph 10 hereof.

- iii. Worker's compensation insurance covering all persons employed in connection with any work done on or about the Leased Premises with respect to which claims for death or bodily injury could be asserted against Lessor, Lessee, or the Leased Premises.
 - iv. Such other insurance on the Leased Premises in such amounts and against such other insurable hazards which at the time are commonly obtained in the case of property similar to the Leased Premises, including war-risk insurance when and to the extent obtainable from the United States Government or any agency thereof.
- b. The insurance referred to in paragraph 15.a. shall be written by companies of recognized financial standing which are authorized to do an insurance business in the state of Nebraska, and such insurance shall name as the insured parties thereunder Lessor and Lessee, as their interests may appear. Lessor shall not be required to prosecute any claim against, or to contest any settlement proposed by, any insurer, provided that Lessee may, at its expense, prosecute any such claim or contest any such settlement. In such event, Lessee may bring such prosecution or contest in the name of Lessor, Lessee, or both, and Lessor will join therein at Lessee's written request upon the receipt by Lessor of an indemnity from Lessee against all costs, liabilities, and expenses in connection with such prosecution or contest.
 - c. Insurance claims by reason of damage to or destruction of any portion of the Leased Premises shall be adjusted by Lessee, but Lessor shall have the right to join with Lessee in adjusting any such loss. If the entire amount of any proceeds paid pursuant to any such claim shall not exceed \$25,000.00, then such proceeds shall be payable to Lessee. If the entire amount of any proceeds paid pursuant to any such claim shall exceed \$25,000.00, then such proceeds shall be paid to Lessor and delivered to Lessee from time-to-time as the work of rebuilding, replacing, and repairing the damage or destruction to the Leased Premises required by paragraph 15.a. progresses, each such certificate describing such work for which Lessee is requesting payment and the cost incurred by Lessee in connection therewith, and stating that Lessee has not theretofore received payment for such work. Upon completion of such work, any remaining proceeds will be paid to Lessee upon delivery to Lessor of a certificate of Lessee, signed by the President or a Vice President thereof, to the effect that such work has been completed and complies with the requirements of paragraph 15.a. No payment of any proceeds shall be made to Lessee pursuant to this paragraph 15.c. if any default shall have happened and be continuing hereunder unless and until such default shall have been cured or

removed.

- d. Every insurance policy referred to in clauses (i) and (iv) of paragraph 15.a. contain, to the extent obtainable, an agreement by the insurer that it will not cancel such policy except after 20 days' prior written notice to Lessor, and that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of Lessor or Lessee which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment.
- e. Lessee shall deliver to Lessor promptly after the execution and delivery of this Lease the original or duplicate policies or certificates of the insurers of recognized financial standing evidencing all the insurance which is required to be maintained by Lessee hereunder, and Lessee shall, within 20 days prior to the expiration of any such insurance, deliver other original or duplicate policies or other certificates of the insurers evidencing the renewal of such insurance. Should Lessee fail to effect, maintain, or renew any insurance provided for in this paragraph 15 or pay the premium therefor or deliver to Lessor any of such policies or certificates, then, and in any of said events, Lessor, at its option but without obligation so to do, may, upon 20 days' notice to Lessee, procure such insurance. Any sums expended by Lessor to procure such insurance shall be additional rent hereunder and shall be repaid by Lessee within thirty (30) days following the date on which such expenditure shall be made by Lessor.
- f. Lessee shall not obtain or carry separate insurance concurrent in form or contributing in the event of loss with that required in this paragraph 15 to be furnished by Lessee unless Lessor is included therein as a named insured, with loss payable as in this Lease provided. Lessee shall immediately notify Lessor whenever any such separate insurance is obtained and shall deliver to Lessor the policies or certificates evidencing the same. So long as Lessee maintains the insurance required in this paragraph 15, Lessor shall not obtain or carry separate insurance on the Leased Premises concurrent in form or contributing in the event of loss with that required by this paragraph 15.

16. *Casualty.*

- a. If the Leased Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Lessee shall promptly notify Lessor thereof; and Lessee shall, with reasonable promptness and diligence, rebuild, replace, and repair any damage or destruction to the Leased Premises, at its expense, in conformity with paragraph 12.a., in such manner as to restore the same to an economic unit having a fair market value not less than the fair market value of the Leased Premises immediately prior to such damage or destruction.
- b. Notwithstanding the provisions of paragraph 16.a., if the Leased Premises shall be substantially damaged or destroyed in any single casualty so that the Leased Premises shall be unsuitable for restoration for Lessee's continued use and occupancy in Lessee's business, then, at Lessee's option and in lieu of rebuilding, replacing, or repairing the Leased Premises as provided herein, Lessee may give notice to Lessor, within 30 days after the occurrence of such damage or destruction, of Lessee's intention to terminate this Lease on any business day specified in such

notice which occurs not less than 60 days nor more than 90 days after the giving of such notice by Lessee.

17. Option to Purchase.

- a. Reserved.
- b. Reserved.
- c. At any time prior to termination of Lessee's leasehold interest in the Leased Premises (including the Extended Terms), Lessee shall have the option, exercisable by notice to Lessor not less than 3 months prior to such date of purchase, to purchase Lessor's interest in the Leased Premises. The purchase price payable by Lessee upon the purchase of such interest pursuant to this paragraph shall be FIVE HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$557,500). On such date of purchase, Lessor shall convey and assign its interest in the Leased Premises to Lessee in accordance with paragraph 18, and Lessee shall pay Lessor such purchase price, together with all installments of Basic Rent and all other sums then due and payable under this Lease to and including such date of purchase. On such date of purchase, this Lease shall terminate except with respect to obligations and liabilities of Lessee under this Lease, actual or contingent, which have arisen on or prior to such date of purchase, but only upon payment by Lessee of all Basic Rent and other sums due and payable by it under this Lease to and including such date of purchase, except that the installment of Basic Rent payable on such date need not be paid.

18. Procedure Upon Purchase.

- a. If Lessee shall purchase the Leased Premises pursuant to any provision of this Lease, Lessor need not transfer and convey to Lessee or its designee any better title thereto than existed on the date of the commencement of the Term hereof, and Lessee shall accept such title, subject, however, to all liens, encumbrances, charges, exceptions, and restrictions on, against, or relating to the Leased Premises and to applicable laws, regulations, and ordinances, but free of liens, encumbrances, charges, exceptions, and restrictions which have been created by or resulted from acts of Lessor without Lessee's consent.
- b. Upon the date fixed for any such purchase of the Leased Premises pursuant hereto, Lessee shall pay to Lessor at its address set forth above, or at any other place designated by Lessor, the purchase price therefor specified herein, and Lessor shall there deliver to Lessee (i) a deed which describes the Leased Premises or portion thereof then being sold to Lessee and conveys and transfers the title thereto which is described in paragraph 17.a., together with (ii) such other instruments as shall be necessary to transfer to Lessee or its designee any other property then required to be sold by Lessor pursuant hereto. Lessee shall pay all charges incident to such conveyance and transfer, including counsel fees, escrow fees, recording fees, title insurance premiums, and all applicable federal, state, and local taxes (other than any income or franchise taxes levied upon or assessed against Lessor) which may be incurred or imposed by reason of such conveyance and transfer and by reason of the delivery of said deed and other instruments. Upon the completion of such purchase, but not prior thereto (whether or not any delay in the completion of or the

failure to complete, such purchase shall be the fault of Lessor), this Lease and all obligations hereunder (including the obligations to pay Basic Rent and additional rent) shall terminate with respect to the Leased Premises, except with respect to obligations and liabilities of Lessee hereunder, actual or contingent, which arose on or prior to such date of purchase.

19. *Assignment and Subletting.* Lessee may with the consent of Lessor (which consent will not be unreasonably withheld), may sublet the entire Leased Premises or assign all its rights and interests under this Lease, provided that each such sublease shall expressly be made subject hereto. If Lessee assigns all its rights and interests under this Lease, the assignee under such assignment shall expressly assume all the obligations of Lessee hereunder in a written instrument delivered to Lessor at the time of such assignment. No assignment or sublease made as permitted by this paragraph 19 shall affect or reduce any of the obligations of Lessee hereunder, and all such obligations shall continue in full effect as obligations of a principal, and not as obligations of a guarantor or surety, to the same extent as though no assignment or subletting had been made. No sublease or assignment made as permitted by this paragraph 19 shall impose any obligations on Lessor, or otherwise affect any of the rights of Lessor under this Lease. Neither this Lease nor the term hereby demised shall be mortgaged by Lessee, nor shall Lessee mortgage or pledge the interest of Lessee in and to any sublease of the Leased Premises or the rentals payable thereunder. Any such mortgage, pledge, sublease, or assignment made in violation of this paragraph 19 shall be void. Lessee shall, within ten (10) days after the execution and delivery of any such assignment, deliver a conformed copy thereof to Lessor, and within ten (10) days after the execution and delivery of any such sublease, Lessee shall give notice to Lessor of the existence and term thereof, and of the name and address of the sublessee thereunder.
20. *Permitted Contests.* Lessee shall not be required to a. pay any tax, assessment, levy, fee, rent, or charge referred to in paragraph 8.a., b. comply with any statute, law, rule, order, regulation, or ordinance referred to in paragraph 8.b., c. discharge or remove any lien, encumbrance, or charge referred to in paragraph 9 or 12.a. or d. obtain any waivers or settlements or make any changes or take any action with respect to any encroachment, hindrance, obstruction, violation, or impairment referred to in paragraph 11.b., so long as Lessee shall contest, in good-faith and at its expense, the existence, the amount, or the validity thereof, the amount of the damages caused thereby, or the extent of its liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent a. the collection of, or other realization upon, the tax, assessment, levy, fee, rent, or charge or lien, encumbrance, or charge so contested, b. the sale, forfeiture, or loss of the Leased Premises or any part thereof, or the Basic Rent or any additional rent or any portion thereof, to satisfy the same or to pay any damages caused by the violation of any such statute, law, rule, order, regulation, or ordinance or by any such encroachment, hindrance, obstruction, violation, or impairment, c. any interference with the use or occupancy of the Leased Premises or any part thereof, and 4. any interference with the payment of the Basic Rent or any additional rent or any portion thereof. While any such proceedings are pending, Lessor shall not have the right to pay, remove, or cause to be discharged the tax, assessment, levy, fee, rent, or charge or lien, encumbrance, or charge thereby being contested. Lessee further agrees that each such contest shall be promptly prosecuted to a

final conclusion. Lessee will pay, and save Lessor harmless against, any and all losses, judgments, decrees, and costs (including all reasonable attorney's fees and expenses) in connection with any such contest and will, promptly after the final settlement, compromise, or determination of such contest, fully pay and discharge the amounts which shall be levied, assessed, charged, or imposed or be determined to be payable therein or in connection therewith, together with all penalties, fines, interests, costs, and expenses thereof or in connection therewith, and perform all acts the performance of which shall be ordered or decreed as a result thereof. No such contest shall subject Lessor or the Mortgagee to the risk of any material civil liability or the risk of any criminal liability, and Lessee shall give such reasonable security to Lessor and the Mortgagee as may be demanded by Lessor or the Mortgagee to insure compliance with this paragraph 19.

21. *Conditional Limitations; Default Provision.*

- a. Any of the following occurrences or acts shall constitute an event of default under this Lease: (i) if Lessee, at any time during the continuance hereof (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency, or other proceedings, in law, in equity, or before any administrative tribunal, which have or might have the effect of preventing Lessee from complying herewith), shall (a) fail to make any payment of Basic Rent, additional rent, or other sum herein required to be paid by Lessee, and Lessee shall fail to make any such payment for a period of thirty (30) days after delivery by Lessor or Secured Party of written notice to Lessee that any such payment has become due, or (b) fail to observe or perform any other provision hereof for thirty (30) days after Lessor shall have delivered to Lessee notice of such failure (provided that in the case of any default referred to in this clause (b) which cannot with diligence be cured within such thirty (30)-day period, if Lessee shall proceed promptly to cure the same and thereafter shall prosecute the curing of such default with diligence, then upon receipt by Lessor of a certificate from the President or a Vice President of Lessee stating the reason that such default cannot be cured within thirty (30) days, and stating that Lessee is proceeding with diligence to cure such default, the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence); or (ii) if Lessee shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal or state bankruptcy law or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the adjudication of Lessee as a bankrupt or its reorganization under any present or future federal or state bankruptcy law or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof, or (iii) if a receiver, trustee, or liquidator of Lessee or of all or substantially all of the assets of Lessee or of the Leased Premises shall be appointed in any proceeding brought by Lessee, or if any such receiver, trustee, or liquidator shall be appointed in any proceeding brought against Lessee and shall not be discharged within ninety (90) days after such appointment, or if Lessee shall

consent to or acquiesce in such appointment, or (iv) if the Leased Premises shall have been abandoned.

- b. If an event of default shall have happened and be continuing, Lessor shall have the right, at its election, then, or at any time thereafter while such event of default shall continue, to give Lessee written notice of Lessor's intention to terminate the term of this Lease on a date specified in such notice. Upon the giving of such notice, the term hereof and the estate hereby granted shall expire and terminate on such date as fully and completely and with the same effect as if such date were the date hereinbefore fixed for the expiration of the Term hereof, and all rights of Lessee hereunder shall expire and terminate, but Lessee shall remain liable as hereinafter provided.
- c. If an event of default shall have happened and be continuing, Lessor shall have the immediate right, whether or not the term hereof shall have been terminated pursuant to paragraph 21.b., to re-enter and repossess the Leased Premises or any part thereof by force, summary proceedings, ejectment, or otherwise, and the right to remove all persons and property therefrom. Lessor shall be under no liability for or by reason of any such entry, repossession, or removal. No such re-entry or taking of possession of the Leased Premises by Lessor shall be construed as an election on Lessor's part to terminate the term hereof, unless a written notice of such intention be given to Lessee pursuant to paragraph 21.b., or unless the termination hereof be decreed by a court of competent jurisdiction.
- d. At any time or from time-to-time after the repossession of the Leased Premises or any part thereof pursuant to paragraph 21.c., whether or not the term hereof shall have been terminated pursuant to paragraph 21.b., Lessor may (but shall be under no obligation to) relet the Leased Premises or any part thereof for the account of Lessee, in the name of Lessee or Lessor or otherwise, without notice to Lessee, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such conditions (which may include concessions or free rent) and for such uses as Lessor, in its absolute discretion, may determine, and Lessor may collect and receive any rents payable by reason of such reletting. Lessor shall not be responsible or liable for any failure to relet the Leased Premises or any part thereof or for any failure to collect any rent due upon any such reletting.
- e. No expiration or termination of the term hereof pursuant to paragraph 21.b., by operation of law or otherwise, and no repossession of the Leased Premises or any part thereof pursuant to paragraph 21.c. or otherwise, and no reletting of the Leased Premises or any part thereof pursuant to paragraph 21.d., shall relieve Lessee of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession, or reletting.
- f. In the event of any expiration or termination of this Lease or repossession of the Leased Premises or any part thereof by reason of the occurrence of an event of default, Lessee will pay to Lessor the Basic Rent, additional rent, and other sums required to be paid by Lessee to and including the date of such expiration, termination, or repossession; and, thereafter, Lessee shall, until the end of what

would have been the term hereof in the absence of such expiration, termination, or repossession, and whether or not the Leased Premises or any part thereof shall have been relet, be liable to Lessor for, and shall pay to Lessor, as liquidated and agreed current damages: (i) the Basic Rent, additional rent, and other sums which would be payable hereunder by Lessee in the absence of such expiration, termination, or repossession, less (ii) the net proceeds, if any, of any reletting effected for the account of Lessee pursuant to paragraph 21.d., after deducting from such proceeds all Lessor's expenses in connection with such reletting (including, without limitation, all repossession costs, brokerage commissions, legal expenses, attorney's fees, employees' expenses, alteration costs, and expenses of preparation for such reletting). Lessee will pay such current damages on the days on which the Basic Rent would have been payable hereunder in the absence of such expiration, termination, or repossession, and Lessor shall be entitled to recover the same from Lessee on each such day.

- g. The words "enter," "re-enter," or "re-entry," as used in this paragraph 20, are not restricted to their technical meaning.

22. Additional Rights of Lessor.

- a. No right or remedy herein conferred upon or reserved to Lessor is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute. The failure of Lessor to insist at any time upon the strict performance of any covenant or agreement, or to exercise any option, right, power, or remedy contained herein shall not be construed as a waiver or a relinquishment thereof for the future. A receipt by Lessor of any Basic Rent, any additional rent, or any other sum payable hereunder with knowledge of the breach of any covenant or agreement contained herein shall not be deemed a waiver of such breach, and no waiver by Lessor of any provision hereof shall be deemed to have been made unless expressed in writing and signed by Lessor. In addition to other remedies provided herein, Lessor shall be entitled, to the extent permitted by law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions, or provisions of this Lease, or to a decree compelling performance of any of the covenants, agreements, conditions, or provisions of this Lease, or to any other remedy allowed to Lessor at law or in equity.
- b. Lessee hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, (i) any right and privilege which it or any of them may have under any present or future constitution, statute, or rule of law to redeem the Leased Premises or to have a continuance hereof for the term hereby demised after termination of Lessee's right of occupancy by order or judgment of any court or by any legal process or writ, or under the terms hereof, or after the termination of the term hereof as herein provided, and (ii) the benefits of any present or future constitution, statute, or rule of law which exempts property from liability for debt or for distress for rent.
- c. If Lessee shall be in default in the performance of any of its obligations hereunder,

and an action shall be brought for the enforcement thereof, in which it shall be determined that Lessee was in default, Lessee shall pay to Lessor all the expenses incurred in connection therewith, including reasonable attorney's fees. If Lessor shall, without fault on its part, be made a party to any litigation commenced against Lessee, and if Lessee, at its expense, shall fail to provide Lessor with counsel approved by Lessor, Lessee shall pay all costs and reasonable attorney's fees incurred or paid by Lessor in connection with such litigation.

23. *Removal of Trade Fixtures.* If no default or event of default hereunder has happened and is continuing, Lessee may, at any time during the term hereof, remove from the Leased Premises any trade fixtures, machinery, or equipment belonging to Lessee or third parties, provided that Lessee shall repair any damage to the Leased Premises caused by such removal.
24. *Surrender.* Upon the expiration or earlier termination hereof, Lessee shall peaceably leave and surrender the Leased Premises to Lessor in the same condition in which the Leased Premises were originally received from Lessor at the commencement of the term hereof, except as repaired, rebuilt, restored, altered, or added to as permitted or required hereby, and except for ordinary wear and tear. Lessee shall remove from the Leased Premises, on or prior to such expiration or earlier termination, all property situated thereon which is not owned by Lessor, and, at its expense, on or prior to such expiration or earlier termination, shall repair any damage caused by such removal. Property not so removed shall become the property of Lessor, and Lessor may thereafter cause such property to be removed from the Leased Premises and disposed of, but the cost of any such removal and disposition, and the cost of repairing any damage caused by such removal, shall be borne by Lessee.

Article III. Additional Terms.

1. *Public Remonstrance.* Notwithstanding anything in this Agreement to the contrary, Lessee's right to purchase the leased premises, and Lessor's authority to convey the same, shall be subject to public remonstrance petition as provided by law. Lessor shall not be liable for any cost, expense, or damages of any nature incurred by or resulting to the Lessee as a result of a successful public remonstrance petition objecting to a sale or conveyance of the Leased Premises.
2. *Notices, Demands, and Other Instruments.* All notices, demands, requests, consents, approvals, and other instruments required or permitted to be given pursuant hereto shall be given in writing and shall be deemed to have been properly given if a. with respect to Lessee, sent by registered mail, postage prepaid, addressed to Lessee at its address first above set forth, and b. with respect to Lessor, sent by registered mail postage prepaid addressed to Lessor at its address first above set forth. Lessor and Lessee shall each have the right from time-to-time to specify as its address for purposes of this Lease any other address in the United States of America upon giving 10 days' written notice thereof, similarly given, to the other party.
3. *Separability.* Each and every covenant and agreement contained herein is or shall be construed to be a separate and independent covenant and agreement, and the breach of any such covenant or agreement by Lessor shall not discharge or relieve Lessee from its

obligations to perform the same. If any term or provision hereof, or the application thereof to any person or circumstances, shall be invalid and unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision hereof shall be valid and shall be enforced to the extent permitted by law.

4. *Binding Effect.* All of the covenants, conditions, and obligations contained herein shall be binding upon and inure to the benefit of the respective successors and assigns of Lessor and Lessee to the same extent as if each such successor and assign were in each case named as a party hereto. This Lease may not be changed, modified, or discharged except by a writing signed by Lessor and Lessee.
5. *Headings.* The headings to the various paragraphs hereof have been inserted for reference only and shall not to any extent have the effect of modifying, amending, or changing the expressed terms and provisions hereof.
6. *Governing Law.* This Lease shall be governed by and interpreted under the laws of the state of Nebraska.
7. *Schedule.* Schedule A is attached hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be signed and sealed as of the date first above written.

LESSOR:
CITY OF GRAND ISLAND



By: 
Roger G. Steele, Mayor

ATTEST:


RaNae Edwards, City Clerk


Interim City Attorney

LESSEE:
GRAND ISLAND CHILDREN'S MUSEUM

By: 
President

Secretary

SCHEDULE A

A certain part of the Southeast Quarter of the Southwest Quarter (SE1/4 SW1/4) of Section Seventeen (17), Township Eleven (11) North, Range Nine (9) West of the Sixth P.M., Hall County, Nebraska, more particularly described as follows: beginning at a point on the north line of a public road, such point being 673.0 feet west, and 33.0 feet north of the Southeast Corner of the Southwest Quarter (SW1/4) of Section Seventeen (17), Township Eleven (11) North, Range Nine (9) West of the Sixth P.M.; running thence west, parallel to the south line of the Southwest Quarter (swSW1/4) of Section Seventeen (17), Township Eleven (11) North, Range Nine (9) West of the Sixth P.M., a distance of 400.0 feet; running thence north at right angles, a distance of 325.0 feet; running thence east at right angles, a distance of 400.0 feet; running thence south at right angles, a distance of 325.0 feet, to the point of beginning, EXCLUDING THEREFROM THE EASTERLY FORTY (40) FEET OF THE AFORESAID DESCRIBED TRACT.