

COOPERATIVE AGREEMENT
FOR LEASE OF A PORTION OF GATES-CRESCENT PARK
and
PURCHASE & SALE OF ANOTHER PORTION OF GATES-CRESCENT PARK

THIS COOPERATIVE AGREEMENT FOR LEASE OF A PORTION OF GATES-CRESCENT PARK and PURCHASE & SALE OF ANOTHER PORTION OF GATES-CRESCENT PARK (referred to herein as the “**Agreement**”) is made and entered into, effective as of the date set forth on the City’s signature page, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the laws of the State of Colorado (the “**City**”) and **THE CHILDREN’S MUSEUM OF DENVER, INC.**, a Colorado nonprofit corporation, with offices located at 2121 Children’s Museum Drive, Denver, Colorado 80211 (the “**Museum**”), jointly referred to in this Agreement as the “**Parties**” or individually each as a “**Party**”.

RECITALS

A. The Museum is a nonprofit corporation which has been providing educational experiences and entertainment for young people for over 35 years at the Children’s Museum (“**Children’s Museum**”) located at 2121 Children’s Museum Drive, which location was acquired from the City through a Specific Performance Contract filed with the Clerk and Recorder, Ex-Officio City Clerk of the City, on October 15, 1980, Clerk Filing No. 97887, and authorized by Ordinance No. 557, Series of 1980, and subsequently conveyed to the Museum by means of a Special Warranty Deed dated February 4, 1983, and recorded February 8, 1983, at Book 2744, Page 637 in the Denver Clerk and Recorder’s Office (the “**Museum’s Property**”).

B. The Museum’s Property is located immediately adjacent to Gates-Crescent Park, a non-designated, City-owned park (the “**Park**”).

C. In its ongoing efforts to improve the Children Museum and to enhance programming provided to young people, the Museum has identified a need to expand its facilities and operations from the Museum’s Property onto parts of the Park, to allow for additional organized activities in the Plaza which lies partly on the Museum’s Property and partly within the Park, to expand the Children’s Museum building onto a portion of the Park, and to develop an outdoor educational experience area on land totally within the Park.

D. Following extensive discussions between the Museum and the Manager of the Denver Department of Parks and Recreation (the “**Manager**”) which were carried over into discussions with the Parks and Recreation Advisory Board and other stakeholders in the Park and culminating in a public meeting where the Museum presented its proposal to interested citizens, the City has agreed to sell to the Museum, subject to the terms and conditions of this Agreement, approximately 0.6 acre area of land consisting of the Plaza area located in the Park and a building expansion site located in the Park to the south of the Museum’s Property, as both properties are depicted on the attached **Exhibits A and B** (the “**Purchased Property**”), and to lease, subject to the terms and conditions of this Agreement, an approximately .89 acre area on the far west side of the Park and south of the Children’s Museum, as depicted on the attached **Exhibit C** (the “**Leased Property**”).

E. It is understood and agreed by the Parties that the sale and lease of portions of the Park property are being undertaken solely to assure the continued vitality and growth of the Children’s Museum and the benefits and services the Children’s Museum affords the citizens of the City and County of Denver and the State of Colorado and that said benefits and services of the Children’s Museum are, and will remain, compatible with the character and use of the Park which must be preserved and protected.

F. To this end, the Museum and the City have agreed to certain use restrictions and certain reserved and granted rights for the Purchased Property and the Leased Property, as well as the Museum’s Property, in order to assure that the mutual interests identified above are recognized and protected.

G. References to the “Museum” in this Agreement shall also refer to any transferee, assignee, or successor in interest as authorized or allowed under this Agreement.

NOW, THEREFORE, in consideration of the recitals above and the mutual agreements contained herein and for other good and valuable consideration as provided herein, the Parties agree as follows:

Purchase & Sale Agreement

1. **Purchased Property**: Subject to the terms, conditions, and covenants contained in this Purchase & Sale Agreement, the City agrees to sell to the Museum, and the Museum hereby agrees to purchase from the City, the real property more particularly described as the “**Plaza Parcel**” in **Exhibit A** and the “**Building Parcel**” in **Exhibit B**, both of which are attached hereto

and incorporated herein by reference, together with, in their present condition, all improvements, appurtenances and permanent fixtures (but excluding any part of any irrigation system and any water taps), but subject to any easements, restrictions, and encumbrances of public record and all zoning laws or other ordinances affecting said property (the “**Purchased Property**”).

2. Consideration: The Parties agree that consideration for the conveyance of the Purchased Property shall be provided as set forth in this Section 2.

a. Agreed Consideration. The Parties acknowledge and agree that, based on the terms, conditions, and restrictions of this Agreement and each Party’s independent examination of land value, a purchase and sale price of One Hundred Sixty-Eight Thousand Dollars (\$168,000.00) is the fair and reasonable consideration for the Purchased Property, of which amount Sixty-Three Thousand Eight Hundred Forty Dollars (\$63,840.00) is attributable to the value of the Plaza Parcel described in **Exhibit A** and One Hundred Four Thousand One Hundred Sixty Dollars (\$104,160.00) is attributable to the value of the Building Parcel described in **Exhibit B** (“**Agreed Consideration**”).

b. Satisfaction and Use of Agreed Consideration. The Museum agrees to pay the City the full amount of the Agreed Consideration at Closing (as defined below). The City agrees that the Agreed Consideration, upon receipt by the City, shall be retained and earmarked for eventual improvements to be made by the City in the Park (outside of the Leased Property (as defined below) and the Purchased Property).

3. Due Diligence.

a. Investigations. The Museum may conduct, at its own expense, whatever due diligence investigation of the Purchased Property or the Leased Property that the Museum may desire. These due diligence investigations may include any environmental studies or assessments, any site inspections, property surveys, and any title examinations relating to the Purchased Property or Leased Property. To the extent that the Museum obtains any title commitments, owners and encumbrances reports or property surveys for either the Purchased Property or the Leased Property, copies of said title commitment, O&E reports or property surveys shall be provided, without charge, to the City. All such investigations must be completed and any objections made by the Museum, as provided in the paragraph below, within ninety (90) calendar days of the date of this Agreement (the “**Due Diligence Period**”). The City will cooperate in any such investigations provided that it does not incur any substantive expenses for

this effort other than personnel time. The City acknowledges that the legal descriptions and survey drawings attached as Exhibits A, B, and C were prepared by the City and that no remuneration is expected from the Museum for the cost of their preparation. Any on-site work that requires disturbance or damage to the land or improvements on the Purchased Property or the Leased Property shall require the prior written consent of the Manager. The Museum shall not permit claims or liens of any kind against the Purchased Property or the Leased Property resulting from any investigations or services performed by contractors or consultants or their subcontractors or sub-consultants relating to the Purchased Property or the Leased Property. The Museum agrees to indemnify and hold harmless the City from and against any damage, loss or costs associated with any investigations or entry upon the Purchased Property or the Leased Property caused or directed by the Museum, its officer, employees, or agents.

b. **Objections & Resolutions.** If the Museum should have any objections resulting from its investigations, including unsatisfactory environmental, physical, or title conditions of the Purchased Property or the Leased Property, the Museum shall notify the City in writing no later than the last day of the Due Diligence Period and provide documented evidence to support any objections. If the City receives no written objections by the last day of the Due Diligence Period or if the Museum submits a written waiver of its due diligence rights under this Section 3, the Museum shall be deemed to have accepted the environmental, physical, and title conditions of the Purchased Property and the Leased Property. If written objections are received by the City, the City may, in its sole discretion, correct or take actions to resolve said unsatisfactory conditions. If the City refuses to correct or resolve the unsatisfactory conditions and so notifies the Museum in writing or if the City fails to take action to correct or resolve the unsatisfactory conditions within thirty (30) calendar days or within such other time frame mutually agreed to by both Parties in writing, then this Purchase and Sale Agreement shall terminate, with each Party to bear its own costs as provided in this Agreement, unless the Museum notifies the City within ten (10) calendar days of the occurrence of any event described above that the Museum waives any objections to said unsatisfactory conditions and is ready and willing to proceed to Closing, as defined below.

c. **Zoning.** The Purchased Property is currently zoned “OSA” under the Denver Zoning Code and must be rezoned because only City-owned property may be zoned “OSA”. The City and the Museum acknowledge and agree that the Museum will proceed, at its

own expense, to prepare a request for rezoning to the City which request must be acceptable to the Manager in order for the Manager to co-sign the request for rezoning prior to submission to Denver Department of Community Planning and Development. The Manager will support the Museum's efforts to rezone the Purchased Property, to the extent such support is appropriate. The re-zoning process is to be completed prior to Closing. If the rezoning of the Purchased Property is not completed within one hundred and eighty (180) days of the date of this Agreement, and the Museum and the Manager do not mutually agree, in writing, to extend this deadline, then this Purchase and Sale Agreement shall terminate, with each Party to bear its own costs as provided in this Purchase and Sale Agreement. The City makes no representation or guarantees that the Museum will be granted the zoning classification it requests.

4. Closing; Title Transfer; Possession; No Warranties; Title Insurance; Taxes; and Remedies.

a. Closing on the sale and purchase and transfer of title of the Purchased Property ("**Closing**") shall occur on a mutually agreeable date, but in no event later than thirty (30) days following the completion of the rezoning of the Purchased Property, as provided in paragraph c. of Section 3, or the completion of any due diligence under Section 3 not yet completed, whichever is later. The hour and place of Closing shall be as designated by the City unless the Museum elects, at its own expense, to retain the services of a title company to perform the Closing, in which case the date and time of closing shall be as mutually agreed by the Parties and at or through the Denver-area office of the title company.

b. Transfer of fee title for the Purchased Property shall be by Bargain and Sale Deeds, one for the Plaza Parcel and one for the Building Parcel (the "**Deeds**"), in substantially the form attached hereto as **Exhibit D** (for the Plaza Parcel) and **Exhibit E** (for the Building Parcel). The Deeds shall include such restrictions and reserved and granted rights in substantially the same form as specified in Sections 5 and 6 below and all easements, restrictions, and encumbrances of public record that have not otherwise been removed or relinquished under Section 3 above.

c. Possession of the Purchased Property shall be delivered to the Museum at Closing.

d. The Purchased Property shall be transferred "as is, where is," without warranties of any kind. This provision shall survive Closing and shall not merge with the Deed.

e. Title insurance for the Purchased Property may be obtained by the Museum at its own expense. Any ALTA/ACSM land title survey required for title insurance purposes shall be arranged by the Museum at its own expense.

f. The City represents that the Purchased Property currently has a governmental tax exemption and, as a result, no taxes or assessments are or will be due and owing on the Purchased Property at Closing. Following Closing, the governmental tax exemption shall terminate, and the Museum shall be solely responsible for payment of any taxes or assessments if the Museum is unable to obtain a charitable tax exemption for the Purchased Property. The City agrees, at or before Closing, to complete and execute standard FIRPTA, 1099 and 1083 forms provided by the title company, subject to the understanding that the City is a municipal corporation of the State of Colorado and a tax exempt entity.

g. In the event of a material default by either Party prior to or on the date of Closing, the non-defaulting Party may elect, at its discretion, either to terminate the Purchase & Sale Agreement or to seek specific performance. All rights and claims to damages of any form and for attorney's fees and other costs are hereby waived.

5. Restrictions and Reserved and Granted Rights for the Plaza Parcel. The rights and title transferred by the Deed for the Plaza Parcel (**Exhibit A**) to the Museum shall be subject to the following restrictions and reserved and granted rights which shall be stated in the Deed for the Plaza Parcel.

a. Use Restrictions. The Museum shall use the Plaza Parcel only in conjunction with the operation and use of a children's museum located on the Museum's Property and, once constructed, the Building Parcel and, for as long as the Lease Agreement is in effect, the operation and use of the Leased Property (as defined below) in accordance with this Agreement and for such other uses as may from time to time be reasonably incidental or accessory thereto. The Museum may allow the use of the Plaza Parcel, either by rent or other arrangement, by third parties, on a single-event or short-term basis, for educational, entertainment and other programs, events, and activities not inconsistent with park purposes. Any other use of the Plaza Parcel shall require the prior written consent of the Manager. This paragraph shall not be deemed to prohibit reasonable periods of non-use of the Plaza Parcel.

b. Access.

1) Public Access. Except for those times when organized events or activities are being held by the Museum or with the Museum's consent on the Plaza Parcel and except for such fencing or other access barriers located on the Plaza Parcel for which the prior written approval of the Manager was obtained, free public access shall be permitted on the paved and travelable portions of the Plaza Parcel and the Museum's Property in front of the Children's Museum in order to allow the public to readily access, by foot or non-motorized (except wheel chairs) vehicles, both the Children's Museum, including its parking lot, and the Park. The Museum may, at its sole expense, with the prior written approval of the Manager, designate or create passages or corridors that satisfactorily provide the required access. All fencing and other access barriers must be situated at least thirty-six inches (36") from any sidewalk in the Park, and the Museum shall provide, at its own expense, for shoulders or a soft trail immediately adjoining the sidewalk, as approved by the Manager, where the fencing or other access barriers is located near to the sidewalk.

2) City Maintenance Vehicles Access. Except for those times when organized events or activities are being held by the Museum or with the Museum's consent on the Plaza Parcel, the Museum shall allow for vehicles operated by the City or City contractors or agents to have free ingress and egress across the paved and travelable portions of the Plaza Parcel and the parking lot on the Museum's Property to and from the Park for the purpose of maintaining the Park or repairing or replacing infrastructure in the Park or along the South Platte River.

3) Fire Access. It is anticipated, as part of the overall improvements to the Plaza Parcel and the Museum's Property, the Museum may have to replace existing concrete surfaces on the Plaza Parcel, the Museum's Property and the Park in order to accommodate fire truck access and/or to satisfy City fire code requirements. Any plans to replace such concrete surfaces, or for the Museum to make any other improvements in the Park, shall require the prior written approval of the Manager and shall be performed solely at the Museum's expense unless the City enters an agreement with the Museum to share this cost. Paragraphs i through q of Section 10 of this Agreement shall be applicable to any authorized improvements made by the Museum in the Park.

c. Plaza Parcel Islands. The Plaza Parcel includes existing landscaped islands adjoined by sidewalk and/or plaza. The Museum agrees to maintain these existing landscaped

islands, including arranging, at the Museum's expense, for the separation of the existing irrigation on the landscaped islands from the City's irrigation system, as approved by the Manager, within sixty (60) days following Closing. The separation of the irrigation systems shall be done without damaging or creating operational problems for the irrigation system in the Park. If the Museum elects in the future to remove the landscaped islands as part of a design to expand the usable surface area of the Plaza Parcel, the Museum shall 1) coordinate with the City Forester prior to the removal of any trees from the landscaped islands and comply with any City ordinances and rules and regulations pertaining to the removal or relocation of such trees; and 2) shall coordinate with the City's Department of Public Works-Wastewater with respect to changes or relocation of any existing storm water drainage systems located on the Plaza Parcel Islands and shall include appropriate storm water detention and water quality measures as determined by Wastewater to be necessary or appropriate for any increased impervious areas and water quality or erosion control issues created by or associated with improvements to the Plaza Parcel.

d. Right of Transfer. The Museum shall have the right to sell or transfer the Plaza Parcel to a related or a separate public, quasi-public, or private nonprofit entity (a "Transferee") in conjunction with the transfer of the Museum's Property, provided that the Transferee unqualifiedly agrees to take title subject to the restrictions and reserved and granted rights set forth in this Section 5 and written notice of said transfer or sale is provided to the City. Any other conveyance or transfer of any interest held by the Museum in the Plaza Parcel, other than underground utility easements, shall require prior written consent by the City, to which the City, in its sole discretion, may grant (with or without conditions) or deny consent for the conveyance or transfer.

e. Right of Re-Purchase. In the event that the Museum proposes to allow the sale or transfer to a person or entity other than a Transferee or if the transfer is to a Transferee and the Transferee refuses to agree to take title subject to the restrictions and reserved and granted rights set forth in this Section 5, then the City reserves the right to re-purchase the Plaza Parcel for a price not to exceed the Agreed Consideration for the Plaza Parcel, which amount shall be Sixty-Three Thousand Eight Hundred Forty Dollars (\$63,840.00) ("**Plaza Parcel Re-Purchase Price**"), unless the Museum withdraws the proposed sale or transfer. This right of re-purchase does not modify or diminish any right the City may have to deny the proposed transfer under paragraph d. of this Section 5. Upon written notice by the Museum that it proposes such a

sale or transfer as provided in this paragraph e., the City shall have forty-five (45) calendar days in which to elect in writing to re-purchase the Plaza Parcel at the specified Plaza Parcel Re-Purchase Price. The Museum shall have ten (10) days after receiving the City's election to re-purchase to withdraw the proposed sale or transfer. Upon submitting to the Museum its written election to re-purchase and provided the Museum does not withdraw its proposal to sell or transfer the Plaza Parcel, the City shall have forty-five (45) calendar days in which to tender the Plaza Parcel Re-Purchase Price to the Museum, whereupon the Museum shall promptly tender a bargain and sale deed transferring the fee title to the entire Plaza Parcel back to the City. The transferred title shall be of the same quality as was transferred to the Museum by this Agreement, free of any monetary liens and monetary encumbrances. The City may waive its rights under this paragraph e. either by written notice to the Museum or by failure to comply with the specified deadlines after receiving proper written notice from the Museum.

f. Effect. Except for paragraph e. of this Section 5, this Section 5 shall remain in effect so long as the City owns the Park and operates it as a park. The City's Right of Re-Purchase set forth in paragraph e. of this Section 5 shall terminate forty (40) years from the date of this Agreement or when the City no longer owns the Park or no longer operates it as a park, if sooner. The recording of the Agreement and the Plaza Parcel Deed containing the restrictions in Section 5 shall put any lenders and other third parties on notice that the Plaza Parcel may not be used to secure any debts or financial obligations of the Museum. Except as expressly provided herein, Section 5 shall be a restrictive covenant that runs with the land and shall bind and inure to the benefit of the Parties and their successors and assigns.

g. Enforcement. In the event of a violation of this Section 5 that is not corrected or not resolved to the reasonable satisfaction of the City within a reasonable period of time specified in a written notice to the Museum, the City shall have the right to seek through judicial action specific performance, actual damages, or such other relief as is available by law. The right to consequential or punitive damages is hereby waived.

6. Restrictions and Reserved and Granted Rights for the Building Parcel and the Museum's Property. The rights and title transferred by the Deed for the Building Parcel (**Exhibit B**) to the Museum shall be subject to the following restrictions and reserved and granted rights which shall be stated in the Deed for the Building Parcel. In addition, the restrictions and

reserved and granted rights contained in this Section 6 shall be applicable to the Museum's Property as provided herein.

a. Preface.

1) As noted in Recital "A" above, title to the Museum's Property was sold by the City to the Museum by means of a Specific Performance Contract (Vacant land), filed with the Office of the Clerk and Recorder, Ex-Officio Clerk of the City, on October 15, 1980, Filing No. 97887 (the "**Original Contract**"), and subsequently conveyed to the Museum by means of a Special Warranty Deed dated February 4, 1983, and recorded February 8, 1983, at Book 2744, Page 637 in the Denver Clerk and Recorder's Office. The Original Contract was amended by a certain Contract Amendment dated July 7, 1987, between the City and the Museum, recorded with the Clerk and Recorder of the City and County of Denver on July 23, 1987 at Reception No. 162611 (the "**1987 Amendment**"). The transfer of the Museum's Property was completed; the Children's Museum was constructed; and certain terms and conditions contained in the Addendum of the Original Contract (the "**Restrictions**") have either been satisfied or are currently in effect. Certain of the Restrictions were waived for the purposes of a specific loan identified in the 1987 Amendment, which loan has since been retired and thereby the Parties acknowledge and agree the 1987 Amendment is no longer in effect.

2) In light of the proposed transfer of the Building Parcel to the Museum and the anticipated expansion of the Children's Museum onto the Building Parcel, the City and the Museum desire to modify the Restrictions, as set forth in this Section 6 (the "**Modified Restrictions**"), to reflect the current circumstances and to have the Modified Restrictions apply to both the Museum's Property and the Building Parcel.

3) In connection with the expansion of the Children's Museum onto the Building Parcel or further improvements or additions to the existing Children's Museum on the Museum's Property (the "**Expansion**"), the Museum may need to obtain financing (or eventually refinancing) for the construction of all or part of the Expansion on the Building Parcel or the Museum's Property or both which will be secured by one or more deeds of trust or other mortgage instrument (any such financing or refinancing hereinafter referred to as a "**Loan**"). No other debt obtained or assumed by the Museum, other than for the financing or eventual refinancing of the construction of all or part of the Expansion, shall be regarded as a Loan and may not be secured by the Building Parcel or the Museum's Property or both without the prior

written consent of the City in its sole discretion. The City consents to the conditional waiver of the Modified Restrictions following foreclosure of a Loan in exchange for this amendment to the Original Contract as expressly provided in this Section 6.

b. Modified Restrictions. The City and the Museum agree that the Addendum to the Original Contract shall be pre-empted, superseded and replaced by the following Modified Restrictions:

1) Use Restrictions. The Museum shall use the Museum's Property and the Building Parcel only in conjunction with the operation and use of a children's museum located on the Museum's Property and, once constructed, the Building Parcel and, for as long as the Lease Agreement is in effect, the operation and use of the Leased Property (as defined below) in accordance with this Agreement and for such other uses as may from time to time be reasonably incidental or accessory thereto. Any other use of the Museum's Property and the Building Parcel shall require the prior written consent of the Manager. This paragraph shall not be deemed to prohibit reasonable periods of non-use of the Museum's Property or the Building Parcel.

2) Right of Re-Purchase. If the Museum has not commenced the Expansion on the Building Parcel within ten (10) years of the date of this Agreement or if the Museum, through its board of directors, should determine at any time prior to the end of said ten (10) year period not to proceed with an Expansion on the Building Parcel or to transfer or sell the Building Parcel for any purpose prior to Expansion on the Building Parcel ("**Re-Purchase Occurrence**"), the City shall have the right to re-purchase the Building Parcel for a price not to exceed the Agreed Consideration for the Building Parcel, which amount shall be One Hundred Four Thousand One Hundred Sixty Dollars (\$104,160.00) ("**Building Parcel Re-Purchase Price**"). Upon the happening of a Re-Purchase Occurrence, the City may, at its election, provide a bargain and sale deed for the Building Parcel along with the Building Parcel Re-Purchase Price to the Museum, which shall accept the Re-Purchase Price and promptly and without qualifications execute and return the bargain and sale deeds subject to any encumbrances that existed when the City transferred the Building Parcel to the Museum and any utility easements granted on the Building Parcel by the Museum but free and clear of any other encumbrances including any monetary liens and monetary encumbrances, including a Loan.

3) Right of Transfer. Subject to the City's Right of Re-Purchase for the Building Parcel above, the Museum shall have the right to sell or transfer both the Museum's Property and the Building Parcel to a related or a separate public, quasi-public, or private nonprofit entity (a "**Transferee**"), provided that the Transferee unqualifiedly agrees to take title subject to the restrictions and reserved and granted rights set forth in this Section 6 and written notice of said transfer or sale is provided to the City. Any other conveyance or transfer of any interest held by the Museum in the Museum's Property and the Building Parcel, other than utility easements or financial interests (subject to the restrictions and requirements of this Section 6), shall require prior written consent by the City, to which the City, in its sole discretion, may grant (with or without conditions) or deny consent for the conveyance or transfer.

4) Right of First Refusal. In the event the Museum receives a bona fide offer to purchase the Museum's Property from a party other than a Transferee ("**Offer**"), which Offer the Museum intends to accept, the Museum shall give the City notice of the Offer and the terms and conditions of any proposed sale or transfer. If the Offer includes the Building Parcel and the Building Parcel has not and cannot be re-purchased by the City under paragraph b.2) above, the provisions of this Right of First Refusal shall apply to the Building Parcel as well as the Museum's Property. The City shall have forty-five (45) calendar days from the date of receipt of said notice in which to elect in writing to exercise this Right of First Refusal for the same proposed purchase price as contained in the Offer. If the City fails to make the election within said 45 days, the Museum shall be free, within six (6) months following said 45 days, to complete the proposed transfer for the same or a higher purchase price as presented to the City. If the purchase price is subsequently modified so that it is ten percent (10%) or more lower than was contained in the Offer originally submitted to the City, then the new Offer must be submitted to the City in accordance with the procedures set out above. If the City elects to pay the purchase price contained in the Offer, the City shall have an additional forty-five (45) calendar days in which to tender this amount, in which case the Museum shall deliver a fully executed bargain and sale deed to the City free and clear of any leases and any monetary liens and monetary encumbrances, including a Loan. If the consideration in the Offer is, in whole or part, the exchange of land, the City shall have the right to exercise the Right of First Refusal by tendering the certified appraised value (which shall not exceed fair market value) contained in the Offer along with the dollar amount of any cash component of the Offer. The City may waive

its rights under this paragraph b.4) either by written notice to the Museum or by failure to comply with the specified deadlines after receiving proper written notice from the Museum.

5) Duration. Except for paragraphs b.2) and b.4) of this Section 6, this paragraph b. of Section 6 shall remain in effect so long as the City owns the Park and operates it as a park. The City's Right of Re-Purchase set forth in paragraph b.2) of this Section 6 shall terminate upon the commencement of Expansion on the Building Parcel or fifteen (15) years from the date of this Agreement, whichever occurs first. The City's Right of First Refusal set forth in paragraph b.4) of this Section 6 shall terminate forty (40) years from the date of this Agreement.

c. Loan.

1) If a lending institution ("**Lender**") enters into an agreement with the Museum whereby it agrees to provide a Loan to the Museum to finance or eventually refinance the construction of all or any part of the Expansion, which Loan is secured in whole or in part by the Museum's Property or the Building Parcel or both (the "**Mortgaged Property**") through a deed of trust or other mortgage instrument, and the Lender, its successors or assigns, properly forecloses upon the Mortgaged Property, whether judicially or through the Public Trustee, then the City hereby agrees that the successful bidder or purchaser at the foreclosure sale, its successors and assigns, shall take the Mortgaged Property free and clear of the Modified Restrictions set forth in paragraph b. of this Section 6; provided that, as a condition precedent to the City's waiver and release of the above-specified Modified Restrictions ("**Waiver of Restrictions**"), both the Museum and the Lender are in full compliance with the terms and conditions of this paragraph c. of Section 6.

2) The Waiver of Restrictions shall apply only to a Loan and for any new loan which may be obtained by the Museum in the future for the sole purpose of refinancing a Loan or financing additional parts of the Expansion, and, upon fully satisfying the qualifications for being a "Loan" under this Agreement, such new loan shall be considered a "Loan" for purposes of this paragraph c. of Section 6. A "Loan" shall include any assignment or other transfer of a Loan to a third party, and a "Lender" shall include any successor in interest to, or any assignee or transferee from, a Lender. The Waiver of Restrictions shall not be effective for any monetary liens or monetary encumbrances of the Mortgaged Property that is not made in connection with a Loan as provided herein. Unless otherwise consented to by the City in a letter

signed by the Mayor for the City and County of Denver, the Waiver of Restrictions shall not be effective if the Mortgaged Property is conveyed to Lender by deed in lieu of foreclosure or any other means of transfer other than through a sale authorized in a judicial or public trustee foreclosure.

3) The Lender shall provide to the City, in care of its Mayor, written notice of pending commencement of the foreclosure, including at a minimum identification of the Museum as owner of the Mortgaged Property, a legal description of the Mortgaged Property, the reception number for the recorded deed of trust that is in default, and the balance still owed by the Museum on the Loan (the “**Foreclosure Notice**”), at least one hundred and eighty (180) calendar days prior to the commencement of any public trustee foreclosure action or the recording of a lis pendens in anticipation of filing a judicial foreclosure (the “**Abeyance Period**”). “Delivery” of the Foreclosure Notice as required by this paragraph shall be given by either hand delivery to the office of the Mayor for the City and County of Denver or by mail delivery to the office of the Mayor through certified or registered mail, return receipt requested, so that Delivery is complete and received prior to the initiation of the Abeyance Period. The office of the Mayor is currently located at 1437 Bannock Street, Room 350, Denver, Colorado 80202 but shall be regarded as being wherever the office of the Mayor may be located in the future.

4) Separate from the Foreclosure Notice required above, the Museum agrees to give timely written notice, as provided for Delivery above, to the Mayor of the City any time the Museum (a) misses a payment on the Loan; (b) receives from the Lender a notice of default under the Loan, or (c) becomes aware in writing that Lender is about to commence or has commenced foreclosure proceedings. In said notice, the Museum shall describe all measures and actions the Museum has taken or intends to take, if any, to resolve any missed payments, defaults, or foreclosure, and the balance still owed by the Museum to the Lender on the Loan.

5) During the Abeyance Period, the Lender shall forbear on taking any action to initiate or bring a foreclosure and shall cooperate with the Museum and the City with respect to the process and actions described in this paragraph. The City, through its Mayor, shall have sixty (60) days starting with the first day of the Abeyance Period to notify the Lender and the Museum, in writing, of whether it shall endeavor to acquire the Mortgaged Property as provided in this paragraph. If the City elects not to proceed to acquire the Mortgaged Property or

fails to provide notice within the 60 days specified above, all conditions precedent set forth in this paragraph c. of Section 6 shall be deemed fully satisfied, the Lender may proceed to take such actions as it deems appropriate to foreclose on the Mortgaged Property, and the Modified Restrictions set forth in paragraph b. of Section 6 shall terminate. If the City elects to endeavor to obtain the funds necessary to acquire the Mortgaged Property, the Lender shall continue to forbear on taking any action to initiate or bring a foreclosure until (a) the City pays off the Loan as provided in this paragraph in which event the Lender shall abandon all foreclosure efforts and relinquish all claims to the Mortgaged Property; (b) the expiration of the Abeyance Period; or (c) the City, through its Mayor, notifies the Lender and the Museum, in writing, that it will cease efforts to obtain the funds necessary to acquire the Mortgaged Property, whichever of these three is sooner. If the Abeyance Period or any extension thereof as provided in this paragraph expires without the City paying off the Loan as provided in this paragraph or the City notifies the Lender and the Museum of its intent to cease efforts to obtain the funds necessary to acquire the Mortgaged Property, all conditions precedent set forth in this paragraph c. of Section 6 shall be deemed fully satisfied, the Lender may proceed to take such actions as it deems appropriate to foreclose on the Mortgaged Property, and the Modified Restrictions set forth in paragraph b. of Section 6 shall terminate. Within the first ten (10) days of the Abeyance Period, the Lender shall provide the City with a full and accurate accounting of the Loan, including all principal and accrued interest paid to date, all principal and accrued interest still outstanding, a per diem on interest that will be owed to Closing Date (defined below), and any fees (paid and unpaid) required of the Museum under the Loan Documents, along with a detailed and documented listing of all reasonable fees and costs, including attorneys fees, incurred and anticipated to be incurred by the Lender as the result of the Museum's default on the Loan. The City and the Museum shall have the right to review this documentation and to require the Lender to demonstrate the legal and accounting basis for the figures the Lender has provided. Once this is done, the amount shall be deemed the total amount the City would have to pay the Lender in order for the Loan to be paid off and the deed of trust or other mortgage instrument to be released as paid in full ("**Loan Payoff**"). The Lender shall cooperate with the City and the Museum to assure that the Loan Payoff is determined no later than the end of first thirty (30) days of the Abeyance Period. The City shall endeavor to find the money necessary to make the Loan Payoff, which may be by appropriation, grants, certificates of participation or other lawful

means of municipal financing, or through other sources (“**Funding**”). At the same time, the City may engage, at its own expense, in due diligence, with the full cooperation of the Museum and the Lender, as to the title, environmental and physical condition of the Mortgaged Property. No later than ten (10) days prior to the expiration of the Abeyance Period, the City shall notify, in writing, the Lender and the Museum as to whether the City is satisfied with the title, environmental and physical condition of the Mortgaged Property and whether the City has procured or is about to complete the procurement of the Funding necessary for the Loan Payoff by the expiration of the Abeyance Period, or if an additional period of time is needed to complete the procurement of the Funding, by a date certain no later than thirty (30) days following the expiration of the Abeyance Period. Once the procurement of the Funding is certain, a Closing Date shall be set by mutual agreement of the City, the Lender and the Museum no later than sixty (60) days following the expiration of the Abeyance Period. At the Closing, in consideration of the City paying off the Museum’s debt under the Loan, the Museum shall deliver a fully and properly executed special warranty deed capable of delivering fee simple title to the City or such entity as the City may nominate to accept title for the entire Mortgaged Property, and, simultaneously, the Lender shall deliver a fully and properly executed Release of Deed of Trust or other mortgage instrument in exchange for the City or such entity as the City may nominate tendering the Funding for the Loan Payoff. Title to the Mortgaged Property shall be delivered free and clear of the Loan, and the City may, at its own expense, obtain title insurance for the Mortgaged Property insuring that title was conveyed free of the Loan.

6) Compliance with paragraphs c.3) and c.5) of this Section 6 shall be a condition precedent for any Lender to record a lis pendens against the Mortgaged Property and to file a judicial foreclosure under C.R.C.P. 105 or other applicable Colorado law or to initiate a foreclosure through the public trustee under sections 38-38-101 et seq., C.R.S., or any successor statute, and this condition precedent shall be unqualifiedly stated in Loan documents, including but not limited to deed(s) of trust, executed by the Lender and the Museum and using the Mortgaged Property as security. Failure of the Lender or the Museum or both to comply with paragraphs c.3), c.5) and c.6) of Section 6 shall entitle the City to seek any judicial recourse available under law to protect the City’s interests and rights in the Mortgaged Property, including but not limited to injunctive or declaratory relief, specific performance, omitted party rights, and the voiding of any deed issued by the sheriff or the public trustee.

7) Any deed of trust or other mortgage instrument granted by the Museum for the benefit of the Lender and using any portion of the Museum's Property or the Building Parcel or both as security must specifically acknowledge and affirm: a) that the City holds a property interest in the Mortgaged Property legally sufficient to entitle the City to exercise such rights as provided in paragraphs c.5) and c.6) of this Section 6; and b) that any right to foreclose against or otherwise legally to take title of the Mortgaged Property must be done by the Lender or its successors or assigns in strict accordance with paragraph c. of this Section 6. The Waiver of Restrictions shall not be effective for any other means of taking title to the Mortgaged Property.

8) Any deed of trust or other mortgage instrument entered by the Museum or its Transferee with a Lender for the purpose of a Loan secured by all or any part of the Museum's Property or the Building Parcel or both shall be subject to the terms and conditions of this paragraph c. of Section 6 of this Agreement. Any deed of trust or other mortgage instrument entered into by the Museum or its Transferee for the purpose of any loan not recognized as a Loan under this paragraph c. of Section 6 of this Agreement if secured by all or any part of the Museum's Property or the Building Parcel or both shall be void.

d. Effect. Section 6 shall pre-empt, supersede, and replace the Addendum to the Original Contract. The recording of this Agreement and the Building Parcel Deed shall provide Lenders notice, actual or constructive, of the restrictions and the reserved and granted rights contained in this Section 6. Except as expressly provided herein, Section 6 shall be a restrictive covenant that runs with the land and shall bind and inure to the benefit of the Parties and their successors and assigns.

e. Enforcement. In the event of a violation of this Section 6 that is not corrected or not resolved to the reasonable satisfaction of the City within a reasonable period of time specified in a written notice to the Museum, the City shall have the right to seek through judicial action specific performance, actual damages, or such other relief as is available by law. The right to consequential or punitive damages is hereby waived.

Lease Agreement

7. Leased Property. Subject to the terms, conditions, and covenants contained in this Lease Agreement, the City agrees to lease to the Museum, and the Museum hereby agrees to

lease from the City, “as is, where is” the real property more particularly described in **Exhibit C**, attached hereto and incorporated herein by reference, together with, in their present condition, all improvements, appurtenances and permanent fixtures (but excluding any water taps), but subject to any easements, restrictions, and encumbrances of public record and all zoning laws or other ordinances affecting said property (the “**Leased Property**”). “Due Diligence” for the Leased Property is provided for in paragraphs a. and b. of Section 3 of the Purchase & Sale Agreement, except that the Due Diligence Period shall extend to the date the City receives written notice from the Museum as provided in Section 8.

8. Lease Date & Term. The Museum shall have the exclusive use of the Leased Property, and shall be fully subject to the terms of this Lease Agreement, effective thirty (30) days following the date the City receives written notice from the Museum of either: a) its intent to take possession of and responsibility for the Leased Property, or b) its intent to initiate the construction or installation of improvements authorized as provided in this Lease Agreement, whichever is earlier (the “**Lease Date**”). The Lease Date, which shall be no sooner than thirty (30) days following the date the City receives written notice from the Museum, must be stated in the written notice received by the City. The term of the Lease shall run for twenty (20) years from the Lease Date and may be renewed for two additional ten (10) year periods as provided in Section 17 of this Lease Agreement, unless this Lease Agreement is terminated as provided in this Lease Agreement (the “**Lease Term**”).

9. Consideration. Effective with the Lease Date and during the Lease Term, the Museum shall provide the following consideration:

a. Programs & Events. The Museum will extend regular and timely invitations to the Manager for the Denver Department of Parks and Recreation (“**DPR**”) to participate in outdoor educational experience programs and events held by the Museum on the Leased Property. If the Manager expresses an interest in DPR participating or having a role in any program or event to be held by the Museum on the Leased Property, whether or not an invitation was extended by the Museum, the Museum shall make a reasonable and good faith effort to include DPR, or to provide an opportunity for DPR to participate, in the program or event and to provide appropriate recognition, through signage, advertising, promotion, and other documentation relating to the program or event, of the role played by DPR in the program or event. The decision to participate or to have a role in any program or event on the Leased

Property, including any funding or in-kind support, shall be solely within the discretion of the Manager. This paragraph a. shall not be applicable to any programs, events, or activities held by third parties who have engaged or rented use of the Museum's facilities at the Children's Museum or the Leased Property for single-event, short-term programs, events, or activities.

b. Free Public Events. The Museum agrees, in cooperation with DPR, to schedule and hold no fewer than five (5) events per year during the Lease Term for which the public will have free admission to the Leased Property and free use of the outdoor educational experience facilities installed by the Museum on the Leased Property ("**Free Public Events**"). These Free Public Events shall be scheduled on Fridays at least once a month during the months of April, May, June, July, and August between 5:00 p.m. and 9:00 p.m., as agreed by the Museum and the Manager, although the Museum and the Manager may agree to modify this schedule or to provide additional Free Public Events. These Free Public Events may be held in conjunction with activities or programs in the adjoining areas of Gates-Crescent Park conducted by DPR or some other entity under permit or contract with the City. The Free Public Events will be jointly reviewed annually by the Museum and the Manager to ensure that the Free Public Events are effective and manageable. If the joint reviews should result in a mutual agreement that the terms for the Free Public Events, as stated in this paragraph, should be modified, the Museum and the Manager may state these modifications in a signed letter amending the terms of this paragraph.

c. Recognition. Any authorized signs identifying or promoting the outdoor educational experience facility on the Leased Property shall include written recognition of the collaborative involvement of DPR.

10. Use Restrictions & Property/Construction and Maintenance Requirements. Effective with the Lease Date, the Leased Property shall be subject to the following use restrictions and requirements for the proper management and maintenance of the Leased Property and for construction on and maintenance of the Leased Property:

a. Admissions. The Museum may charge a general admission charge for the Leased Property that is included as part of the general admission for the Children's Museum or a special admission charge for programs or events for just the Leased Property or both the Leased Property and the Children's Museum; provided that, 1) the charges are reasonable in comparison with charges assessed by similar children's museums that are members of the Association of

Children's Museums; and 2) the Museum continues its Sponsored Membership Program, as such program may be modified from time to time by the Museum's board of directors. The Museum shall submit an annual report to the Manager demonstrating compliance with these requirements (see Section 24 below).

b. Use. The Leased Property may be used only for improvements, installations, equipment, programs, events, and activities consistent with the stated mission and purpose of the Museum and this Agreement. This includes the use of the Leased Property, either by rent or other arrangement, by third parties, on a single-event or short-term basis (subject to Section 18 below), for educational, entertainment and other programs, events, and activities not inconsistent with park purposes. Any proposed or potential uses by the Museum not for these purposes shall require the prior written consent of the Manager.

c. Sales.

1) In General. The Museum may sell on the Leased Property food and beverages and items commonly sold at the Children's Museum or related to the outdoor educational experience program to be conducted on the Leased Property, subject to the following conditions: a) All sales shall be conducted on the Leased Property, and not out in the Park, unless prior written permission is obtained from the Manager; b) All net sales proceeds shall be committed to the fundraising, programs or activities of the Children's Museum or for authorized repairs to the Leased Property; c) All licenses or permits required for the operation of the business and for food service shall be obtained and maintained during all times that such sales occur; and d) The sales, service, distribution, promotion or use of alcohol, tobacco, fireworks, firearms and adult materials on the Leased Property are strictly prohibited, except as provided in paragraph c.2 of this Section 10.

2) Alcohol. Subject to the Museum or its agent obtaining any required State or Denver Excise & License permits for the service of alcohol beverages and the Museum or its agent obtaining and maintaining, as appropriate, liquor liability insurance, the Museum may serve alcohol beverages at private events held or sponsored by the Museum on the Leased Property and is permitted to charge for private events which may include alcohol as part of the overall event charge. The Museum shall indemnify and hold harmless the City for any damages, injuries, penalties, fines or other costs resulting from or associated with such service of alcohol beverages on the Leased Property.

3) Concessionaires. The Museum shall have the right to conduct on its own, or provide by agreement(s) between the Museum and a qualified concessionaire(s) for, the operation of long-term or seasonal concessions for selling food, drink, merchandise, and such other services, products, and uses which the Museum, in its reasonable discretion, determines to be consistent with this Lease Agreement. General liability and other insurance appropriate for the concession shall be required as a condition to operate a concession, and evidence of that insurance must be provided to the Manager prior to the commencement of concession sales. All such agreements shall be subject to the prior written approval by the Manager and shall contain a provision that the agreements may be suspended or terminated, as appropriate, if it is determined by the Manager that the concessionaire has a) failed to comply with applicable health and safety laws (local, state, and federal), b) failed to pay applicable taxes, fees, fines, or charges (local, state, and federal), or c) failed to substantially conform with other Applicable Law. The Manager shall give written notice to the Museum stating with specificity the reasons for the proposed termination and providing for a ninety (90) calendar day period in which the violation may be rectified. The Museum shall inform the concessionaire of the Manager's notice in a timely manner so as to assure that any corrective action on the part of the concessionaire can be completed within the specified 90-day period. Failure to make such correction within the 90-day period may result in the termination of the concession agreement.

d. Control & Safety. Except for Free Public Events, public access to the Leased Property will be only through the Children's Museum or through gates controlled by the Museum or its contractors or agents. All programming, events, and activities conducted on the Leased Property must be under the auspices or control of the Museum, although the Museum may enter into sponsorships and contracts allowing for participation by other entities in programming, events, and activities on the Leased Property. The Museum shall be solely responsible for taking appropriate measures to assure and protect the health and safety of children and other patrons on site at the Leased Property and to assure that all sponsors and participants (other than DPR) in programming, events, and activities do not present any danger or cause any harm to the children and other patrons on site at the Leased Property, including background checks as specified herein. With respect to its operations and programs on the Leased Property, the Museum shall not hire, retain, or knowingly engage or permit the services of any supervisor, employee, volunteer, agent, or contractor with a felony criminal conviction or

convictions or who has been charged with a felony crime involving physical violence, sexual acts, or illegal drugs, including any criminal attempts, solicitations, trafficking, or conspiracies relating to the same, and any crime or crimes, whether a felony or a misdemeanor, that involve children. A “conviction” shall mean a plea of guilty, a plea of *nolo contendere*, a finding of guilt, a default judgment, or a deferred judgment and sentence. The Museum shall use every reasonable means available to confirm (through a national criminal background check for its supervisors and a state criminal background check for all other employees, volunteers, agents, and contractors) that its supervisors, employees, volunteers, agents, or contractors have not been convicted or charged as set forth above and shall immediately and fully inform the City if the Museum becomes aware of any such conviction or charge. The Museum shall provide proof of said background checks to the City upon request. If such a criminal conviction exists and the Museum believes there are extenuating circumstances that should be considered, the Museum may request, in writing, that the Manager waive the restrictions of this paragraph in light of policies set forth in C.R.S. Section 24-5-101, as amended, pertaining to the effect of criminal convictions on employment rights. Any waiver shall be in the absolute discretion of the Manager. Failure to materially comply with this paragraph or, at the City’s option, failure to promptly discharge an employee, volunteer, agent, or contractor who has been so convicted or charged shall be cause for the City to immediately suspend the use of the Leased Property by the Museum under this Lease Agreement until the Museum materially complies with this paragraph or an alternative solution acceptable to the Manager is reached. The Museum shall indemnify, hold harmless, and defend the City against any claims, actions, suits, damages, injuries, costs, penalties, judgments, awards, settlements, or other liability or expenses arising from or related to the Museum’s failure to comply with this paragraph.

e. Fencing & Landscaping. The Museum shall be solely responsible for the costs and all actions necessary for constructing, installing, operating, inspecting, protecting, maintaining, repairing, and replacing the fencing and other access barriers and the landscaping for the Leased Property. The Museum shall provide for a process, acceptable to the Manager, for effectively obtaining public comments on the proposed design(s) for the fencing and other access barriers and the landscaping on the Leased Property. The ultimately proposed design(s) for the fencing and other access barriers and the landscaping, and any proposal for material alterations to any fencing or other access barriers and the landscaping subsequently to be installed on the

Leased Property shall be submitted to the Manager for approval prior to the commencement of any work on site. While providing for security and access control on the Leased Property, the fencing or other access barrier and the landscaping must be compatible with the surrounding Park and shall not interfere with the public's use of the surrounding Park or create unnecessary difficulties in operating and maintaining the Park. All fencing and other access barriers must be situated at least thirty-six inches (36") from any sidewalk in the Park, and the Museum shall provide, at its own expense, for shoulders or a soft trail immediately adjoining the sidewalk, as approved by the Manager, where the fencing or other access barriers is located near to the sidewalk. Any substantive changes to the natural areas on the Leased Property shall be subject to the review and comments of the City Naturalist, and, to the extent that the natural areas were installed through funding by Great Outdoors Colorado ("GOCO") and if so required by GOCO, changes to the natural area will require the approval of GOCO.

f. Irrigation System. The Museum shall be solely responsible for the costs and all actions necessary for constructing, installing, retrofitting, operating, inspecting, maintaining, repairing, and replacing the irrigation system for the Leased Property and for paying for all water used on or water taps required for the Leased Property. The Museum shall come up with a design for the existing irrigation system on the Leased Property that effectively and efficiently separates that system from the DPR's current irrigation system in the Park, without damaging or creating operational problems for the DPR's system, and provides for a separate water meter for the Leased Property. The proposed design for the irrigation system and any subsequent proposal for material alterations to the irrigation system on the Leased Property shall be submitted to the Manager for approval prior to the commencement of any work on site. Any irrigation system installed, retrofitted or modified by the Museum on the Leased Property must be compatible with DPR's irrigation system in the Park, and, in the event the City elects to replace or extensively modify the irrigation system in the Park, the Museum agrees to cooperate with DPR to the extent necessary to assure that both systems are compatible. Any City, including DPR, water or irrigation lines or systems remaining on the Leased Property must be protected to assure uninterrupted availability of water to the City or DPR, and any damage done to said water or irrigation lines or systems caused, directly or indirectly, by the Museum, its employees, contractors, or agents must be promptly repaired or replaced by the Museum in accordance with City or DPR standards. The City or DPR shall have the right of access to its water or irrigation

lines or systems during times which do not adversely affect the Museum's operation and activities on the Leased Property or at any time an emergency arises. The City shall not be responsible for paying for irrigation water for the Leased Property after the Lease Date and during the Lease Term. The Museum must supply, within the restrictions set by the Denver Water Department, adequate irrigation water to assure that natural vegetation and existing and installed trees are properly sustained on site.

g. Grading, Trees & Drainage. The Museum shall be solely responsible for the costs and all actions necessary for constructing, installing, operating, inspecting, maintaining, protecting, repairing, and replacing the existing or future grading, trees and drainage systems within the Leased Property and, if the Museum's development plans for the Leased Property impact the grading, trees or drainage systems in the Park ("**Adjoining Impacts**"), the Museum shall be solely responsible for the costs and all actions necessary for properly and completely resolving all such Adjoining Impacts, as required by DPR, to assure that a safe and usable Park, as determined by DPR, is available for the public and the users of the South Platte Trail. The ultimately proposed plan(s) for the modifying the existing grading, trees, and drainage system, and any plan(s) for future modifications to the grading, trees and drainage system, on the Leased Property shall be submitted to the Manager for approval prior to the commencement of any work on site. Any modifications to the grading, trees, and drainage system must be compatible with the surrounding Park and shall not substantially interfere with the public's use of the surrounding Park or create unnecessary difficulties in operating and maintaining the Park. The Museum shall 1) coordinate with the City Forester prior to the removal of any trees from the Leased Property and comply with any City ordinances and rules and regulations pertaining to the removal or relocation of such trees; and 2) coordinate with the City's Department of Public Works-Wastewater with respect to changes or relocation of any existing storm water drainage systems located on the Leased Property and shall include appropriate storm water detention and water quality measures as determined by Wastewater to be necessary or appropriate for any increased impervious areas and water quality or erosion control issues created by or associated with improvements to the Leased Property. The Museum shall be responsible for removing any excess soil, material and debris from the site resulting from grading or any excavation activity conducted by the Museum or the Museum's contractors or agents and lawfully disposing of such soil, material and debris.

h. Improvements. The Museum shall be solely responsible for the costs and all actions necessary for constructing, installing, operating, inspecting, maintaining, repairing, and replacing all improvements associated with an outdoor educational experience operation and use on the Leased Property (“**OEE Improvements**”). The Museum shall provide for a process, reasonably acceptable to the Manager, for effectively obtaining public comments on the proposed design(s) for OEE Improvements on the Leased Property. The ultimately proposed design(s) for the OEE Improvements and any proposal for material alteration to any OEE Improvements subsequently existing on the Leased Property shall be submitted to the Manager for approval prior to the commencement of any work on site. The OEE Improvements shall be consistent with and in character with the nature of facilities and programs provided by the Children’s Museum and an outdoor educational experience for children. Temporary facilities, such as event tents and stages, portable restroom facilities, and movable kiosks, shall not be considered OEE Improvements. All temporary facilities and OEE Improvements shall be owned, leased, borrowed or controlled by the Museum during the Lease Term.

i. Signage, Advertising & Sponsorships. All permanent signs (which includes all signs installed for five (5) days or more, including directional, informational, promotional (only for the Museum or special programs or events on the Leased Property) and corporate sponsorship signs) to be placed on the Leased Property must either be individually approved by the Manager or compliant with a design plan prepared by or for the Museum and approved by the Manager. No permanent or semi-permanent commercial advertising signs are permitted on the Leased Property. All signs, banners or posters must comply with all City and state sign code requirements. No signs, banners or posters may be placed where they adversely impact the physical health or require the removal of trees or bushes.

j. Claims & Liens. The Museum shall not permit claims or liens of any kind against the Leased Property, including those resulting from any labor, equipment, or materials used in the construction or installation of fencing or other access barriers, landscaping, irrigation systems, sidewalks or improvements on the Leased Property as performed by the Museum’s contractors or consultants or their subcontractors or sub-consultants or by third parties who have engaged or rented the Leased Property or their contractors or consultants or their subcontractors or sub-consultants. Any utility locations required for work performed on the Leased Property shall be the sole responsibility and cost of the Museum. The Museum shall require sufficient

general liability and automobile insurance coverage to be obtained and maintained as appropriate for the work performed or activities conducted on the Leased Property. The Museum agrees to indemnify and hold harmless the City from and against any damage, loss or costs associated with any work performed or activities conducted on the Leased Property caused or directed by the Museum, its officers, employees, or agents or by third parties who have engaged or rented the Leased Property or these parties' officers, employees, or agents.

k. Applicable Laws. With respect to any construction or installation work on the Leased Property, the Museum shall be responsible for obtaining and maintaining, or causing to be obtained and maintained, all required permits, licenses or other governmental authorizations and approvals necessary to perform the work and shall, at all times during the work, ensure or cause to be ensured compliance with all laws, statutes, rules, regulations, and orders as well as the terms and conditions of this Lease Agreement. To the extent applicable, the Museum shall conform with the requirements of the federal Americans with Disabilities Act and any other federal or state laws requiring access for the disabled to public accommodations.

l. Environmental Compliance. The Museum shall obtain all federal, state, and local environmental permits necessary under this Lease Agreement and shall comply with all applicable federal, state, and local environmental permit requirements. The City, as the owner of the Leased Property, agrees to cooperate and assist the Museum with its obligations hereunder, provided that the City shall not be required to incur any costs regarding the same. The Museum shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders applicable under this Agreement (collectively, “**Environmental Requirements**”), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term “**Hazardous Materials**” shall mean asbestos, asbestos-contaminated soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, along with any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and as regulated or controlled by any concomitant state statutes, and any guidelines issued

and rules or regulations promulgated pursuant to such federal or state statutes or any other applicable federal or state statute. The Museum agrees to indemnify and hold harmless the City from and against any damage, loss or costs associated with any violation or failure to comply with this paragraph.

m. Insurance, Bonds, and Indemnification. With respect to any construction or installation work on the Leased Property, the Museum shall obtain and maintain, or require the contractor(s) and subcontractor(s) to obtain and maintain, a) insurance in the amounts and types of coverages appropriate for the work, substantially as specified in **Exhibit F** attached to and incorporated into this Agreement unless otherwise agreed in writing by Denver's Risk Management Office, and b) one hundred percent (100%) payment and performance bonds from an acceptable surety. The City shall be named as additional insured on all insurance coverages, and the Museum shall be named as the obligee on all bonds. In addition, all contractor(s) and subcontractor(s) shall be required to include an indemnification and "hold harmless" clause, approved by and for the benefit of the City, to protect the City against claims, actions, and demands arising from or related to the work performed by the contractor(s) and subcontractor(s). Evidence that such insurance and bonds have been obtained, satisfy the requirements of this paragraph, and have been continuously maintained shall be provided by the Museum to DPR. Copies of any construction contracts shall be provided by the Museum upon request by DPR.

n. No Employment of Illegal Aliens.

1) This Lease Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

2) The Museum certifies that:

(a) At the time of its execution of this Lease Agreement, it does not knowingly employ or contract with an illegal alien who will perform construction or maintenance work under this Lease Agreement.

(b) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform construction or maintenance work under this Lease Agreement.

3) The Museum also agrees and represents that:

(a) It shall not knowingly employ or contract with an illegal alien to perform construction or maintenance work under the Lease Agreement.

(b) It shall not enter into a contract with a consultant or contractor that fails to certify to the Museum that it shall not knowingly employ or contract with an illegal alien to perform construction or maintenance work under the Lease Agreement.

(c) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform construction or maintenance work under this Lease Agreement, through participation in the E-Verify Program.

(d) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Lease Agreement, and that otherwise requires the Museum to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(e) If it obtains actual knowledge that a consultant or contractor performing construction or maintenance work under the Lease Agreement knowingly employs or contracts with an illegal alien, the Museum will notify such consultant or contractor and the City within three (3) days. The Museum will also then terminate such consultant or contractor if within three (3) days after such notice the consultant or contractor does not stop employing or contracting with the illegal alien, unless during such three-day period the consultant or contractor provides information to establish that the consultant or contractor has not knowingly employed or contracted with an illegal alien.

(f) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

4) The Museum is liable for any violations as provided in the Certification Ordinance. If Museum violates any provision of this illegal aliens' provision or the Certification Ordinance, the City may terminate this Lease Agreement for a breach of the Lease Agreement. If the Lease Agreement is so terminated, the Museum shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this

illegal aliens' provision or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying the Museum from future contracts with the City.

o. Prevailing Wages. The Parties acknowledge and agree that all construction and maintenance work performed by contractor(s) or subcontractor(s) on the Leased Property must comply with the prevailing wage requirements of Section 20-76 of the Denver Revised Municipal Code. The Museum shall include a prevailing wage provision, as prescribed by the City, in each and every contract with a contractor or subcontractor. As a result, the Museum and its contractor(s) or subcontractor(s) agree to cooperate fully with the Denver Auditor's Office in implementing, administering, and enforcing all applicable requirements of Section 20-76, D.R.M.C.

p. Utilities. The provision of utilities on the Leased Property shall be the sole responsibility and cost of the Museum. Lighting shall be located and designed to minimize impacts on the surrounding Park and I-25. No permanent restroom facilities shall be constructed on the Leased Property without the prior written consent of the Manager. Any temporary, portable restroom facilities shall be located and maintained so that they will not have an adverse impact on the surrounding Park and shall be promptly removed when not needed.

q. General. The Leased Property is to be used and occupied by the Museum solely for the purpose of operating a nonprofit organization. The Museum shall use the Leased Property in a careful, safe, and proper manner and shall not use or permit the Leased Property to be used for any purpose prohibited by the laws of the United States of America, the State of Colorado, the Charter or ordinances of the City and County of Denver, or the written policies and rules and regulations of the Denver Department of Parks and Recreation. The Museum shall not commit or suffer to be committed any waste or damage upon the Leased Property or the adjoining Park or any nuisance to be created or maintained thereon. After the Lease Date, the Museum shall provide, at its own expense and in addition to those otherwise specified in this Section 10, for all maintenance and repair services for the Leased Property and shall keep the Leased Property free and clear from all trash, debris, waste, graffiti, or hazards resulting from its use or the use by its employees, officers, agents, invitees, or visitors.

11. Status and Authority of the Museum.

a. **Independent Entity.** The Museum and the City acknowledge and agree that the status of the Museum shall be that of a private, nonprofit corporation cooperatively working with the City as an independent entity solely for the purposes set forth in this Lease Agreement.

b. **Limited Authority.** The scope of authority the Museum may exercise shall be as expressly allowed under, or necessarily implied in, this Lease Agreement. The Museum shall have no authority to avoid, modify, or waive any applicable City ordinances or regulatory requirements enacted or adopted under the City's police or taxing powers.

c. **Contracts.** This Lease Agreement shall not be construed to grant the Museum the right or power to bind, or to impose liability upon, the City through any contracts or agreements the Museum may make, unless expressly provided herein or unless the prior, written approval of the Manager is obtained and the contract or agreement is in accordance with all applicable City ordinances and regulatory requirements. All contracts or agreements made by the Museum shall be in its own name and not in the name of the City.

d. **Nonprofit Status.** The Museum shall at all times during the term of this Lease Agreement take such actions as may be necessary to maintain and preserve, and shall refrain from taking such actions as may be detrimental to, its status as a nonprofit corporation that qualifies as a tax exempt entity under section 501(c)(3) of the Internal Revenue Code (or any successor provision).

12. **Governance.** The Museum agrees that, at all times during the term of this Lease Agreement, its articles of incorporation or its corporate bylaws, as appropriate, will reflect, or at least not contradict, that: a) the Museum is a charitable organization created solely for the purpose of operating a children's museum; b) the board of directors for the Museum shall consist of no fewer than five (5) voting members; and c) all members of the board of directors for the Museum shall be required to conduct themselves, in pursuit of the Museum's corporate affairs, in accordance with applicable law and this Lease Agreement, including the fiduciary standards of loyalty and care to the Museum. Copies of the articles of incorporation and bylaws meeting these requirements shall be provided to the Manager within ninety (90) days of the date of this Lease Agreement.

13. **Insurance:** The Museum agrees to secure and deliver to the Manager and the City's Risk Manager at or before the Lease Date, and to keep in force at all times during the term of this Lease Agreement, as the same may be renewed or extended, insurance policy or policies

which shall include workers' compensation, commercial general liability, hired and non-owned auto liability, volunteer accident, property coverage, and directors and officers liability to the extent and in the amounts specified in **Exhibit G** to this Agreement. Failure to maintain insurance coverage as specified in this Section 13 shall be a basis for suspension of the Museum's use of the Leased Property until adequate proof of such insurance coverage has been provided or termination with cause if the failure to maintain the required coverage persists for more than thirty (30) calendar days.

14. Immunity; Indemnity; Liability.

a. Immunity. Under no circumstance shall any provision of this Lease Agreement be construed as constituting a waiver of the notice requirements, defenses, immunity or limitations of liability on the part of the City or for any of its facilities under Colorado Governmental Immunity Act (C.R.S. § § 24-10-101 *et seq.*).

b. Indemnity. Except as expressly provided for in other sections of this Lease Agreement, the Museum shall defend, indemnify, and save harmless the City, its officers, agents, employees and contractors from any and all fines, losses, damages, claims, demands, suits, actions or proceedings of any kind or nature whatsoever ("**Claims**"), during the Lease Term, including without limitation workers' compensation claims, of or by anyone whomsoever, on account of personal injury or death of any person or damage to property, including those persons employed by or associated with the City or property belonging to the City, its officers, agents, employees or contractors, where the injuries or damage are caused by the negligence or misconduct of the Museum or its employees, officers, agents, volunteers, invitees and visitors on or about the Leased Property or where such injuries or damage are the result, directly or indirectly, of the violation of the provisions of this Lease Agreement. This indemnity shall survive the expiration or earlier termination of this Lease Agreement. The Museum is not required, however, to defend, indemnify or save harmless the City, its officers, agents, employees and contractors from damages resulting from the sole negligence or misconduct of the City's officers, agents, employees and contractors. In the event of a Claim, the Museum covenants and agrees that it will not file or assert any legal action or claim against the City, its officers, agents and employees by way of cross claim, counterclaim, third party claim or independent action until such time as the trier of fact in a court of competent jurisdiction has found that the damages have resulted from the sole negligence or misconduct of the City's

officers, agents, employees or contractors. If the City reasonably believes that the Museum has asserted a defense against any Claim that puts the City at risk of incurring any substantive liability under the Claim or a collateral action or puts the City's rights, title, or interest in the Leased Property at any risk, the Museum's insurer shall promptly provide, at the insurer's expense, separate legal counsel reasonably acceptable to the City or, if this does not occur, the City shall have the right to elect to provide its own defense, and the Museum shall be liable for the City's defense costs. Insurance coverage specified herein constitutes the minimum requirements, and said requirements shall in no way lessen or limit the liability of the Museum under this Lease Agreement. The Museum shall procure and maintain, at its own expense and cost, any additional kinds and amounts of insurance that it may deem necessary.

c. Liability. Notwithstanding any provision or implication of this Lease Agreement to the contrary, at no time shall the City have any responsibility or liability of any sort for damages, claims, or costs arising from accidents, injuries, defects, system failures, or improper or negligent care associated with or caused by the design, operation, construction, maintenance, or repair of the Museum improvements or facilities on the Leased Property or any uses or activities the Museum, its employees, agents, permittees, invitees, or contractors may undertake on the Leased Property.

15. Claims. In the event that any claim, demand, suit, or other action is made or brought in writing by any person, firm, corporation, or other entity against the Museum related in any way to this Lease Agreement or the actions or activities of the Museum relating to the Leased Property, the Museum shall give written notice thereof to the City, within fifteen (15) calendar days after being notified, of such claim, demand, suit, or other action. Such notice shall state the date and hour of notification and shall include a copy of any such claim, demand, suit, or other action received by the Museum. Such written notice shall be submitted to the Manager and the City Attorney.

16. Financial Interests. The Museum agrees and covenants that any financial interests created in, or used to secure payment for the costs of, any improvements to or facilities located on the Museum's Property, the Building Parcel or the Leased Property, including but not limited to any loans, bonds, purchase agreements, and Uniform Commercial Code filings, shall expressly exclude all property title, rights and interests held by the City in the Leased Property from such debt or financial security contained in such financial instruments. The terms and conditions of

this Lease Agreement must be expressly recognized in any such financial instrument(s), which must specifically acknowledge and affirm that any financial interests created by the financial instrument(s) are subordinate to this Lease Agreement.

17. Renewal, Amendment & Termination.

a. First Renewal. Provided that this Lease Agreement has not been terminated as provided in this Section 17 and provided that the Museum is not in material breach or default under this Lease Agreement, the Lease Agreement will be renewed upon the Museum submitting to the Manager a notice of intent to renew no sooner than eighteen (18) months prior, and no later than six (6) months prior, to the date this Lease Agreement is due to expire. If the Manager determines that the Museum is in material breach or default under this Lease Agreement, the Manager shall so notify the Museum in writing and the Museum shall have ninety (90) days in which to demonstrate, in writing and to the reasonable satisfaction of the Manager, that the Museum has come into substantial compliance or in which to come up with a resolution, set forth in writing, which the Manager finds to be satisfactory. Upon determination that the Lease Agreement has not been terminated and that the Museum is not, or is no longer, in material breach or default under this Lease Agreement, the Manager shall issue a notice of renewal for such period of time as provided in Section 8 of this Lease Agreement which shall be sent to the Museum and a copy of said notice of renewal shall be placed in the clerk file for this Agreement within the City Clerk's files.

b. Second Renewal. Upon the same terms and conditions as set forth in paragraph a. of this Section 17, the Museum will renew the Lease Agreement for a second time upon the Museum submitting to the Manager a notice of intent to renew no sooner than eighteen (18) months prior, and no later than six (6) months prior, the date that the First Renewal of the Lease Agreement is due to expire.

c. Amendment. Any amendment of this Lease Agreement, not otherwise expressly authorized in this Lease Agreement, shall require that the Lease Agreement be approved, in writing, with the same formality as this Lease Agreement and the Cooperative Agreement in which it is contained.

d. Termination. The City has the right to terminate this Lease Agreement for material breach or default under the terms, conditions, and covenants of this Lease Agreement, provided that the Museum has not cured the breach or default within ninety (90) days of the date

of written notice from the City (except as otherwise expressly provided in this Lease Agreement). Notice of breach or default shall be in writing signed by the Manager and delivered to the Museum. Additional time for curing a breach or violation may be granted by the Manager, at the Manager's reasonable discretion, upon written request from the Museum.

e. Abandonment. The Agreement shall be terminated, in whole or part as appropriate, with respect to the Leased Property, or any portion thereof, if the Museum discontinues, intentionally or unintentionally, the use of, or otherwise abandons, the Leased Property, or any portion thereof, for a period of twelve (12) consecutive months. No use of the Leased Property, or any portion thereof, shall be deemed discontinued or abandoned if the Museum obtains, prior to the end of twelve (12) consecutive months of discontinued use, written acknowledgment of the Manager that the use will be restarted within a specified time period or upon the occurrence of a specified event.

f. Failure to Comply with Use Restrictions and Granted and Reserved Rights for the Plaza Parcel, the Museum's Property or the Building Parcel. In the event of a material breach or default of the use restrictions and granted and reserved rights contained in Sections 5 and 6 of the Purchase & Sale Agreement with respect to the Plaza Parcel, the Museum's Property, or the Building Parcel, which breach or default is not timely and satisfactorily remedied or resolved, the Manager shall have the right, at the Manager's sole discretion, to terminate this Lease Agreement upon sixty (60) calendar days' written notice to the Museum or to refuse to renew the Lease Agreement as provided in this Section 17.

18. Assignment/Sublease. The Museum shall have the right to assign the lease rights to the Leased Property to a related or a separate public, quasi-public, or private nonprofit entity (the "**Assignee**") in conjunction with the transfer of the Museum's Property, provided that the Assignee unqualifiedly agrees to take the assignment subject to this Lease Agreement and to comply with the terms and conditions of this Lease Agreement, and written notice of said assignment is provided to the City. Any other assignment of any interest held by the Museum in the Leased Property shall require prior written consent by the City, to which the City, in its sole discretion, may grant (with or without conditions) or deny consent for said assignment. No sublease, rental or third-party contract for the use of the Leased Property for a period exceeding thirty (30) days shall be allowed without the prior written approval by the City, which the City in its sole discretion, may grant (with or without conditions) or deny. No sublease, rental or third-

party contract shall be allowed unless it is in accordance with the use restrictions set forth in Section 10 above.

19. Entry by City. The Museum shall permit representatives of the City to enter upon the Leased Property at all reasonable hours to inspect the same, provided the entry does not interfere with any event or activity being held on the Leased Property

20. Surrender of Property; Improvements. At the expiration or termination of the Lease Agreement and except as otherwise provided in this Section 20, the Museum shall deliver the Leased Property to the City in the same condition as the Leased Property was on the Lease Date. The City and the Museum agree that any grading, landscaping, resurfacing, sidewalks, and irrigation systems constructed on, in or under the Leased Property and approved by the City pursuant to the terms of this Lease Agreement shall remain on the Leased Property upon the expiration or termination of this Lease Agreement, provided that these items are turned over to the City in reasonably good and usable condition. Any improvements which are leased or still subject to financing shall be removed, at the Museum's sole expense, from the Leased Property prior to the expiration or termination of the Lease Agreement or at such time as agreed to by the Manager. With respect to all remaining improvements, the Museum shall timely arrange a walk-through inspection by DPR of the improvements made by the Museum on the Leased Property and the condition of the Leased Property. Within fifteen (15) calendar days following this walk-through inspection, DPR shall notify the Museum, in writing, of any improvements, which are not leased or still subject to financing, which DPR desires for the Museum leave on the Leased Property and as to any unacceptable conditions of the Leased Property that the Museum must promptly rectify. All improvements not identified in this Section 20 to remain on the Leased Property or not selected by DPR to remain on the Leased Property shall be promptly removed by the Museum from the Leased Property.

21. No Sale or Advertising of Tobacco Products; No Smoking.

a. The Museum shall cooperate and comply with the provisions of Executive Order No. 13, which prohibits the sale or advertisement of tobacco products on City owned property and in facilities owned or operated or controlled by the City. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever, but does not include

any advertising and sponsoring which is a part of a performance or show or any event displayed or held in City facilities.

b. The Museum agrees to adopt and enforce a “no smoking” policy in all areas of the Leased Property. The Museum’s written smoking policy shall be in conformance with Executive Order No. 99 and any rules, regulations, or policies adopted by the Manager and generally applicable to specified facilities under the auspices of Parks and Recreation.

22. Use, Possession or Sale of Alcohol or Drugs. Except as provided in paragraph c.2 of Section 10, the Museum shall not permit, and shall take every reasonable measure to prevent, the sale, service or consumption of alcohol beverages, as defined and regulated under the Colorado Liquor Code, and the possession or use of illegal or controlled substances or drugs on the Leased Property. In addition, the Museum shall have in effect policies and rules that strictly prohibit any employee, contractor, agent, permittee or invitee of the Museum from being on the Leased Property under the apparent influence of alcohol or controlled or illegal substances or drugs.

23. No Discrimination in Employment. In connection with the performance of this Lease Agreement, the Museum agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Museum further agrees to insert the foregoing provision in all approved contracts and subcontracts hereunder.

24. Taxes; Licenses; Liens, and Debts.

a. Taxes. The Museum shall collect and remit all sales taxes and other taxes as required by law (local, state, or federal), shall promptly pay all taxes and excise and license fees of whatever nature applicable to this Lease Agreement, and shall not permit any of said taxes and excise and license fees to become delinquent.

b. Licenses. The Museum shall take out, keep current, and comply with all licenses, permits, or other authorizations (local, state, or federal) required for the performance of this Lease Agreement.

c. Liens. The Museum shall not permit any mechanic’s or materialman’s lien or any other lien to be imposed and remain for more than ninety (90) days upon the property of the City, or any part or parcel thereof, by reason of any work or labor performed or materials

furnished by any person, partnership, association, company, corporation, or other entity to or for the Museum, either pursuant to C.R.S. § 38-26-107, as amended, or by other authority.

d. Debts. The Museum shall promptly pay, when due, all bills, debts, and obligations incurred in connection with its management or administration of the Leased Property and shall not permit the same to become delinquent. The Museum shall suffer no lien, mortgage, judgment, execution, or adjudication of bankruptcy that would, in any way, impair the rights of the City under this Lease Agreement or its rights to the Leased Property.

e. Final Adjudication. The Museum may, diligently and in good faith, resist or contest the application or imposition of any such tax, fee, lien, debt, or obligation, in which case the same shall not be considered due, owing or imposed for the purposes of this Lease Agreement until final adjudication of validity. The Museum may likewise, diligently and in good faith, appeal any judgment, execution, or adjudication of bankruptcy, in which case the same shall not be regarded as impairing the City's rights until final adjudication.

25. Annual Reports: Each year during the term of this Lease Agreement, the Museum shall prepare and submit to the Manager an annual report in a format reasonably satisfactory to the Manager (the "Report"). Such Report shall be submitted on or before ninety (90) days after the end of the Museum's fiscal year. At a minimum, the Report must demonstrate the Museum's accomplishments and operations over the past year and how these are consistent with its stated goals and services and its continued public purpose. The Report should also include its plans for the upcoming year and how the public will be benefited by such proposed plans. The Report shall also demonstrate how the Museum has complied with paragraph a. of Section 10 of this Agreement and shall include an overview of the Museum's annual budget for the coming fiscal year and the Museum's revenues and expenditures for the past fiscal year.

General Provisions

(Applicable to Entire Agreement)

25. General Provisions.

a. Appropriation. Notwithstanding any provision of this Agreement to the contrary, any financial obligation of the City, if any, under this Agreement is contingent upon all funds necessary for performance under this Agreement being budgeted, appropriated and otherwise made available. The Parties acknowledge that this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

b. Non-waiver. No Party shall be excused from complying with any provision of this Agreement by the failure of the other Party to insist upon or to seek compliance. No assent, expressed or implied, to any failure by a Party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said Party.

c. Examination of Records. The Parties agree that any duly authorized representative of the City, including the Denver Auditor or his designee, shall have access to and the right to examine any directly pertinent books, documents, papers, and records of the Museum related to this Agreement upon at least ten (10) calendar days prior written notice.

d. Applicable Law. The Parties agree to comply with all applicable federal, state and local statutes, charter provisions, ordinances, resolutions, rules, regulations, policies, and standards in existence as of the effective date of this Agreement or as may be subsequently enacted or adopted and applicable to this Agreement.

e. Conflict of Interest. The Parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein, and the Museum further agrees not to hire or contract for services any official, officer or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.

f. No Personal Liability. No official, officer, agent, or employee of either Party shall be charged personally or held contractually liable to the other Party or its officials, officers, agents, or employees under any term or condition of this Agreement or for any breach, default, or violation under this Agreement.

g. *Force Majeure*. No Party shall be liable for delay or failure to perform hereunder, despite best efforts to perform, if such delay or failure is the result of *force majeure*. Notices of the occurrence and the end of such delay shall be provided by the Party asserting *force majeure* to the other Party. "*Force majeure*" shall mean causes beyond the reasonable control of a Party such as, but not limited to, weather conditions, acts of God or the public enemy, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities.

h. Contracting or Subcontracting. Any work that is allowed to be contracted or subcontracted under this Agreement shall be subject, by the terms of the contract or subcontract, to every provision of this Agreement. Compliance with this provision shall be the responsibility of the Party who arranged the contract or authorized the subcontract.

i. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the United States, the State of Colorado, and the applicable provisions of the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

j. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. It is the express intention of the Parties that any person or entity other than the Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

k. Notice. All notices, demands or consents required or permitted under this Agreement shall be in writing and delivered personally, or by certified mail, return receipt requested, to the following:

To the Museum:

The Children's Museum
2121 Children's Museum Drive
Denver, Colorado 80211
Attention: President and CEO

With a copy to:

Hogan Lovells US LLP (AMR)
1200 17th Street, Suite 1500
Denver, Colorado 80202

To the City:

Manager of Parks and Recreation
Department of Parks and Recreation
City and County of Denver
201 West Colfax Avenue, Dept. 601
Denver, Colorado 80202

With a copy to:

City Attorney
City and County of Denver
1437 Bannock Street, Room 353
Denver, Colorado 80202

The persons or addresses set forth above may be changed at any time by written notice in the manner provided herein.

l. Entire Agreement. This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire Agreement of the Parties. The Parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.

m. No Joint Venture. This Agreement is not intended, nor shall this Agreement be construed, to establish or constitute a joint venture between the Parties.

n. Amendment. Except as otherwise expressly provided in this Agreement, this Agreement must be amended, modified, or changed, in whole or in part, only by written agreement executed by the Parties in the same manner as this Agreement.

o. Severability. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the Parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term or condition that will legally achieve the original intent and purposes of the Parties hereunder.

p. Environmental. The City shall not seek to hold the Museum liable under any Environmental Requirements (as defined above) arising from or related to facts, circumstances, or conditions at, on, under or from the Purchased Property or the Leased Property existing or occurring prior to the Closing Date (as defined above); provided, however, the Museum shall assume all responsibility and costs resulting from any Hazardous Materials (as defined above) uncovered or exposed during any grading or excavation work by or on the behalf of the Museum or its contractors or agents on the Purchased Property or the Leased Property. Nothing in this provision is intended, nor shall it be construed, to constitute an admission of liability on the part of the City or to create any financial or other obligation on the part of the

City with respect to any environmental remediation required for any Hazardous Materials uncovered or exposed in association with any grading or excavation work by or on the behalf of the Museum or its contractors or agents on the Purchased Property or the Leased Property.

p. Headings for Convenience. Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to combine, limit, or describe the scope or intent of any provision of this Agreement.

q. Authority. Each Party represents and warrants that it has taken all actions that are necessary or that are required by its applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of the Party and to bind the Party to its terms. The person(s) executing this Agreement on behalf of each Party warrants that he/she/they have full authorization to execute this Agreement.

r. Execution of Agreement. This Agreement shall not be or become effective or binding until it has been approved by ordinance and it has been fully executed by all signatories of the Parties.

s. Recordation. This Agreement shall be recorded in the office of the Clerk and Recorder for the City and County of Denver.

t. Electronic Signatures and Electronic Records: The Museum consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder (other than deeds), may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.