

## GROUND LEASE AGREEMENT

This Ground Lease Agreement (the "Lease Agreement") is made this \_\_\_ day of \_\_\_\_\_, 2025 by and between **GRAND FORKS CHILDREN'S MUSEUM, INC.**, a North Dakota non-profit corporation, whose mailing address is 515 Demers Avenue, Grand Forks, North Dakota 58201 (the "Developer") and the **GRAND FORKS GROWTH FUND**, a Jobs Development Authority, whose mailing address is 255 North 4<sup>th</sup> Street, P.O. Box 5200, Grand Forks, North Dakota 58203 (hereinafter referred to as the "JDA")

### RECITALS

1. The City of Grand Forks, North Dakota, North Dakota municipal corporation whose principal office and mailing address is 255 North 4th Street, Grand Forks, ND 58201 (hereinafter the "City"), the JDA, and the Developer entered into that certain Development Agreement (the "Development Agreement") having an effective date of November 3, 2025 describing and setting out requirements for the Developer's Construction and operation of a Children's Museum on the herein described parcel of real property that is owned by the JDA, and subject to the terms and conditions of the Development Agreement, and the availability of funds, the City agreed to provide certain funds to the Developer for the Construction of the Children's Museum. A copy of the Development Agreement is attached hereto as Exhibit "A."

2. The terms and conditions of the Development Agreement required a long-term ground lease be entered into between the JDA and the Developer to allow for the Construction and operation of the Children's Museum on the herein described parcel of real property.

3. The JDA and the Developer desire to memorialize their understanding for the long-term ground lease for the Construction and operation of the Children's Museum.

**NOW THEREFORE, FOR A VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS AGREED AS FOLLOWS:**

1. **Recitals.** The Recitals described above are true and accurate and by this reference incorporated into and an integral part of this Lease Agreement.

2. **Definitions.** All of the defined terms and definitions set forth in the Development Agreement shall apply to, are incorporated into and made a part of this Lease Agreement. All other defined terms and definitions set forth in this Lease Agreement shall apply.

3. **Leased Property.**

3.1 The JDA hereby agrees to and does lease to the Developer and the Developer agrees to and does hereby lease from the JDA the following described parcel of real property for the term and upon the conditions described herein and for the Developer's Construction, installation and operation of the Children's Museum (the "Children's Museum Leased Property"):

Lot 3, Block 1 of Danks Fourth Resubdivision, being a replat of Lots 7-11, Block 1 and the adjacent vacated south 43<sup>rd</sup> Street Right-of-Way, Danks Second Resubdivision and Lot A, Block 1 of the Replat of Lot 12, Block 1, Danks Second Resubdivision to the City of Grand Forks, North Dakota, according the plat recorded as Document Number 846235.

Having a street address of 1660 South 42<sup>nd</sup> Street, Grand Forks, ND 58201

**3.2 Construction Access.** The Developer shall have use of the Children’s Museum Leased Property for the Construction and installation of the Children’s Museum, from the Commencement Date, as defined in Section 4.1.1 below. Construction of the Children’s Museum shall commence on or before Spring, 2026, unless otherwise agreed between the parties.

**4. Term.**

**4.1 Initial Term.**

**4.1.1** This Lease Agreement shall commence upon the Effective Date of the Development Agreement (“Commencement Date”) and shall continue until 11:59 p.m. central time on December 31, 2075(the “Initial Term”).

**4.1.2** If Construction of the Children’s Museum is not Finally Completed and a Certificate of Occupancy for the Children’s Museum is not issued by December 31, 2027, unless such date is for the Children’s Museum to be Finally Completed and/or a Certificate of Occupancy to be is issued are extended upon prior written consent of the City and JDA, an event of default by the Developer shall have occurred (without further notice required to be sent by the JDA), and the JDA shall have the option and right to terminate this Lease Agreement, and to pursue any other remedy described in Section 17.1 below. Upon termination of this Lease Agreement by the JDA pursuant to this Section 4.1.2, the Children’s Museum Leased Property shall return to the exclusive control of the JDA, and all rights, titles and interests of the Developer in and to the Children’s Museum Leased Property and the Children’s Museum, shall terminate and be null and void.

**4.1.3** Upon the termination of this Lease Agreement under Section 4.1.2, the JDA may seek all available remedies under Section 17.1. Further, upon the termination of this Lease Agreement under Section 4.1.2, the Developer, at the option and discretion of the JDA:

**(a)** shall, at the Developer’s sole cost and expense, return the Children’s Museum Leased Premises to the JDA the same condition as it existed prior to the Commencement Date, or

(b) shall, at the Developer's sole cost and expense, execute and deliver to the JDA all documents requested by the JDA to transfer and convey, free and clear of all liens, encumbrances, mortgages and security interests, all of the Developer's rights, titles and interests in the Children's Museum, and the Developer's other buildings, structures, facilities, fixtures, equipment, machinery, infrastructure, improvements and other real and personal property used in the operation of the Children's Museum.

#### 4.2 Option to Renew

4.2.1 The Developer shall have the option to renew this Lease Agreement for two (2) additional periods of ten (10) years each ("Extended Terms), provided that the Developer is not in default, is not currently in violation of any provision of this Lease Agreement, and has provided to the JDA written notice of intent to exercise the option to renew no later than ninety (90) days prior to the termination of the Initial Term or Extended Term, as the case may be. Terms and conditions of this Lease Agreement during any Extended Term shall be the same as contained herein.

### 5. Rent

5.1 Rent – Initial Term. The rent for the Initial Term shall be at the rate of \$4,000.00 per year, payable by the Developer to the JDA on the 1<sup>st</sup> day of each January, with the first rent payment due on January 1, 2026. The Parties acknowledge and agree no rent will be payable during the 2025 calendar year. Rent shall increase by 5% every five years, with the following being the amount of the annual rent for each five year period during the Initial Term:

Years 2026 -2030 (years 1-5 of Initial Term):	\$4,000.00
Years 2031-2035 (years 6-10 of Initial Term):	\$4,200.00
Years 2036 – 2040 (years 11-15 of Initial Term):	\$4,410.00
Years 2041-2045(years 16-20 of Initial Term):	\$4,630.50
Years 2046-2050 (years 21-25 of Initial Term):	\$4,862.03
Years 2051-2055 (years 26-30 of Initial Term):	\$5,105.12
Years 2056-2060 (years 31-35 of Initial Term):	\$5,360.38
Years 2061-2065 (years 36-40 of Initial Term):	\$5,628.40
Years 2066-2070 (years 41-45 of Initial Term):	\$5,909.82
Years 2071-2075 (years 46-50 of Initial Term):	\$6,205.31

**5.2 Rent – Extended Term.** The rent for first Extended Term shall be at the rate of \$6,515.58 per year, and on the second Extended Term shall be \$6,841.36 payable on the 1<sup>st</sup> day of each January, with the first rent payment due on January 1, 202076.

**6. Authorized Uses and Purposes.**

**6.1 Children’s Museum.** The Developer understands and agrees the sole and exclusive use of the Children’s Museum Leased Property shall be for the Construction, installation, and the subsequent operation, maintenance and repair of the Children’s Museum, as more particularly described in and intended under the terms of the Development Agreement and this Lease Agreement. The Developer shall operate the Children’s Museum in a safe manner, in compliance with all Governmental Requirements, and pursuant to Good Industry Practice and a manner that is Usual and Customary. Any use other use of the Children’s Museum Leased Property shall require the prior written approval of JDA and the City.

**6.2 Construction of Children’s Museum – Incorporation of terms and conditions of Development Agreement.** All of the terms and conditions of Section 2 of the Development Agreement for the Construction and installation of the Children’s Museum, are incorporated herein, made a part of and shall apply to this Lease Agreement, including, without limit Section 2.1 (providing the Developer, at the Developer’s cost and expense, shall be solely responsible for the preparation and creation of the Children’s Museum Development Plans and the design, Construction and installation of the Children’s Museum), Section 2.6 (providing the Developer shall be solely responsible for any costs, expenses, or fees for the operation, maintenance and repair of the Children’s Museum, unless otherwise agreed by the City by subsequent written agreement approved by the City Council), and Section 2.8 (setting forth terms and conditions for the Construction and installation of the Children’s Museum).

**6.3 Subsequent Alterations.** During the Initial Term and Extended Term, the Developer shall have the right to make alterations to the Children’s Museum and Developer’s other buildings, structures, facilities, fixtures, equipment, machinery, infrastructure, improvements and other real and personal property used in the operation of the Children’s Museum, provided, however, that no such alterations shall be commenced without prior written approval from the JDA.

**6.4. Mortgages and Subordination.**

**6.4.1** The Developer, at its own cost and expense, shall have the right during the Initial Term or Extended Term negotiate and obtain a loan or loans which may be secured by a mortgage and UCC filings on the Children’s Museum and/or the Developer’s other buildings, structures, facilities, fixtures, equipment, machinery, infrastructure, improvements and other real and personal property used in the operation of the Children’s Museum, provided, however, such loan or mortgage shall be subject to the JDA’s interest as described and set forth in this Lease Agreement. Any subordination of the JDA’s interest to the party providing such loan to the Developer, as described in this Section 6.4.1, shall be subject to separate agreement that requires prior approval by the JDA.

**6.4.2** In the event the Developer encumbers the Children’s Museum Leased Property or any other property owned by the JDA or the City without the prior written consent of the JDA or City, said encumbrance shall be an event of default by the Developer (without notice required to be sent by the JDA) and the JDA shall have the option and right to terminate this Lease Agreement, and to pursue any other remedy described in Section 17.1 below. In addition, upon the termination of this Lease Agreement under this Section 6.4.2, the Developer, at the option and discretion of the JDA:

(a) shall, at the Developer’s sole cost and expense, return the Children’s Museum Leased Premises to the JDA the same condition as it existed prior to the Commencement Date, or

(b) shall, at the Developer’s sole cost and expense, execute and deliver to the JDA all documents requested by the JDA to transfer and convey, free and clear of all encumbrances and liens, all of the Developer’s rights, titles and interests in the Children’s Museum, and the Developer’s other property located on the Children’s Museum Leased Premises.

**6.4.3** In addition to the remedies described in Section 6.4.2 the Developer agrees that in the event Developer encumbers the Children’s Museum Leased Property or any other property owned by the JDA or the City without the prior written consent of the JDA or City, the Developer shall remove or cause to be removed, at no expense to the JDA or the City, said encumbrance and shall do so immediately. The Developer further agrees that in the event such an encumbrance damages the JDA or the City in any way, the Developer shall on demand reimburse the JDA and/or the City in full for said damages.

**6.4.4** Notwithstanding anything to the contrary, in no way shall any of the JDA’s or the City’s interests in the Children’s Museum and/or the Children’s Museum Leased Property be subordinated to any other interest, without prior written consent of the JDA and the City.

**7. Obligations and Representations of Developer.**

**7.1 Acceptance of Premises.** The Developer, by execution of this Lease Agreement represents that it has inspected the Children’s Museum Leased Property, and that it accepts the condition of same as it exists on the Commencement Date, and fully assumes all risks incident to the use thereof, including, but not limited to, any hidden, latent, or other dangerous conditions on the Children’s Museum Leased Property.

**7.2 Outside Storage.** After initial construction of the Children’s Museum is Finally Completed, the Developer shall not store in a location susceptible to view by the public any equipment, materials or supplies on the Children’s Museum Leased Property. Any screens or other devices used to keep equipment, materials or supplies from view shall be subject to written approval by the JDA.

**7.3 Lighting and Signs.** The Developer shall secure advance written approval from the JDA before placing any exterior lighting or exterior signs on the Children's Museum Leased Property or the Children's Museum. Nothing herein, shall relieve the Developer from its obligation to obtain approval of such lighting and signs in accordance the City Code.

**7.4 Developer's Property Taxes and Special Assessments.**

**7.4.1** The Developer shall promptly pay any and all lawful taxes (including real property taxes) and special assessments levied on or against the Developer, the Children's Museum Leased Property, the Children's Museum or the operation of the Children's Museum, and all licenses, permits, occupational and inspection fees assessed or charged against the Developer, the Children's Museum Leased Property, the Children's Museum, or the operation of the Children's Museum, and the Developer shall hold the JDA free and harmless from any loss, damage, or expense, including reasonable attorney's fees, arising out of or by reason of any charges specified in this Section 7.4.1.

**7.4.2** If the Developer, in Good Faith, desires to contest the validity or amount of any tax or special assessment to be paid by it, an event of default by the Developer shall not arise hereunder in respect to the payment of such taxes or special assessments which the Developer shall be required to pay, provided all of the following are satisfied:

(a) the Developer shall first notify the JDA at least ten (10) Calendar Days prior the due date thereof of its intention to contest such payment,

(b) in Good Faith, and with all possible promptness and diligence, and in a manner that is Usual and Customary, the Developer shall contest such payment, and

(c) the Developer shall deposit with the JDA the amount of the taxes or special assessments it is contesting.

**7.4.3** Provided all such conditions described in this Section 7.4.2 are satisfied, the Developer may thereupon defer the payment of any such tax or special assessment during such time as the validity or amount of such tax or special assessment is contested by the Developer by appropriate legal proceedings. Should any rebate be made on account of any taxes or special assessments paid by the Developer, the amount of such rebate shall belong to and be paid to the Developer.

**7.5 Compliance with Laws.** The Developer shall comply with all Governmental Requirements applicable to the Developer, the Children's Museum, the operation of the Children's Museum and the Developer's use of the Children's Museum Leased Property.

**7.6 Liens.** The Developer agrees to promptly pay all sums legally due and payable on account of any labor performed on or materials furnished or services performed for the Construction, installation, operation, maintenance and repair of the Children's Museum

and/or for any other permitted use of the Children's Museum Leased Property. The Developer shall not permit any liens to be placed against the Children's Museum Leased Property on account of labor performed or material furnished and, in the event such a lien is placed against the Children's Museum Leased Property, the Developer agrees and shall to save and hold harmless the JDA from any and all such asserted claims and liens and to remove or cause to be removed any and all such asserted claims or liens as soon as reasonably possible.

## **7.7 Maintenance and Repair.**

**7.7.1** The Developer shall, at its sole cost and expense keep, maintain and repair the Children's Museum Leased Property, the Children's Museum, and any and all buildings, structures, facilities, fixtures, equipment, machinery, infrastructure, improvements, and any other real or personal property improvements relating to the operation of the Children's Museum or the Developer's use of the Children's Museum Leased Property, in a good and well-maintained condition consistent with Good Industry Practice and that is Usual and Customary to preserve, enhance and protect the operation and general appearance and value of the Children's Museum and the Children's Museum Leased Property. Without in any manner limiting the foregoing, but in addition thereto, the Developer further agrees to perform snow removal and lawn care for the Children's Museum Lease Property and to remove, or cause to be removed, at the Developer's sole cost and expense, any trash, garbage or debris generated by the Developer's use of the Children's Museum Leased Property except temporarily in connection with collection or removal of same.

**7.7.2** In the event Developer fails to comply with this Section 7.7.1, the JDA shall issue a written notice to the Developer regarding its failure to comply with Section 7.7.1. The notice must state:

- (a) the nature of Developer's failure to comply with Section 7.7.1,
- (b) the remedy required by JDA to cure the failure to meet the requirements of Section 7.7.1, and
- (c) the Developer has thirty (30) Calendar Days from the date of such written notice to cure the matter described in such notice.

**7.7.3** In the event the Developer fails, within said 30 Calendar Day period, to cure the matter set forth in the written notice issued under Section 7.7.2, the JDA shall have the right thereafter to declare an event of default (without further notice being provided by the JDA) and seek available remedies against the Developer described in Sections 17.1 and 17.2, or in the alternative, to cure the matter set forth in the written notice issued under Section 7.7.2. Any and all of the costs, expenses, disbursements and fees for the JDA to cure pursuant to this Section 7.7.3, including all costs, disbursements and reasonable attorney's fees, shall be paid by the Developer within thirty (30) Calendar Days after written demand is made by the JDA to the Developer for such payment.

7.7.4 Notwithstanding, anything to the contrary, in the event the matter set forth in the written notice issued under Section 7.7.2 takes longer than 30 Calendar Days to cure, then no event of default shall be declared by the JDA provided the Developer has undertaken commercially reasonable efforts to initiate a cure within such 30 Calendar Day period and the Developer diligently and continuously pursues such curing efforts. In the event the Developer fails to initiate and/or fails to diligently or continuously pursue such curing events, the JDA shall have the option, without further notice to the Developer, to declare an event of default (without further notice to be given by the JDA) and to seek all available remedies described in Sections 17.1 and 17.2 against the Developer.

7.8 **Non-Assignment.** The Developer shall not at any time assign any part of this Lease Agreement, or sublease or assign any of the Children's Museum Leased Property or assign, transfer, convey or hypothecate any other interest the Developer may have under this Lease Agreement without the prior written approval of the JDA. No such assignment, sublease, transfer, conveyance or hypothecation shall be valid unless the assignee or transferee expressly assumes and agrees to perform every covenant of this Lease Agreement. The assignee's or transferee's assumption shall be evidenced by a recordable instrument, either by joinder in the assignment itself or by separate instrument. The assignment, sublease, transfer, conveyance or hypothecation shall not be valid unless it and the assumption agreement are promptly approved by the JDA and an executed original thereof delivered to the JDA. If the Developer's interest in and to this Lease Agreement is unlawfully assigned, subleased, transferred, conveyed or hypothecated, its liability for the performance of every term, condition, covenant, or agreement contained herein shall remain in full force and effect.

7.9 **Utilities.** Except such utilities the City has specifically agreed to install, the Developer agrees to install or cause to be installed on the Children's Museum and Children's Museum Leased Property all utilities and meters for each and every utility to be used for the Construction, installation and operation of Children's Museum and the Developer's use of the Children's Museum Leased Property, and to pay any and all costs, expenses and fees as a result of the installation and use of such utilities.

7.10 **Safety and Security.** The parties hereby agree that the Developer assumes all responsibility and obligation for providing safety and security on the Children's Museum and the Children's Museum Leased Property.

7.11 **Construction Costs/Sufficient Funds to cause Children's Museum to become Finally Completed.**

7.11.1 The Developer, at the Developer's cost and expense, shall be solely responsible for the preparation and creation of the Children's Museum Development Plans and the design, Construction and installation of the Children's Museum.

7.11.2 Before commencing the Construction of any phase of the Children's Museum, the Developer shall provide to the JDA, a written and signed sworn statement representing and warranting the Developer has legally binding and enforceable commitments through donor gift agreement(s) or commitments, grants, or through other funding

agreements and the sum total to be paid under such agreements, commitments and grants are in an amount that, when added to the total of the City Construction Funds provided under the Development Agreement, is sufficient to pay for all of the costs, expenses and fees for the design and the Construction of the Children's Museum to cause the Children's Museum to be Finally Completed.

## **7.12 Hazardous Substances**

**7.12.1** It shall be the responsibility of the Developer to verify the environmental condition of the Children's Museum Leased Property. Any changes to the condition of the site as a result of any action on the part of Developer shall be the sole responsibility of the Developer.

**7.12.2** Subject to the Developer's right to terminate this Lease Agreement as set forth in Section 7.12.4, the Developer shall be responsible for mitigating, at no cost or expense to the JDA and/or the City, the effect of any buried materials, foreign soils, or other unknown conditions of the Children's Museum Leased Property, and to remediate any changes to the condition of the Children's Museum Leased Property and all environmental damages caused by any act or omission of the Developer, and to pay any fines or damages associated with such action.

**7.12.3** The Developer will be responsible for mitigation of the effect any Hazardous Material, Hazardous Waste or other foreign product that is regulated under any Environmental Law.

**7.12.4** The Developer shall have the right, exercisable at any time, to investigate and perform tests on the Children's Museum Leased Property, at the Developer's sole cost and expense, to determine whether Hazardous Materials are located on the Children's Museum Leased Property or if the JDA or the City (or any entity whose conduct JDA is or may be responsible under any Environmental Law) has violated any Environmental Law, and the Developer may, in the event that such Hazardous Materials and/or violations exist, may, notwithstanding Section 7.12.2 terminate this Lease Agreement without any further liability to the JDA or City.

**7.12.5** The Developer will not permit or allow the storing or release of any Hazardous Materials or Hazardous Waste within the Children's Museum or any part of the Children's Museum Leased Property or otherwise engage in any activity that would subject JDA and/or the City, or the Developer to liability in connection with the storage or use or release of such Hazardous Materials.

**7.12.6** For purposes of this Section 7.12, (a) "Hazardous Material" shall mean and include any hazardous waste, hazardous material, hazardous substance, petroleum product, oil, asbestos or asbestos containing material, toxic substance, pollutant, contaminant, or other substance which may pose a threat to the environmental or to human health or safety, as defined or regulated under any Environmental Law; (b) "Hazardous Waste" shall mean and include any hazardous waste as defined or regulated under any Environmental Law; and (c)

“Environmental Law” shall mean any environmental or health and safety-related law, regulation, rule, ordinance, or by-law by any Governmental Authority, whether existing as of the date hereof, previously enforced, or subsequently enacted.

**8. Quiet Enjoyment.** The JDA covenants, warrants, and represents that, subject to the Governmental Requirements, it has full right and power to execute and perform this Lease Agreement and to grant the estate leased herein and that the Developer, upon payment of rent herein specified and performance of the covenants and agreements herein contained, shall peaceably and quietly have, hold and enjoy the Children’s Museum Leased Property during the Initial Term and any Extended Term, subject to JDA’s right to inspect as described in Section 9 below.

**9. JDA’s Right to Entry.**

**9.1** The JDA, its agents, representatives, contractors, and employees shall have the right to inspect the Children’s Museum Leased Property and Children’s Museum at any reasonable time for the purpose of examining same and to ascertain if they are in good repair. Prior to any inspection by the JDA, it shall arrange with the Developer for a suitable time to make such inspection, except in emergency, in which case the JDA may enter the Children’s Museum Leased Property and Children’s Museum without prior notice.

**9.2** For purpose of this Section 9, an emergency means any situation that has or that is likely to imminently endanger life, property or the public health and safety or that has or is imminently likely to cause an adverse effect on the security of, or damage to public or private property, (including to all or any part of the Children’s Museum or the Children’s Museum Leased Property), or that the JDA or the City determines a response or mitigation actions is warranted to protect lives and property, to provide for the public health and safety, or to avert or lessen the threat of a disaster, or that the JDA or the City determines a response or mitigation action is warranted to prevent significant impact to operations of either the Children’s Museum or the Children’s Museum Leased Property such as fire or other conditions hazardous to property or life.

**10. Holding Over.** In the event the Developer holds over in its occupation of the Children’s Museum Leased Property or any portion thereof after the expiration the Initial Term or Extended Term, as the case may be, such holding over shall operate and be construed as a tenancy from month to month at the same monthly rental that applied to the last preceding month and subject to all the other terms and conditions herein provided, and in no event shall the tenancy be deemed to be one of longer than one month. However, nothing contained herein shall be construed as consent by JDA to the holding over of the Children’s Museum Leased Property by the Developer.

**11. Reasonable Exercise of JDA’s Rights.** All rights privileges, options and powers as are reserved by the JDA with respect to the Children’s Museum Leased Property, shall be exercised in a reasonable manner, without unnecessary and unreasonable interference with the Developer’s use and occupancy of the Children’s Museum Leased Property.

**12. Condemnation.**

**12.1** In the event of any taking by condemnation or eminent domain of any portion of the Children's Museum Leased Property, the JDA and Developer shall share all compensation paid, or award given, for the property taken in accordance with their respective interests in the Children's Museum Leased Property, except that any compensation paid or award given with respect to the Children's Museum or other improvements, furniture, furnishings, fixtures, equipment, and other personal property on the Children's Museum Leased Property owned by Developer shall inure to the benefit of the Developer.

**12.2** If all of the Children's Museum Leased Property is taken, or if a portion thereof is taken so that the operation of the Children's Museum shall be as a result thereof economically not feasible, then, as of the date possession is taken pursuant to such condemnation or exercise of the right of eminent domain, this Lease Agreement shall cease and terminate and the obligations of the JDA and the Developer hereunder for the unexpired term of this Lease Agreement likewise shall cease and terminate.

**13. Damage to Children's Museum Lease Property-Children's Museum/Liability.**

**13.1** In the event of partial or complete loss to the Children's Museum Leased Property and Children's Museum by fire, the elements, accident, or other occurrence, the JDA shall have no obligation to compensate the Developer for any loss except for loss caused by the JDA's negligence where the JDA's percent of fault exceeds the Developer's percent of fault, and in such event, the JDA's liability shall not exceed the percent of fault assigned to the JDA for such loss.

**13.2** Subject to Section 14.6 below, the Developer shall, within thirty (30) Calendar Days of a loss described in Section 13.1, give notice to the JDA of its intent to repair or rebuild, or of its intent to terminate this Lease Agreement. In the event that the Developer chooses not to repair or rebuild, the Developer, at the Developer's sole cost and expense, will return the Children's Museum Leased Property to the condition of its existence prior to the Commencement Date. In the event the Developer chooses to repair or rebuild, then such repair and re-build will be in accordance and comply with the requirements under the Development Agreement, (including but not limited to Section 2) and the requirements of this Lease Agreement.

**13.3** In the event that a loss or occurrence on the Children's Museum Leased Property or the Children's Museum, by an act or omission of the Developer causes a loss or damage to any property of the JDA or City, the Developer shall, at its expense, repair, replace, or rebuild or cause to be repaired, replaced or rebuilt, any such property damaged or lost to its previous condition as soon as reasonably possible, and to reimburse the JDA and the City, their respective agents, representatives, contractors and employees for any and all costs, expenses, and fees including reasonable attorneys' fees incurred as a result of such loss or damage.

**14. Insurance.** On the earlier of the date Developer commences Construction on the Children's Museum or the date Developer makes use of any part of the Children's Museum Leased Property, and during the entire Initial Term or Extended Term, as the case may be, the Developer shall obtain and maintain the following coverages and insurance:

**14.1** Workforce Safety insurance as required by the State of North Dakota.

**14.2** Commercial general liability insurance, personal injury, bodily injury, and property damage on an occurrence basis with limits of liability not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. Without in any way limiting the terms and conditions, such policies, shall at a minimum, insure the Developer against all claims and demands made by any person or persons for injuries received in connection with the operation and maintenance of the Children's Museum, the Developer's use of the Children's Museum Leased Property, and for any other risk insured against by such policies. The JDA and the City shall be named as an additional insured on a primary, non-contributory basis.

**14.3** Commercial umbrella insurance with a minimum limit of \$4,000,000. The JDA and the City shall be named as an additional insured on a primary, non-contributory basis.

**14.4** During the entire period of Construction of any part of the Children's Museum, the Developer will obtain and maintain "builder's risk" insurance against damage or destruction by fire and full extended coverage including vandalism and malicious mischief, covering all improvements to be erected and all materials for the same which are on or about the Children's Museum Leased Property; and the Developer will keep insured any and all buildings and improvements upon the Children's Museum Leased Property against all loss or damage by flood, fire and windstorm, together with "extended coverage." The amount of insurance shall at all times be sufficient to prevent any party in interest from being or becoming a co-insurer on any part of the risk, and shall not be less than eighty percent (80%) of the full insurable value of the Children's Museum. All of such builder's risk insurance policies shall include the JDA as one of the insured parties and shall fully protect both JDA and the Developer, as their respective interests may appear.

**14.5** No later than the date the Children's Museum has become Substantially Completed, the Developer shall obtain and maintain insurance for damage or destruction of the Children's Museum and the Developer's other buildings, structures, facilities, fixtures, equipment, machinery, infrastructure, improvements and other real and personal property used in the operation of the Children's Museum by fire, windstorm, or other casualty in an amount that is not less than the fair market value of said Children's Museum or such other property of the Developer.

**14.6** If the loss or damage by fire, windstorm, or other casualty is equal to or greater than eighty percent (80%) of the fair market value of the Children's Museum prior to such loss or damage, the Developer may, within the time period described in Section 13.2 above, either:

**14.6.1** elect to terminate this Lease Agreement, and in which case the Developer will return the Children's Museum Leased Property to the condition of its existence prior to the Commencement Date, and repair any loss or damage caused to JDA's or City's property, including any adjacent buildings, or

**14.6.2** repair the losses and damages.

**14.7** Regardless of the election under Section 14.6 that is made by the Developer, all applicable insurance proceeds received by JDA and the Developer for the destruction of buildings or improvements by fire, windstorm, or other casualty shall be deposited in a joint account of the JDA and the Developer in a bank designated by JDA in the City, and such funds shall be made available for the Construction or repair, as the case may be, of any building or buildings damaged or destroyed by fire, windstorm, or other casualty for which insurance is payable. The JDA and the Developer shall periodically pay out these funds from the joint account on the estimate of any reliable and authorized architect licensed in the State of North Dakota, who must certify that the amount of the estimate is reasonable and is being applied to the payment of the reconstruction or repair. The Developer shall assure the application of the money for such purpose. In the event Developer rebuilds or repairs, the rebuilt or repaired Children's Museum or other building or improvement, or the replaced or repaired personal property, shall be of the same or higher value as prior to the damage or destruction, the re-build and repair shall be in accordance and comply with the requirements under the Development Agreement, (including but not limited to Section 2) and the requirements of this Lease Agreement, and the rebuilt and repaired buildings shall be ready for occupancy within eighteen (18) months from the time of the loss or destruction. The eighteen (18) month period for rebuild and repair shall be extended by delays caused without the Developer's fault or a Force Majeure Event (but not including matters of finance) beyond the Developer's control. In the event Developer elects not to rebuild or repair and terminate this Lease Agreement, then, subject to the Developer's mortgagee's more restrictive requirements, the insurance proceeds shall be held and disbursed under the terms and conditions above, first to repair any damage to the Children's Museum Leased Property, other property of the JDA's or City, including adjacent buildings, if any, then to return the Children's Museum Leased Property to its condition prior to the Construction of the Children's Museum, and any remainder disbursed to the Developer.

**14.8** In addition, if any boilers or elevators are included in improvements located on the Children's Museum, the Developer shall cause to be written boiler insurance and elevator insurance policies, in amounts determined to be sufficient by the JDA.

**14.9** All insurance policies shall be issued by companies authorized to do business in the State of North Dakota, name the Developer as the insured, and shall be accompanied by a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) Calendar Days' prior notice to the JDA.

**14.10** Certificates evidencing the herein described insurance shall be submitted to the JDA prior to the date such insurance coverage is to be in effect under this Lease Agreement, and at least fifteen (15) Calendar Days prior to the expiration dates of expiring policies. A current certificate of insurance must be on file with the JDA for the duration of the

Initial Term and Extended Term. Said coverage shall be primary coverage rather than any policies and insurance owned or maintained by the JDA or the City. Policies shall be issued by insurers who endorse the policies to reflect that, in the event of payment of any loss or damages, subrogation rights under those contract documents will be waived by the insurer with respect to claims against the JDA or the City.

**14.11** The Developer shall be responsible for the payment of all deductibles contained in any coverage or insurance hereunder.

**14.12** If, during the Initial Term or any Extended Term, changed conditions or other pertinent factors should, in the reasonable judgment of the JDA, render inadequate the above-described insurance limits, the Developer will furnish on demand such additional coverage as may reasonably be required by the JDA under the circumstances. All such insurance shall be obtained at Developer's expense, under valid and enforceable policies, issued by the insurers of recognized responsibility which are well-rated by national rating organizations and are acceptable to the JDA.

**14.13** The provisions requiring Developer to carry said insurance shall not be construed in any manner as waiving or restricting the liability of Developer under this Lease Agreement.

**14.14** The JDA has the authority to vary from the specified limits as deemed necessary.

**14.15** The JDA will maintain liability and property insurance for the Children's Museum Leased Property as determined in its discretion.

**15. Indemnification.**

**15.1** The Developer agrees to and shall indemnify, save and hold the JDA and the City, and their respective officials, directors, officers, agents, representatives and employees harmless from any and all actions, claims, demands, liabilities, losses, damages, fines, penalties, expenses or fees, including attorneys' fees and disbursements, experts' fees and costs, and costs of investigation and litigation, which arise out of, result from, relate to or are in connection with (a) any negligent acts or negligent omissions of the Developer or any of the Developer's directors, officers, agents, representatives, employees and contractors under this Lease Agreement or (b) breach by the Developer of any of its representations, covenants or agreements made herein or in the Development Agreement.

**15.2** With respect to each separate matter brought by any third party against which the JDA or the City is indemnified by Developer, the Developer shall be responsible, at its sole cost and expense, for controlling, litigating, defending and/or otherwise attempting to resolve, through counsel of its choice, any proceeding, claim, or cause of action underlying such matter, except that (a) the JDA or the City (as the case may be) may, at their respective option, participate in such defense or resolution at its expense and through counsel of its choice; (b) the JDA or the City (as the case may be) may, at its option, assume control of such

defense or resolution if the Developer does not promptly and diligently pursue such defense or resolution, provided that the Developer shall continue to be obligated to indemnify the City hereunder in connection therewith; and (c) neither Developer nor the JDA or City shall agree to any settlement without the other's prior written consent (which shall not be unreasonably withheld or delayed). In any event, the Developer and the JDA and/or the City shall in Good Faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Developer's expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, the JDA shall promptly (and in no event more than twenty (20) days after any third-party litigation is commenced asserting such claim) give reasonably detailed written notice to the Developer of the nature of such matter and the amount demanded or claimed in connection therewith

**15.3** The obligations of the Developer in this Section 15 shall survive termination or expiration of this Lease Agreement.

**16. Default.** An event of default by Developer shall occur if any of the following occur and remains in effect following written notice and a 30-day opportunity to cure, provided that a default which takes longer than 30 days to cure shall not be a default if Developer has undertaken commercially reasonable efforts to initiate a cure within such 30-day period:

**16.1** The Developer fails to act or otherwise observe or perform any term condition, covenant or promise of this Lease Agreement.

**16.2** The abandonment by Developer of the Children's Museum or the Children's Museum Leased Property.

**16.3.** The Developer fails to act or otherwise observe or perform any term condition, covenant or promise of the Development Agreement or within any Other Children's Museum Development Agreement.

**16.4.** The Developer fails to act or otherwise observe or perform any term, condition, covenant or promise under any promissory note, security agreement, mortgage or other agreement relating to any loan for the Construction, installation, or operation of the Children's Museum.

**16.5.** Any representation or warranty by the Developer in this Lease Agreement, the Development Agreement or the Other Children's Museum Agreements or in any other agreement, certificate, request, or other document executed, furnished pursuant to or under this Lease Agreement, the Development Agreement or the Other Children's Museum Agreements proves to have been incorrect in any material respect as of the date when made or deemed made.

**16.6.** The Developer admits in writing the fact that its debts exceed a fair valuation of its property.

**16.7.** The Developer commences a voluntary proceeding under any applicable federal or state bankruptcy, insolvency or other similar law.

**16.8.** The Developer makes an assignment for the benefit of its creditors.

**16.9.** The Developer consents to the entry of an order for relief in an involuntary proceeding under any applicable federal or state bankruptcy, insolvency or other similar law.

**16.10.** The Developer has entered against it by a court of competent jurisdiction a decree or order granting relief in any involuntary case under any applicable federal or state bankruptcy law, or appointing, with or without the consent of the Developer, as the case may be, a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for the Developer or for any substantial part of its property, or approving a plan for reorganization of the Developer, or ordering the winding up or liquidation of their affairs, and such decree or order shall not be vacated, set aside or stayed for a period of thirty (30) consecutive days.

**17. Remedies.**

**17.1 Remedies by JDA.** Upon the occurrence of an event of default by the Developer, which default has not been cured following the required notice and opportunity to cure, the JDA may:

**17.1.1** Terminate this Lease Agreement and all of the Developer's or any other Person's rights, titles and interests under this Lease Agreement.

**17.1.2** Pursue and obtain against the Developer any and all remedies the JDA has under the Development Agreement and/or the Other Children's Museum's Agreements.

**17.1.3** Pursue and obtain against the Developer full and complete recovery and reimbursement of all costs, expenses and fees the City incurred in connection with this Lease Agreement.

**17.1.4** Pursue and obtain any other legal or equitable remedy against the Developer.

**17.2 Termination of Lease Agreement.** Upon the termination of this Lease Agreement by the JDA under Section 17.1.1, the Developer, at the option and discretion of the JDA:

**17.2.1** shall, at the Developer's sole cost and expense, return the Children's Museum Leased Premises to the JDA the same condition as it existed prior to the Commencement Date, or

**17.2.2** shall, at the Developer's sole cost and expense, execute and deliver to the JDA all documents requested by the JDA to transfer and convey, free and clear of all liens, encumbrances, mortgages and security interests, all of the Developer's rights, titles and interests

in the Children's Museum, and the Developer's other property located on the Children's Museum Leased Premises

**17.3. Remedies by City.** Upon the occurrence of an event of default by the Developer hereunder, which default has not been cured following the required notice and opportunity to cure, the City may pursue and obtain any and all available remedies under the Development Agreement and/or the Other Children's Museum's Agreements. Nothing herein is intended to, nor does it, limit or otherwise restrict the City's remedies under the Development Agreement and/or the Other Children's Museum's Agreements, but are in addition to such remedies.

**17.4. Remedies by Cumulative.** All rights and remedies from an event of default shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

**17.5. Non-Waiver of Remedy.** No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice except as may otherwise be provided by law or under this Agreement.

**17.6. Force Majeure.**

**17.6.1.** Except as provided in Section 17.6.4 below, neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Lease Agreement, for any failure or delay in fulfilling or performing any term of this Lease Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by a Force Majeure Event. The failure or inability of either Party to perform its obligations in this Lease Agreement due to a Force Majeure Event shall be excused for the duration of the Force Majeure Event and extended for a period equivalent to the period of such delay.

**17.6.2.** Either Party (the "Noticing Party") shall give the other Party notice within 30 Calendar Days of the commencement of the Force Majeure Event, explaining the nature or cause of the delay and stating the period of time the delay is expected to continue. The Noticing Party shall use reasonable best efforts to minimize the effects of such Force Majeure Event. The Noticing Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

**17.6.3** In the event the subject Force Majeure Event, for which a notice under Section 17.6.2 above was issued, has continued for a period of 180 Calendar Days after the date of said notice, then such event shall no longer be a Force Majeure Event, and the rights and obligations of the Parties under this Lease Agreement shall resume.

**17.6.4** A Force Majeure Event means any of the following events: (i) acts of God; (ii) floods, fires, earthquakes, explosions, or other natural disasters; (iii) war, invasions, hostilities (whether war is declared or not), terrorist threats or acts, riots or other civil unrest; (iv) embargoes or blockades in effect on or after the date of this Lease Agreement; (v) epidemics, pandemics, or other national or regional public health emergencies; (vi) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (vii) shortages of supplies, adequate power, or transportation facilities.

**18. Developer's Right Upon Termination.** Upon expiration of Initial Term or any Extended Term, as the case may be, the Developer shall be entitled to elect one of the following options:

**18.1** The Developer shall return the Children's Museum Leased Property to the JDA in its condition prior to the Commencement Date; provided, however, the Developer shall have ninety (90) Calendar Days after the expiration in which to return the Children's Museum Leased Property to the JDA in such pre-Commencement Date condition. In the event that demolition by the Developer exceeds the ninety (90) day period, the Developer shall pay rent to the JDA at the then current rate for any excess days.

**18.2** The Developer may negotiate the sale with JDA or a third party of the Children's Museum and the Developer's other buildings, structures, facilities, fixtures, equipment, machinery, infrastructure, improvements and other real and personal property used in the operation of the Children's Museum. The JDA shall have a thirty (30) day right of first refusal to purchase Children's Museum and such other property if such proposed sale is to a third party. The JDA maintains the right to approve such a sale and a new land lease to a third party.

**18.3** In lieu of removal of the said items, the Developer may, with mutual consent of JDA, transfer to the JDA title to Children's Museum and the Developer's other buildings, structures, facilities, fixtures, equipment, machinery, infrastructure, improvements and other real and personal property used in the operation of the Children's Museum. The Developer hereby agrees to execute all appropriate documents to vest title in the JDA free and clear of any and all liens, encumbrances, mortgages and security interests.

**18.4.** The Developer acknowledges and agrees this Section 18 and the rights afforded to the Developer under this Section 18 shall not apply in the event the JDA terminates this Lease Agreement pursuant to Section 4.1.2, Section 6.4.2 or Section 17.1.1.

**19. Non-exclusive Lease.** It is understood and agreed by and between the Parties that the JDA and the City each retains the privilege of entering into other agreements which may or may not be similar to this Lease Agreement and which may or may not contain similar terms with other entities for the use of adjacent land but this Section 19 shall not be construed to abrogate the Developer's right to Quiet Enjoyment described in Section 8. The Developer hereby agrees that it will not object to, obstruct, or hinder in any way JDA's right to enter into such agreements, even though such agreements may be adverse to the Developer's interests.

20. **Notice.** Any notice required or desired to be served by either party upon the other may be served by depositing such notice in certified United States mail, return receipt requested, in a sealed envelope, postage prepaid, and addressed as follows:

To the JDA:  
255 North 4<sup>th</sup> Street  
Grand Forks, ND 58201

To the Developer:  
P.O. Box 5126  
Grand Forks, ND 58206

or to such other address or person as shall from time to time be designated by the parties in writing.

21. **Severability.** If any of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions contained herein.

22. **Entire Agreement.** This Lease Agreement constitutes the sole and entire agreement and understanding between the Parties hereto as to the subject matters hereof, and supersedes all prior discussions, agreements and understandings of every kind and nature between them as to such subject matter.

23. **Amendments.** Neither the Lease Agreement nor any term or provision hereof may be changed, waived, discharged, or terminated, except by a written instrument signed by both Parties hereto.

24. **Authority.** The Parties to this Lease Agreement acknowledge, warrant and represent that each has the full right, authority and power to enter into this Lease Agreement. The Parties to this Lease Agreement further acknowledge, warrant and represent that the execution by the individuals noted below for such Party, and the delivery and performance by the Parties of this Lease Agreement has been and/or shall be duly authorized by all necessary action of the Parties and no other action on the part of the respective Parties is required in connection therewith and that this Lease Agreement and each agreement, document and instrument executed and delivered pursuant to this Lease Agreement constitutes, or when executed and delivered will constitute, valid and binding obligations of the respective Parties enforceable in accordance with their terms.

25. **Headings.** All titles or headings to articles, sections, subsections or other divisions of this Lease Agreement or exhibits hereto are only for the convenience of the Parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the Parties hereto.

26. **Applicable Law.** This Lease Agreement shall be construed and interpreted in accordance with the laws of the State of North Dakota and the Ordinances of the City of Grand Forks and any action or claim related thereto shall be brought in the District Court for Grand Forks County, North Dakota.

27. **Waivers.** One or more waivers by either Party of any covenant or condition of this Lease Agreement shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by either Party with respect to any act by the other Party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such Party.

28. **Counterparts.** This Lease Agreement may be executed in two or more counterparts, each of which shall be considered an original.

29. **Relationship of Parties.** Each Party, its employees, agents, and representatives are not employees, agents or representatives of the other Party for any purpose, including, but not limited to, the application of the Social Security Act, the North Dakota Unemployment Compensation Act, and the North Dakota Workers' Compensation Act. No part of this Lease Agreement shall be construed to represent the creation of an employer/employee relationship. Each Party will retain sole and absolute discretion in the manner and means of carrying out its activities and responsibilities under this Lease Agreement, except to the extent specified in this Lease Agreement.

30. **Cooperation.** The Parties agree to cooperate fully, to execute any and all additional documents, and to take any and all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Lease Agreement and to accomplish the purposes of this Lease Agreement.

31. **Singular and Plural.** Words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular herein shall apply to such words when used in the plural where the context so permits and vice versa.

32. **References.** The words “herein,” “hereof,” “hereunder” and other words of similar import when used in this Lease Agreement refer to this Lease Agreement as a whole, and not to any particular article, section or subsection. Any reference herein to a Section or Subsection shall be deemed to refer to the applicable Section or Subsection of this Lease Agreement unless otherwise stated herein. Any reference herein to an Exhibit shall be deemed to refer to the applicable Exhibit attached hereto unless otherwise stated herein.

33. **Successors and Assigns.** The conditions, covenants, and agreements in the foregoing Lease Agreement contained herein are to be kept and performed by the parties hereto and shall be binding upon said respective parties, their successors and assigns.

34. **Time of the essence.** Time is of the essence for all matters and obligations under this Lease Agreement and all documents and agreements referenced herein.

**35. Performance of Additional Acts.** The Parties agree to perform such acts and to prepare, execute, file or record any documents, instruments, or stipulations requested by each other to perform the covenants, to satisfy the conditions herein contained, or to give full force and effect to this Lease Agreement.

**36. Binding Effect.** This Lease Agreement will inure to the benefit of and is binding upon the JDA and the Developer, and their respective successors and assigns.

**GRAND FORKS CHILDREN'S  
MUSEUM, INC.,** a North Dakota  
non-profit corporation

**GRAND FORKS GROWTH FUND**  
Jobs Development Authority

\_\_\_\_\_  
By: Alex Reichert  
Its: Board President  
Dated: \_\_\_\_\_

\_\_\_\_\_  
By: Danny Weigel  
Its: Chairperson  
Dated: \_\_\_\_\_