

DRAFT: 10/06/09

AIR RIGHTS LEASE AGREEMENT

THIS AIR RIGHTS LEASE AGREEMENT (the “Lease”) is made and entered into as of _____, 2009 (the “Commencement Date”) by and between the **TOWN OF CHAPEL HILL**, a North Carolina municipal corporation (“Landlord”), and **THE CHAPEL HILL-CARRBORO CHILDREN’S MUSEUM**, a North Carolina corporation d/b/a Kidzu Children’s Museum (“Tenant”).

RECITALS:

A. Landlord is the owner of the parking deck known as the James C. Wallace Parking Plaza (the “Parking Deck”), which Parking Deck is located at 150 E. Rosemary Street in the Town of Chapel Hill, Orange County, North Carolina. The Parking Deck is situated on that certain land described on Exhibit A attached hereto and incorporated herein by this reference (together with the appurtenances thereto, the “Land”).

B. Landlord has agreed to lease to Tenant, and Tenant has agreed to take and lease from Landlord, the Premises (as hereinafter defined) on the terms and conditions set forth in this Lease.

WITNESSETH:

NOW, THEREFORE, in consideration of the rents to be paid, the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I: PREMISES

Section 1.1 Description of the Premises. Landlord hereby demises and rents unto Tenant, and Tenant hereby rents and hires from Landlord, the air rights parcel described on Exhibit A-1 attached hereto and incorporated herein by this reference, which generally contains the plaza level (rooftop) of the Parking Deck, less and except the “Southeast Corner” as defined below, and the air space extending eighty (80) feet above such portion of the plaza level (together with the appurtenances hereinafter described in this Article, the “Premises”). The site plan attached hereto as Exhibit B and incorporated herein by this reference identifies certain portions of the plaza level of the Parking Deck as the “Northeast Corner” and the “Southeast Corner”. The Northeast Corner is included within the Premises demised herein and, subject to the provisions of Section 1.3 below, the Southeast Corner is excluded from the Premises demised herein. Contemporaneously with Tenant’s application for a special use permit allowing the use of the Premises for the purposes set forth in this Lease, a subdivision plat creating an air rights parcel of the Premises as a legally subdivided lot, separate from the remainder of the Land, shall

be submitted by Landlord to the Town of Chapel Hill Planning Department for review and approval at Landlord's sole cost and expense.

TOGETHER WITH a non-exclusive easement over, under, across, upon and through those portions of the Parking Deck reasonably necessary for (i) the construction, installation, operation, use, maintenance, repair, replacement and reconstruction of the museum building and associated improvements, structural components, caissons, columns, piers, conduits, chutes, stairwells, elevators, pipes, chases, wires, building components, utility facilities (including, without limitation, plumbing, electrical, telephone, water, heating, ventilating, air conditioning, cooling, gas, heating and communication cables), and all other facilities serving or intended to serve the improvements to be constructed on the Premises by Tenant (the "Improvements") and (ii) vertical, horizontal, subterranean, lateral and subjacent subsistence and support for the use, maintenance, repair and replacement of the Improvements, and for the attachment of the Improvements to all columns, piers, footings, caissons, girders, beams, foundations, slabs and other supports, supporting structures and appurtenances to the Parking Deck as are necessary or appropriate in connection with the construction, maintenance, repair and replacement of the Improvements.

TOGETHER WITH a non-exclusive easement over, under, across, upon and through all elevators, driveways, ramps, walkways, sidewalks and stairways located within the Parking Deck and Land for pedestrian and vehicular access, ingress, egress and regress to and from the Premises.

Section 1.2 Reservation of Landlord's Right to Use the Premises. (a) Prior to such time as Tenant commences construction of its intended Improvements on the Premises, Landlord reserves the right to use the Premises for public and private events and functions (each a "Town Event" and collectively, "Town Events").

(b) After such time as Tenant opens its museum to the public within the Premises, Landlord may from time to time use the Northeast Corner for Town Events outside of Tenant's business hours; provided, however, that (i) Landlord shall give Tenant at least sixty (60) days written notice of Landlord's use of the Northeast Corner for any such Town Event, (ii) Tenant shall approve such use of the Northeast Corner for the requested Town Event in writing (such approval not to be unreasonably withheld, conditioned or delayed) and (iii) Landlord shall either reimburse Tenant for the actual and reasonable costs incurred by Tenant to secure and clean the Northeast Corner during the Town Event or Landlord shall make arrangements to provide its own cleaning and security services, which arrangements shall be approved in writing by Tenant (such approval not to be unreasonably withheld).

(c) In the event Landlord uses any portion of the Premises during the Term hereof in accordance with subparagraphs (a) and (b) above, Landlord shall to the extent allowed by law indemnify, defend and hold harmless Tenant, its members, managers, shareholders, directors, officers, employees and agents, against any loss, liability, cost, claim, demand, damage, action, cause of action or suit arising out of or in any manner relating to such use of the Premises by Landlord; provided, however, that nothing herein contained shall constitute or be construed as a

waiver of Landlord's governmental immunity. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

Section 1.3 Tenant's Right to Use the Southeast Corner. (a) As stated above in Section 1.1, the parties acknowledge and agree that the Southeast Corner is excluded from the Premises demised to Tenant herein. Landlord hereby covenants and agrees that, during the entire Term of this Lease, (i) Landlord shall maintain the Southeast Corner, at Landlord's sole cost and expense, (ii) Landlord shall not develop (or permit the development of) permanently enclosed, habitable buildings containing in excess of five percent (5%) of the land area of the Southeast Corner and (iii) Landlord shall, at its sole cost and expense, provide standard policing of the Southeast Corner, and if security issues arise after Tenant opens its museum to the public, Landlord will consider in good faith any requests reasonably made by Tenant to increase the security provided by Landlord to the Southeast Corner.

(b) Landlord acknowledges that Tenant intends to utilize the Southeast Corner on a regular basis for museum related programming and other events during museum business hours, subject to the rights of other members of the general public to also use the Southeast Corner for general recreation purposes. Landlord agrees that it shall not, at any time during the Term of this Lease, reserve (for use by Landlord or a related agency or entity) or permit the reservation of the Southeast Corner by another party for an event or for event set up during Tenant's business hours (thereby restricting the use of the Southeast Corner by Tenant during such event) without first providing Tenant with at least sixty (60) days notice of such event reservation. Tenant shall be subject to the same rules and regulations that may apply to other members of the general public with respect to usage of the Southeast Corner, and Tenant shall be responsible for promptly removing any litter or other refuse that may accumulate in the Southeast Corner as a result of Tenant's activities therein.

(c) In the event Tenant uses any portion of the Southeast Corner during the Term hereof in accordance with subparagraphs (a) and (b) above, Tenant shall indemnify, defend and hold harmless Landlord, its members, managers, shareholders, directors, officers, employees and agents, against any loss, liability, cost, claim, demand, damage, action, cause of action or suit arising out of or in any manner relating to such use of the Southeast Corner by Tenant. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

ARTICLE II: TERM OF LEASE

Section 2.1 Term. The term of this Lease (the "Term") shall commence on the Commencement Date and expire on 11:59 p.m. on the date that is ninety-nine (99) years following the Commencement Date unless sooner terminated in accordance with the terms and conditions set forth herein.

Section 2.2 Early Termination Right. Notwithstanding anything to the contrary set forth in this Lease, Tenant shall have the right to terminate this Lease at any time prior to the expiration of the Term hereof for any reason or no reason by providing written notice of such termination to Landlord at least sixty (60) days prior to the effective date thereof. In the event

Tenant elects to terminate this Lease after construction has commenced but before a certificate of occupancy has been issued for the improvements constructed by Tenant on the Premises, then Landlord may require Tenant to raze, clear and dispose of such improvements at Tenant's cost and expense.

Section 2.3 Lease Year. The first "Lease Year" shall begin on the Commencement Date and end twelve months after the last day of the calendar month in which the Commencement Date occurs. The second and successive "Lease Years" shall be the consecutive twelve-month periods that follow during the Term.

ARTICLE III: RENT

Section 3.1 Base Rent. Tenant shall pay to Landlord, annually in advance, commencing on the Commencement Date and continuing on the first day of each Lease Year during the Term, the amount of One and No/100 Dollars (\$1.00) ("Base Rent"). Landlord hereby acknowledges that Tenant has prepaid the Base Rent for the entire Term of this Lease and that no additional Base Rent shall be due and payable hereunder.

Section 3.2 Additional Rent. Except as otherwise provided herein, Tenant shall also pay without notice, except as may be required in this Lease, and without abatement, deduction or set-off, as additional rent, all sums, Impositions (as defined in Article IV hereof), costs, expenses and other payments that Tenant in any of the provisions of this Lease assumes or agrees to pay, and, in the event of any nonpayment thereof, Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided for herein or by law or in equity.

Section 3.3 Past Due Charges. If Tenant shall fail to pay within ten (10) days following the due date any charges or fees to be paid by Tenant hereunder, such unpaid amounts shall bear a late charge equal to the greater of five percent (5%) of the overdue amount or One Hundred Dollars (\$100.00).

ARTICLE IV: PAYMENT OF TAXES, ASSESSMENTS AND IMPOSITIONS

Section 4.1 Responsibility for Taxes, Assessments and Impositions. At present, Landlord is a municipality, and therefore no ad valorem taxes are being assessed against the Land or the Parking Deck as of the Commencement Date. Tenant shall pay or cause to be paid directly to the taxing authority, before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all ad valorem taxes, water and sewer rents, rates and charges, levies, license and permit fees and other governmental charges (the foregoing being hereinafter referred to as "Impositions", and any of the same being hereinafter referred to as an "Imposition") assessed against the Premises and any Improvements constructed thereon.

Section 4.2 No Income Taxes. Nothing herein contained shall require Tenant to pay municipal, state or federal income taxes assessed against Landlord, municipal, state or federal capital levy, gift, estate, succession, inheritance or transfer taxes of Landlord.

Section 4.3 Right to Contest. Tenant shall be privileged to seek a reduction in the valuation of the Premises for tax purposes and to contest in good faith by appropriate proceedings, at Tenant's expense, the amount or validity in whole or in part of any Imposition; and may defer payment thereof, provided that Tenant shall deposit with Landlord or the appropriate governmental authority, as provided by applicable law, a sum which shall be at least equal to the amount of the item so contested, and also, from time to time, on demand of Landlord, such additional sum as may be reasonably required to cover interest or penalties accrued or to accrue on any such item or items.

ARTICLE V: USE OF THE PREMISES; IMPROVEMENTS; PLAN APPROVAL

Section 5.1 Use of the Premises. During the Term of this Lease, the Premises may be used for any or all of the following purposes: (a) a not-for-profit children's museum with outdoor displays and exhibits, together with accessory retail uses related to such children's museum, including, without limitation, the operation of a snack bar and a gift shop; (b) for profit business uses that provide services incidental to the use of the Premises as a children's museum, provided such business uses do not collectively occupy more than 25% of the square footage of the museum building at any time and are otherwise lawful and in accordance with this Lease; (c) a workshop area in connection with the construction of outdoor displays and exhibits related to a children's museum, provided such workshop area does not occupy more than 20% of the square footage of the museum building at any time and is otherwise lawful and in accordance with this Lease; (d) offices for admissions, administration and other general office purposes incidental to any of the foregoing permitted uses; and (e) any use by another non-profit entity to which Landlord has consented pursuant to the provisions of Section 13.1 below. Any other use of the Premises shall require Landlord's prior written consent. Notwithstanding anything set forth herein to the contrary, all uses of the Premises shall comply with the Town of Chapel Hill zoning and other ordinances.

Section 5.2 Improvements. (a) At any time during the Term of this Lease, but subject to the provisions of Section 5.3 below, Tenant shall have the right to construct, operate, maintain, repair and replace within the Premises any structures or outdoor displays and exhibits permitted under the Town of Chapel Hill building code and zoning ordinances. Without any limitation of the foregoing or Section 5.3 below, Landlord acknowledges and agrees that, provided that the Parking Deck may continue to be used as a parking facility on the lower levels, Landlord shall not unreasonably withhold, condition or delay its consent to modifications of the portion of the plaza level of the Parking Deck included within the Premises, so long as such modifications are made at Tenant's sole cost and expense and are otherwise lawful and in accordance with this Lease. Upon Landlord's approval of plans and specifications pursuant to Section 5.3 below, Tenant shall be entitled to demolish existing improvements and remove any landscaping, trees, plants, masonry faced walls, planters and pavers within the portion of the plaza level of the Parking Deck that is included within the Premises. All alterations, improvements and renovations of the Premises shall be performed in compliance with all applicable laws and in a good and workmanlike manner.

(b) Notwithstanding the provisions of subparagraph (a) above, Tenant agrees that no buildings may be constructed in the Northeast Corner. Tenant intends to utilize the Northeast Corner for outdoor exhibits, programming and related amenities.

(c) Tenant shall not be permitted to block or interfere with any of the parking spaces on the lower levels of the Parking Deck without the prior written approval of Landlord, which approval may be withheld in Landlord's sole and absolute discretion and may be conditioned upon Tenant's reimbursement to Landlord of any parking revenues that are actually lost during the period of interference. Notwithstanding the foregoing, Tenant may, without Landlord's consent (and without any reimbursement to Landlord for lost parking revenue), temporarily block a limited number of parking spaces on the lower levels of the Parking Deck if Tenant's contractors or engineers determine, in their reasonable discretion, that such measures are necessary to ensure the safety of users of the Parking Deck during Tenant's construction activities. In the event Tenant temporarily blocks spaces, then Tenant must (i) notify Landlord in advance of the location and number of parking spaces to be blocked (which shall not exceed five (5) spaces without Landlord's written consent) and the period of time such spaces cannot be used (which shall not exceed twenty-four (24) hours without Landlord's written consent), (ii) use commercially reasonable efforts to minimize any disruption to the operation of the Parking Deck and (iii) remove the barriers to the affected parking spaces as soon as reasonably possible.

(d) The parties acknowledge that Tenant may desire, either in connection with its initial development of the museum or subsequent development phases, to construct a pedestrian bridge connecting the plaza level of the Parking Deck to the Bank of America Plaza. Landlord agrees to cooperate in good faith with Tenant's efforts to secure the third party approvals that would be necessary to construct such a pedestrian bridge.

(e) Landlord acknowledges that applicable building codes and other governmental requirements may require that Tenant construct and install an additional stairway and/or elevator on the west side of the Parking Deck in connection with Tenant's intended development of the Premises (the "New Stairway"). If required, the New Stairway shall be constructed at Tenant's sole cost and expense in compliance with all terms and conditions contained in this Lease regarding the construction of Improvements; provided, however, it is expressly agreed by the parties that the New Stairway shall be deemed to be part of the Parking Deck, through which Tenant shall have a non-exclusive easement for ingress, egress and regress to and from the Premises pursuant to Section 1.1 of this Lease. Subject to its approval of plans and specifications and Tenant's compliance with the construction requirements of this Lease, Landlord consents to the construction and installation of the New Stairway and covenants to maintain any the New Stairway in the manner required by Section 6.1 of this Lease.

(f) Landlord acknowledges that Tenant may, at some point in the future, request the right to construct, operate and install a private elevator (with associated street level signage) along the exterior wall of the Parking Deck facing Rosemary Street (the "Exterior Elevator"). Subject to its approval of plans and specifications and Tenant's compliance with the construction requirements of this Lease, Landlord hereby approves an Exterior Elevator in concept. In the event an Exterior Elevator is constructed, it is expressly agreed that such Exterior Elevator shall

be maintained by Tenant and that Tenant may, to the extent permitted by local code and other governmental laws, rules and regulations, design and operate the Exterior Elevator to permit access only to the plaza level of the Parking Deck for use exclusively by Tenant and its agents, employees, guests and invitees. The Exterior Elevator shall become a part of the Premises by the recording of a recombination plat in accordance with applicable law, which recombination plat shall be prepared by Tenant and its sole cost and expense, and shall be subject to the reasonable approval of Landlord.

(g) Tenant covenants and agrees to use commercially reasonable efforts to design and construct the museum building consistent with the requirements for LEED certification.

Section 5.3 Construction Matters. (a) Plan Approval. Notwithstanding anything to the contrary set forth in this Lease, Tenant may not construct any Improvements unless and until the Plans (as hereinafter defined) for such Improvements have been approved in writing by Landlord (which approval may not be unreasonably withheld, conditioned or delayed) in accordance with the procedures outlined in this Section 5.3. Notwithstanding anything to the contrary set forth in this Section 5.3 or elsewhere in this Lease, Tenant shall not be required to obtain Landlord's approval of plans for any indoor exhibits, outdoor exhibits or related amenities. Tenant shall, at Tenant's own cost and expense, engage a licensed architect and/or engineer reasonably acceptable to Landlord to prepare plans, specifications, elevations, rendered architectural perspectives and working drawings for any proposed Improvements (collectively, the "Plans") and shall cause a copy of such Plans to be sent to Landlord. Within thirty (30) days after Landlord's receipt of the Plans, Landlord shall deliver a written notice to Tenant of Landlord's approval, not to be unreasonably withheld, conditioned or delayed, or any detailed objections Landlord may have to the Plans. If Landlord does not deliver such written notice to Tenant during the aforesaid thirty (30) day period, then the Plans shall be deemed approved without further action by either party. If Tenant submits any corrective amendments to the Plans to Landlord in accordance with objections by Landlord, Landlord shall respond to Tenant in writing of Landlord's approval or disapproval of such corrective amendments within twenty (20) days. If Landlord does not deliver such written notice to Tenant during the aforesaid twenty (20) day period, then the corrective amendments shall be deemed approved without further action by either party. In no event shall Landlord's approval of any design or construction document or specification constitute a representation that the matter approved is in compliance with any applicable code, law or regulation. The plans and specifications approved in writing by Landlord are hereinafter referred to as the "Approved Plans".

(b) Construction Contract/Schedule/Reports. Tenant's general contractor and its proposed construction contract(s) for the Improvements shall be subject to the prior review and approval of Landlord, such approval not to be unreasonably withheld, conditioned or delayed. The construction contract shall contain such terms and conditions as shall be mutually satisfactory to Tenant and the general contractor or construction manager, but shall include the following: (i) where reasonably possible and cost effective under the circumstances, a lump sum or guaranteed maximum price for the development, construction, equipping and completion of the Improvements (or the relevant portion thereof governed by such construction contract) so as to minimize the Tenant's risk of cost overruns; (ii) a guaranty of substantial completion not later than a scheduled completion date reasonably acceptable to Landlord; (iii) a provision for a payment and performance bond in the full amount of the price for the work covered thereby in a

form reasonably acceptable to Landlord, with Tenant, Landlord and, if required, Tenant's lender being named as primary insureds and beneficiaries on all such bonds; (iv) a provision for liquidated damages in the event of a delay in substantial completion beyond the scheduled completion date, in an amount and on terms reasonably acceptable to Landlord and Tenant; (v) appropriate retention amounts; (vi) a provision for the receipt of lien waivers and releases from all construction contractors and their subcontractors; (vii) a requirement that, subject to industry standard, each construction contractor certify in writing that no materials used in the work contain lead, asbestos materials or other Hazardous Materials in excess of amounts allowed by applicable law, including any Environmental Laws; (viii) a requirement that each construction contractor comply with all applicable laws, including Environmental Laws; (ix) a requirement that the construction contractor maintain the insurance required by Section 10.1(a), Section 10.1(c) and Section 10.1(d) hereof, with Landlord named as an additional insured as its interest may appear if appropriate; and (x) a requirement that all construction work shall comply with the Approved Plans.

As part of the construction contract, Tenant and its general contractor shall develop a schedule (the "Schedule") with appropriate milestones providing for substantial completion of the Improvements by the approved scheduled completion date. The Schedule shall include time for adverse weather conditions to the extent normally encountered in the Chapel Hill, North Carolina area and the impact thereof, delineate all phases of the pre-construction work and the construction work and set forth a projected date for completion of each phase in sufficient detail to allow Landlord to monitor progress of the construction. The Schedule shall indicate the projected dates for the starting and completion of the various stages of design and construction and shall be revised as required by the progress and condition of the work. Upon Landlord's request (which requests may not be made frequently than monthly), Tenant shall provide written reports to Landlord on a regular basis. Such written reports shall describe the status of the design and construction of the Improvements, any revisions to the Schedule, the estimated percentage of completion, and will include copies of (i) any reports Tenant has received from its architect or general contractor since the date of the last progress report delivered to Landlord; (ii) the most recent certification from the architect, if such a certification is available; and (iii) such other relevant information as Landlord shall reasonably request.

(c) Construction of Improvements. Tenant may not commence construction of any Improvements unless and until: (i) Landlord has approved the Approved Plans for such Improvements in writing; (ii) Tenant has obtained a building permit for the construction of such Improvements; (iii) certificates of all insurance coverages required to be carried by Tenant have been delivered to Landlord; and (iv) Tenant has delivered to Landlord a contractor's "Payment and Performance Bond" in favor of Landlord as obligee, on the current AIA forms then in use or other forms reasonably acceptable to Landlord, issued by a surety company licensed as a surety in the State of North Carolina, guaranteeing completion of the Improvements in accordance with the Approved Plans free of liens and security agreements. Any Improvements constructed upon the Premises shall be constructed in accordance with the Approved Plans. Upon at least 48 hours written notice to Tenant, Landlord may designate a representative to inspect the Premises during construction of the Improvements (provided that Tenant shall have the right to designate a Tenant representative to accompany Landlord's representative during any such inspection), and if Landlord determines Tenant's construction is not being done in accordance with the Approved

Plans, Tenant shall correct any deficiencies or omissions promptly. After completion of the Improvements, any subsequent changes or modifications to the Improvements from the Approved Plans or subsequent renovations of the Improvements (except for interior, non-structural alterations) must be approved by Landlord in writing, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, Tenant shall not be required to obtain Landlord's approval of plans for indoor exhibits, outdoor exhibits or related amenities. Prior to opening for business, Tenant shall obtain and deliver to Landlord: (i) a certification by Tenant's architect or engineer that the Improvements has been completed in substantial accordance with the Approved Plans, and (ii) Tenant's affidavit that all work, labor and materials have been paid for in connection with the construction of the Improvements. All work required in connection with the construction of the Improvements shall be performed only by competent contractors licensed under the laws of the State of North Carolina and shall be performed in accordance with written contracts with those contractors. Each such contract shall require the contractors to indemnify, defend and hold Landlord harmless against all claims, damages, losses and expenses, including attorneys' fees, arising out of the construction work and shall further require such contractors to name Landlord as an additional insured in all liability insurance policies maintained by such contractors for the duration of the construction period. Prior to the commencement of construction of any Improvements, Tenant shall deliver or cause to be delivered to Landlord certificates of insurance from each such contractor evidencing compliance with the provisions of Section 5.3(b) and a copy of Tenant's contract with each general contractor engaged for the construction of the Improvements, and with each separate contractor engaged by Tenant to perform services in connection therewith for consideration in excess of Fifteen Thousand Dollars (\$15,000.00). Tenant shall also deliver or cause to be delivered to Landlord copies of Tenant's contracts with any other contractors upon Landlord's written request therefor. Upon completion of construction of any Improvements, Tenant shall furnish Landlord a copy of the as-built plans for such Improvements.

Section 5.4 Construction Staging. (a) Landlord hereby agrees that in the event the Town of Chapel Hill's Planning Department (the "Planning Department") approves Tenant's request to stage its construction activities on the plaza level of the Parking Deck, then during the entire period of Tenant's construction of the Improvements, Tenant shall have the exclusive right to use the entire plaza level of the Parking Deck (including the Southeast Corner) for construction staging, and Tenant is hereby granted an exclusive easement for construction, access, ingress and egress to and from the Southeast Corner for such purpose until Tenant's construction activities have been completed. No other use may be permitted on the plaza level of the Parking Deck during Tenant's construction activities. If so approved by the Planning Department, Tenant shall take appropriate measures to blockade the entire plaza level of the Parking Deck from use by the public; provided, however, that if required by local code, Landlord or the Planning Department, Tenant shall take measures to ensure that a fenced walkway remains open to the public to provide access from the ADA elevator to the ramp on the plaza level of the Parking Deck during Tenant's constructions activities.

(b) In the event the Planning Department denies Tenant's request to stage its construction activities on the plaza level of the Parking Deck, then during construction of the Improvements, Tenant shall erect good and sufficient fences, barricades and screens so as to block off areas under construction in the Premises, but which shall not interfere with free and

continuous ingress and egress to or from the Land, or unobstructed access across the driveways and thruways within the Parking Deck.

(c) Tenant agrees to conduct its construction activities expeditiously, to perform all construction within the fenced-off areas of the Premises described above in this Section 5.4, and to keep all other portions of the Land and Parking Deck free from all encroachments of materials, equipment and/or personnel employed in such construction and to, insofar as is reasonably possible, perform such construction so as to avoid any interference with the use of the Parking Deck.

(d) Upon request, Landlord shall grant Tenant the right to utilize construction staging areas proximate to the Premises during Tenant's construction of the Improvements in locations reasonably acceptable to Landlord and Tenant provided that such staging areas shall be relocated from time to time at Landlord's request, and Tenant shall maintain such staging areas in a neat and safe condition.

Section 5.5 Ownership of Improvements. During the Term of this Lease, Tenant shall enjoy full ownership of the Improvements.

Section 5.6 Reversion of Improvements. Notwithstanding any other provisions set forth in this Lease, upon the expiration or earlier termination of this Lease, ownership of the Improvements shall revert to Landlord and Tenant shall have no further rights or interest thereto.

Section 5.7 Landlord's Cooperation. Landlord shall not initiate, or approach the state or any other governmental entity to seek, a rezoning, special use permit modification or other governmental action that may alter the zoning designation for the Premises or that would alter any development rights relating to the Premises. Tenant shall have the right to seek a rezoning, special use permit modification, variance or waiver of any other requirement relating to the use, improvement or operation of the Premises, or any portion thereof, in a manner consistent with the provisions of this Lease. Landlord agrees to cooperate with Tenant in any effort by Tenant to obtain any such rezoning, special use permit modification or variance with respect to the Premises. Furthermore, Landlord agrees to cooperate with Tenant if Tenant desires to seek or obtain any development or other rights with respect to the Premises consistent with the provisions of this Lease. Landlord's cooperation shall in all events include the execution (within fifteen (15) days of receipt of a written request therefor) of any petitions, applications or similar items Landlord is reasonably required to execute as the owner of fee simple title to the Premises.

Section 5.8 Compliance with Laws. Tenant shall be responsible for obtaining all permits and licenses required by the Town of Chapel Hill for the construction of Tenant's intended improvements. Tenant shall maintain and conduct its business in such a manner as to comply with any and all governmental and/or quasi-governmental laws, rules, regulations, ordinances and orders. Nothing herein shall constitute a contractual modification of the Town of Chapel Hill's independent police power authority under its land use laws and applicable ordinances.

Section 5.9 Nuisance. Tenant shall not permit the Premises to become a public or private nuisance and will not maintain any nuisance on the Premises.

Section 5.10 Landlord's Recapture Rights. Landlord shall have the option to terminate this Lease upon the occurrence of any of the following events:

(a) Construction of the Improvements has not commenced within four and one-half (4.5) years after the Commencement Date of this Lease;

(b) Tenant has not opened the Premises to the public within seven (7) years after the Commencement Date of this Lease;

(c) If, after such time Tenant has opened a children's museum on the Premises to the public, Tenant shall cease museum operations in the Premises for a period of four (4) consecutive months. For purposes of the preceding sentence, the failure to keep the museum open to the public for at least 20 hours in a calendar week shall constitute a cessation of museum operations for that calendar week.

The foregoing events are hereinafter referred to as "Recapture Events".

Landlord may exercise this termination right by notifying Tenant in writing of its intention to terminate this Lease at any time after the occurrence of a Recapture Event. This Lease will be deemed canceled and of no further force and effect on the date that is ninety (90) days after the date on which Tenant receives such notice from Landlord unless Tenant cures such Recapture Event within such ninety (90) day period. If this Lease is terminated because of the occurrence of a Recapture Event after construction has commenced but before a certificate of occupancy has been issued for the improvements constructed by Tenant on the Premises, then Landlord may require Tenant to raze, clear and dispose of such improvements at Tenant's cost and expense, which obligation shall survive termination of the Lease.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred under the following circumstances:

- (i) Tenant's cessation of business operations as a result of condemnation, damage to or destruction of the Improvements, provided that Tenant commences its restoration work within one hundred eighty (180) days after the date that Tenant has received (x) its building permit (which shall be applied for by Tenant within one hundred eighty (180) days after the date the casualty occurs) and (y) Landlord's approval of its plans and specifications for the reconstructed Improvements (which shall be submitted to Landlord within one hundred eighty (180) days after the date the casualty occurs), and reopens to the public not later than two (2) years after such work is commenced; or
- (ii) Tenant's cessation of business operations for a period not to exceed one (1) year due to remodeling, expansion or other renovations to the Improvements or a major exhibit renovation. Tenant shall use good faith reasonable efforts

to notify Landlord in advance of any required cessation of business operations due to a scheduled remodeling, expansion or other renovations to the Improvements or a major exhibit renovation.

Section 5.11 Financing Condition. Prior to Tenant's commencement of construction on the Premises, Tenant shall provide written evidence to Landlord, in form and substance reasonably acceptable to Landlord, that Tenant has obtained actual or committed funds (through actual contributions, pledges for contributions, debt financing or a combination thereof) equal to 100% of the Estimated Budget (as hereinafter defined) to complete construction of a museum building substantially in accordance with the Approved Plans, provided that committed funds may not constitute more than fifty percent (50%) of the Estimated Budget. For purposes of the foregoing, a "committed fund" shall mean a written pledge from a person or entity to contribute funds to Tenant over a period of not more than five (5) years for the purpose of funding the construction of the museum building. The "Estimated Budget" shall mean the total construction cost for the museum building as specified in the permit issued by The Town of Chapel Hill (or an affiliated governmental agency such as a planning board or building department) in connection with the Approved Plans or, in the event the permit does not specify such construction cost, the Estimated Budget shall be stipulated in writing by Tenant's general contractor, which stipulation shall be binding on Landlord and Tenant.

Section 5.12 Project Coordinators. Each party shall designate in writing to the other party the name of the individual who is to be its "Project Coordinator" (and an alternate) with full power and authority to execute on behalf of such party any and all instruments, consents and approvals contemplated by the terms of this Lease. The Project Coordinators shall represent the interests of the Landlord and Tenant, respectively, and be responsible for overseeing all aspects of the design, construction and development of the Improvements as contemplated by this Lease. Any written consent, approval, decision or determination hereunder by the Tenant's Project Coordinator shall be binding on Tenant, and any written consent, approval, decision or determination hereunder by the Landlord's Project Coordinator shall be binding on Landlord; provided, however, the Project Coordinators shall not have any right, power or authority to modify, amend or terminate this Lease. All access of Tenant and its agents, employees and professionals to Landlord, its consultants and advisors, shall be coordinated through the Landlord's Project Coordinator. Tenant understands that in order to secure priority treatment Tenant must apply for expedited review in accordance with existing requirements and procedures in place in the Town of Chapel Hill. Landlord hereby initially designates _____ as its Project Coordinator and _____ as its alternate. Tenant hereby initially designates _____ as its Project Coordinator and _____ as its alternate. Each party shall have the right, from time to time, to change the person who is its Project Coordinator, by giving the other such party written notice of the proposed change and designating the new project coordinator, provided, however, that the parties agree to use all commercially reasonable efforts to maintain consistency in its Project Coordinator.

ARTICLE VI: REPAIRS AND MAINTENANCE

Section 6.1 Maintenance by Landlord. During the Term hereof, subject to the provisions of Section 6.3 below, Landlord, at Landlord's sole cost and expense, shall maintain

and keep in good repair and working order, and replace, as necessary, the Parking Deck, including, without limitation, all elevators and electrical systems serving the Parking Deck (excluding, however, the Improvements). Landlord shall provide, at its sole cost and expense, routine maintenance of the Parking Deck, which maintenance duties shall include (i) replacement of light bulbs, (ii) replacement of broken glass, (iii) regular sweeping, power washing and debris removal from the Parking Deck floors, driveways, ramps, sidewalks and entrance and exit areas as needed, (iv) regular cleaning and sweeping of the elevators serving the Parking Deck and replacement of any carpeting in such elevators as needed (but no less frequently than once in each two year period), (v) inspection and recharging as necessary of fire extinguishers, (vi) floor striping and curb painting, (vii) routine maintenance of electric signs, if any, (viii) repair and maintenance of all fixtures, including any heating and air conditioning units and external mechanical equipment, and (ix) snow and ice removal on the driveway and sidewalks on the exterior of the Parking Deck as needed. Furthermore, on an annual basis, Landlord shall conduct its own inspection of the Parking Deck and, every five (5) years, Landlord shall commission an independent structural engineer or other qualified professional to perform a structural analysis of the Parking Deck. The purpose of such inspections shall be to identify repairs and replacements necessary to maintain the structural integrity of the Parking Deck, which shall include preventative measures to address water damage and corrosion. Subject to Section 6.3 below, Landlord agrees to make all repairs and replacements recommended by such inspections. Tenant shall promptly report to Landlord any defective condition known to it that Landlord is required to repair. If any maintenance, repairs or replacements required to be made by Landlord under this Lease are not completed within thirty (30) days following receipt of written notice from Tenant that such repairs are necessary, or in the event of an emergency if such repairs are not made as soon as feasible, then Tenant shall have the right (but not the obligation) to perform the necessary maintenance, repairs or replacement on behalf of and at the expense of Landlord. Landlord shall pay to Tenant the reasonable costs of such repairs within thirty (30) days after written demand therefor. Notwithstanding the foregoing, Tenant shall be obligated for the reasonable costs of such maintenance, repair or replacement to the extent such work is necessitated by the negligence or willful misconduct of Tenant or its employees, agents or contractors, with reimbursement to be made within thirty (30) days following Landlord's submission to Tenant of invoices or other reasonable evidence of costs incurred.

Section 6.2 Maintenance by Tenant. During the Term hereof, Tenant, at Tenant's sole cost and expense, shall keep the Improvements clean and in sanitary condition as required by the laws, rules, regulations or ordinances, and the health, sanitary and police regulations of any governmental unit having jurisdiction over the Premises. Tenant agrees to maintain the exterior of the Improvements throughout the Term in good condition and repair, normal wear and tear, damage by storm, fire, lightning, earthquake and other casualty excepted. If any maintenance or repairs required to be made by Tenant under this Lease are not completed within thirty (30) days following receipt of written notice from Landlord that such repairs are necessary, or in the event of an emergency if such repairs are not made as soon as feasible, then Landlord shall have the right (but not the obligation) to enter upon the Premises and make the necessary repairs on behalf of and at the expense of Tenant. Tenant shall pay to Landlord the reasonable costs of such repairs within ten (10) days after written demand therefor, as additional rent.

Section 6.3 Obligations and Procedures to Address Extraordinary Repair Needs.

(a) If, after January 1, 2049, Landlord determines that the Parking Deck has deteriorated in its structural integrity to the point where its continued functioning for the storage of motor vehicles, on all levels designed for such purposes, may be compromised, Landlord may, at its sole expense, commission a structural analysis to be carried out by an independent structural engineer or other qualified professional. In the event the results of this analysis indicate that the Parking Deck has been compromised due to its age and deteriorated condition such that it cannot continue to function for its full intended purposes without further repairs and improvements costing in excess of 35% of its then current replacement cost, Landlord shall report this information to Tenant.

(b) If, after January 1, 2059, Landlord determines that the Parking Deck has deteriorated in its structural integrity to the point where its continued functioning for the storage of motor vehicles, on all levels designed for such purposes, may be compromised, Landlord may, at its sole expense, commission a structural analysis to be carried out by an independent structural engineer or other qualified professional. In the event the results of this analysis indicate that the Parking Deck has been compromised due to its age and deteriorated condition such that it cannot continue to function for its full intended purposes without further repairs and improvements costing in excess of 20% of its then current replacement cost, Landlord shall report this information to Tenant.

(c) In the event that Landlord reports that its structural analysis indicates that the Parking Deck has been compromised as set forth in either paragraph (a) or paragraph (b) above, Tenant shall have the option to accept the results of Landlord's report or, within sixty (60) days of receiving the report, notify Landlord of its request that a second such study be conducted. If a second study is conducted, then Tenant shall, in its reasonable discretion, choose the independent structural engineer or other qualified professional to conduct the second study and Tenant shall be responsible for the cost of such second study. If Tenant does not request a second study within the aforesaid sixty (60) day period, or if conducted the second study confirms the conclusion of the first study, then the provisions of paragraph (d) shall apply. If the results of the second study contradict the conclusions of the first study, Landlord and Tenant shall share equally in the cost of a third study, with the selection of the independent structural engineer or other qualified professional to perform the third study to be made by agreement of the analysts that performed the first two studies. If two of the three studies indicate that the repair costs do not exceed the amount established in paragraph (b), then Landlord shall be obligated to make the repairs or, at a minimum, such repairs as may be necessary to allow Tenant to continue to operate its facilities and Landlord to perform its obligations as set forth in this Lease. If two of the three studies indicate that the repair costs exceed the amount in paragraph (b), then the provisions of paragraph (d) shall apply.

(d) If the provisions of this paragraph (d) become applicable as outlined above in paragraph (c), then Landlord may elect to redevelop the site, in which event Landlord may terminate this Lease by providing written notice of such termination to Tenant, which notice shall be sent to Tenant with as much notice of the termination as is reasonably possible under the circumstances (provided that a minimum of twelve (12) months notice of the termination must be given). Notwithstanding anything to the contrary set forth in this Lease, if Landlord terminates

this Lease pursuant to this paragraph (d), then in no event may Landlord occupy (or permit others to occupy) any Improvements constructed by Tenant on the Premises after the effective date of the termination of this Lease.

(e) If this Lease is terminated due to the provisions of this Section, Landlord shall use good faith and reasonable efforts in any redevelopment planning, and shall invite Tenant to participate in said planning, to arrange for the incorporation of the Tenant's facilities in any reconstructed development on the site.

(f) Except as explicitly set forth in this Section 6.3, Landlord shall be obligated to maintain the Parking Deck in accordance with the requirements of Section 6.1 above during the entire Term of this Lease.

ARTICLE VII: UTILITIES

Tenant shall pay for all utility services to the improvements constructed by Tenant on the Premises, including, without limitation, gas, electricity, telephone, water and sewer.

ARTICLE VIII: LIENS; COMPLIANCE WITH LAWS; COOPERATION

Section 8.1 Liens. In the event that any lien is recorded or filed against the Premises as a result of work performed or materials furnished at the request of or on behalf of Tenant, Tenant shall, within thirty (30) days after learning of such filing, cause the same to be released and discharged of record. Should Tenant contest any such claim or lien, Tenant may do so only if within such thirty (30) day period, Tenant causes the lien to be released and discharged of record by the posting of adequate security with a court of competent jurisdiction and obtaining a court order releasing the lien, as may then be provided by North Carolina's mechanic lien statutes. Tenant shall defend on behalf of Landlord, at Tenant's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien, liens or orders, and Tenant will pay any damages and discharge any judgment entered therein and hold Landlord harmless from any loss, claim or damage resulting therefrom, including reasonable attorneys' fees. In the event Tenant fails to cause such lien to be released of record after written request from Landlord, Landlord may, at its option (but shall not be obligated to), pay the amounts claimed, and all amounts so paid, plus all costs and expenses incurred by Landlord (including, without limitation, attorney's fees or any other legal costs or expenses) together with interest thereon at the rate of twelve percent (12%) per annum, shall be immediately due and payable from Tenant to Landlord as additional rent. Tenant shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage, or other encumbrance on the fee interest in the Land, the reversion or other estate of Landlord, or that would be prior to any interest of Landlord in the Premises.

Section 8.2 Compliance with Laws. All work to be performed by Landlord or Tenant shall in each case conform with all applicable laws, rules, ordinances, regulations, orders and requirements of all governmental or quasi-governmental bodies having jurisdiction and of the

local board of fire underwriters, planning and zoning, or any other local body exercising similar or related functions or jurisdiction over any aspect of the Premises or the Parking Deck, as applicable.

Section 8.3 Cooperation. The parties agree to cooperate with each other in the performance of any work required to be performed by them respectively, and pursuant to the end, neither shall intentionally cause the other any delay or interfere with the due prosecution of the work of the other.

ARTICLE IX: SIGNAGE

Tenant shall not erect any sign that is visible from the exterior of the ground level of the Parking Deck without first obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned nor delayed. If requested by Tenant, Landlord shall permit Tenant to display signage on the exterior wall(s) of the Parking Deck, provided that Landlord shall first consent in writing to the location, design and other specifications of any such signage. If requested by Tenant, Landlord shall permit Tenant to display directional signage at the entrances to and throughout the Parking Deck directing Tenant's guests to the plaza level of the Parking Deck. During the full Term of this Lease, Tenant shall maintain all such signage in a neat and clean condition. All such signage shall comply with the Town of Chapel Hill's sign regulations.

ARTICLE X: INSURANCE AND INDEMNIFICATION

[INSURANCE REQUIREMENTS TO BE REVIEWED]

Section 10.1 Tenant's Insurance. At Tenant's expense and throughout the Term, Tenant shall maintain the following insurance:

(a) Commercial General Liability Insurance (1993 ISO form [CG 00 01 10 93] or its equivalent) in the amount of at least One Million and No/100 Dollars (\$1,000,000.00) per occurrence, with a General Aggregate limit of at least Two Million and No/100 Dollars (\$2,000,000.00). Such insurance shall specifically cover any liability of Tenant that may arise through any indemnity given by Tenant in this Lease. Such insurance shall be on an occurrence basis; and

(b) The equivalent of ISO Special Form Property Insurance covering Tenant's property located in the Premises (including fixtures, leasehold Improvements and equipment), providing protection to the extent of one hundred percent (100%) of the replacement cost of such property, less a commercially reasonable deductible not to exceed \$50,000.00.

(c) During the course of any alteration, construction, or reconstruction of the Improvements, Tenant shall maintain builders' risk insurance.

(d) Workers' compensation insurance required to be carried by Tenant by North Carolina law in amounts not less than the amount required by law. Tenant shall require all contractors that Tenant enters into contracts with in connection with the Improvements to promise to carry workers' compensation insurance in amounts not less than the amount required by law covering all persons employed by the contractor in connection with the Improvements and with respect to whom death, bodily injury, or sickness insurance claims could be asserted against Landlord or Tenant.

Section 10.2 Landlord's Insurance. At Landlord's expense and throughout the Term, Landlord shall maintain the following insurance:

(a) Commercial General Liability Insurance (1993 ISO form [CG 00 01 10 93] or its equivalent) in the amount of at least One Million and No/100 Dollars (\$1,000,000.00) per occurrence, with a General Aggregate limit per location of at least Two Million and No/100 Dollars (\$2,000,000.00), naming Tenant as an additional insured. Such insurance shall specifically cover any liability of Landlord that may arise through any indemnity given by Landlord in this Lease. Such insurance shall be on an occurrence basis; and

(b) The equivalent of ISO Special Form Property Insurance providing protection to the extent of not less than one hundred percent (100%) of the replacement cost of the Parking Deck, less a commercially reasonable deductible.

Section 10.3 Insurance Standards. All such policies and renewals thereof as are required to be obtained by Tenant shall name Landlord as an additional insured (provided that with respect to the insurance described in Section 10.1(b) above, Landlord may be named as a loss payee as its interests may appear). All such policies of insurance shall provide that (i) no material change or cancellation of said policies shall be made without thirty (30) days' prior written notice to the other party and (ii) the insurance company issuing the same shall have waived any right of subrogation against the other party. Prior to the Commencement Date and at least sixty (60) days prior to the expiration dates of said policy or policies, each party shall provide to the other copies of policies or certificates of insurance evidencing all coverage required by this Lease. All the insurance required of Tenant or Landlord under this Lease shall be primary and non-contributory, issued by companies that are rated at least A-, VIII in Best's Insurance Reports, and authorized to do business in North Carolina. Landlord makes no representation that the limits of liability specified to be carried by Tenant are adequate to protect Tenant. Tenant may obtain, at Tenant's sole election and expense, such additional insurance coverage as Tenant deems adequate. Landlord shall have the right to increase the insurance requirements hereunder from time to time as may be necessary to maintain adequate insurance coverages as measured by insurance then typically required for land and improvements similar to the Premises in the greater Raleigh/Durham/Chapel Hill, North Carolina metropolitan area.

Section 10.4 Hold Harmless. Except to the extent caused by Landlord's negligence or intentional misconduct, Landlord, its managers, directors, officers, employees and agents, shall not be liable to Tenant, or its members, managers, shareholders, directors, officers, employees and agents, for any damage to person or property caused by any act, omission or neglect of Tenant, its members, managers, shareholders, directors, officers, employees and agents, and

Tenant agrees to indemnify and hold Landlord, its managers, directors, officers, employees and agents, harmless from all claims for any such damage. Except to the extent caused by Tenant's negligence or intentional misconduct, Tenant shall not be liable to Landlord, or its managers, directors, officers, employees and agents, for any damage to person or property caused by any act, omission or neglect of Landlord, its managers, directors, officers, employees and agents, and Landlord agrees, to the extent permitted by law, to indemnify and hold Tenant, its members, managers, shareholders, directors, officers, employees and agents, harmless from all claims for such damage. The indemnification granted by each of Landlord and Tenant herein are subject to any express provisions to the contrary in this Lease.

Section 10.5 Waiver of Subrogation. Anything in this Lease to the contrary notwithstanding, Landlord and Tenant each hereby waives any and all rights of recovery, claim, action or cause of action against the other, its agents, officers, directors, members, shareholders and employees, for any loss or damage that may occur to the Premises or Parking Deck, or any improvements thereto or any personal property therein, by reason of fire, the elements or any other cause that is typically insured against under the terms of Special Form or other property insurance policies, or is actually insured against by the insurance carried by the injured party, regardless of cause or origin, including negligence of the other party hereto, its agents, officers, members or employees, and covenants that no insurer shall hold any right of subrogation against such other party.

ARTICLE XI: DAMAGE BY FIRE OR OTHER CASUALTY

Section 11.1 Casualty. In the event that any of the Improvements are damaged by fire or other insured casualty, Tenant, in Tenant's sole and exclusive discretion, may elect to either (i) repair, replace and rebuild the Improvements at Tenant's sole cost and expense, in which case Tenant shall commence its restoration work within one hundred eighty (180) days after the date that Tenant has received (x) its building permit (which shall be applied for by Tenant within one hundred eighty (180) days after the date the casualty occurs) and (y) Landlord's approval of its plans and specifications for the reconstructed Improvements (which shall be submitted to Landlord within one hundred eighty (180) days after the date the casualty occurs), and complete such work with due diligence, but not longer than two (2) years after such work is commenced, or (ii) terminate this Lease by providing written notice of such termination to Landlord within one hundred eighty (180) days following the date of the casualty. Subject to Section 11.3 below, if Tenant elects to repair, replace and rebuild the Improvements, Landlord shall be obligated to promptly repair, replace and rebuild any corresponding damage to the Parking Deck. If Tenant elects to terminate this Lease, then Tenant shall, at Tenant's cost and expense, raze, clear and dispose of the improvements constructed by Tenant on the Premises within one hundred eighty (180) days following the date of the casualty.

Section 11.2 Distribution of Insurance Proceeds Following a Casualty. Upon any termination of this Lease under Section 11.1, Landlord shall not be obligated to rebuild, restore or replace any corresponding damage to the Parking Deck, and the insurance proceeds received and receivable under any policy of insurance covering the Improvements shall be payable as follows:

(a) first, to the cost of razing, clearing and disposal of the damaged Improvements; then

(b) second, to Landlord in an amount equal to the then net present value of the Improvements and other improvements that would have reverted to Landlord upon the expiration of the Term (such amount being "Landlord's Present Residual Value"). The value of the Improvements that would have reverted to Landlord upon the expiration of the Term shall be determined as of the effective date of termination of this Lease, and the discount rate used to calculate Landlord's Present Residual Value shall be equal to the thirty-year U.S. treasury bill rate as of the effective date of termination of this Lease, plus 100 basis points; then

(c) third, to the holder of any leasehold deed of trust to the extent required to satisfy and release such leasehold deed of trust ; and then

(d) fourth, any remaining funds shall be payable to Tenant.

Section 11.3 Casualty to Parking Deck. After January 1, 2059, in the event that the Parking Deck is damaged by fire or other insured casualty to the extent of fifty percent (50%) or more of its replacement value, Landlord shall be entitled to terminate this Lease by providing written notice of such termination to Tenant within ninety (90) days following the date of the casualty. Notwithstanding anything to the contrary set forth in this Lease, if Landlord terminates this Lease pursuant to this Section 11.3, then in no event may Landlord occupy (or permit others to occupy) any Improvements constructed by Tenant on the Premises after the effective date of the termination of this Lease, and the insurance proceeds received and receivable under any policy of insurance covering the Improvements shall be paid to Tenant to be used by Tenant in Tenant's sole and absolute discretion. Except as otherwise provided in this Lease, this Lease shall not terminate or be affected in any manner by reason of the damage or destruction, by fire or other casualty, in whole or in part, of the Parking Deck, or by reason of the untenability of the Premises.

ARTICLE XII: EMINENT DOMAIN

Section 12.1 Termination by Tenant. If the whole of the Premises shall be taken by condemnation or eminent domain, then the Term hereof shall cease as of the day of the vesting of title, or as of the day possession shall be so taken, whichever is earlier. If only a portion of the Premises or any portion of the Parking Deck is so taken such that Tenant's use of the Premises shall no longer be practicable or desirable in Tenant's sole and absolute discretion, Tenant shall be entitled to terminate this Lease, effective as of the day of the vesting of title or as of the date possession shall be so taken, whichever is earlier, upon giving written notice thereof to Landlord. If Tenant does not elect to terminate this Lease, it shall restore the Premises to an architectural unit. Tenant shall notify Landlord of its election either to terminate or restore not later than forty-five (45) days after any such taking.

Section 12.2 Termination by Landlord. If a substantial portion of the Parking Deck shall be taken by condemnation or eminent domain such that Landlord's use of the Parking Deck

shall no longer be economically viable, Landlord shall be entitled to terminate this Lease, effective as of the day of the vesting of title or as of the date possession shall be so taken, whichever is earlier, upon giving written notice thereof to Tenant. For purposes of the preceding sentence, a “substantial portion of the Parking Deck” shall mean a portion of the Parking Deck constituting a minimum of fifty percent (50%) of the parking spaces in the Parking Deck as of the Commencement Date. If Landlord does not elect to terminate this Lease, it shall restore the Parking Deck to an architectural unit as nearly like its condition prior to such taking as shall be practicable. Landlord shall notify Tenant of its election either to terminate or restore not later than forty-five (45) days after any such taking.

Section 12.3 Distribution of Condemnation Proceeds. Condemnation proceeds shall be apportioned in the same manner as insurance proceeds are apportioned pursuant to Section 11.2 of this Lease; provided, however, that nothing set forth in this Lease shall be deemed a waiver of Tenant’s exclusive right to any and all awards that may be made for damages to, or taking of, interior Improvements by Tenant, for loss of Tenant’s business, or for relocation expenses so long as Landlord’s award is not reduced thereby.

ARTICLE XIII: ASSIGNMENTS, DEEDS OF TRUST AND SUBLEASES OF TENANT’S INTEREST

Section 13.1 Assignments and Subleases. (a) So long as Tenant is a non-profit entity of the type described in Section 501(c)(3) of the Internal Revenue code of 1986, as amended, Tenant, and its successors and assigns, shall have the unrestricted right to assign this Lease or sublet all or any part of the Premises without the consent of Landlord, subject, however, to the provisions of Section 5.1 above and this Article XIII. Furthermore, so long as Tenant is a non-profit entity of the type described in Section 501(c)(3) of the Internal Revenue code of 1986, as amended, Tenant, and its successors and assigns, shall have the right to assign this Lease or sublet all or any part of the Premises to another non-profit entity of the type described in Section 501(c)(3) of the Internal Revenue code of 1986, as amended, for any use by such non-profit entity; provided, however, that the non-profit entity and its proposed use must be approved in writing by Landlord, such approval not to be unreasonably withheld, conditioned or delayed. Subject to Section 13.2 below, Tenant shall not otherwise assign, sublet or transfer this Lease without the prior written consent of Landlord, which may be granted or withheld in Landlord’s sole discretion. No assignment of this Lease shall be effective unless and until Landlord shall have received an executed counterpart of such assignment, in recordable form, under which the assignee shall have assumed this Lease and agreed to perform and observe the covenants and conditions in this Lease contained on Tenant’s part to be performed and observed. Upon compliance with this paragraph each assignor shall be released from all liability hereunder thereafter accruing.

(b) Furthermore, Landlord’s written consent shall be required as a condition to the consummation of any “Corporate Reorganization” by Tenant. A “Corporate Reorganization” shall mean any transaction or series of transactions pursuant to which Tenant (i) converts into, or merges with and into, any entity other than a corporation, or (ii) is no longer an entity of the type described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

Section 13.2 Leasehold Deeds of Trust. (a) Tenant, and its successors and assigns, shall have the right to mortgage and pledge this Lease, subject to the provisions of Section 5.1 above and this Section 13.2. Nothing in this Lease shall prohibit Tenant from obtaining financing secured by a second or subordinate deed of trust lien and the provisions in this Lease applicable to a leasehold deed of trust shall also be applicable to a second or subordinate leasehold deed of trust.

(b) No holder of a deed of trust on this Lease shall have the rights or benefits mentioned in Article XVI below, nor shall the provisions of said Article be binding upon Landlord, unless and until (i) Landlord has approved in writing the terms of such leasehold deed of trust, such approval not to be unreasonably withheld, conditioned or delayed, and (ii) an executed counterpart of such leasehold deed of trust and of each assignment thereof or a copy certified by the holder of the deed of trust or by the recording officer to be true, shall have been delivered to Landlord.

ARTICLE XIV: DEFAULT BY TENANT AND REMEDIES

Section 14.1 Events of Default. The occurrence of any of the following shall be an event of default (an “Event of Default”) by Tenant under this Lease: (a) Tenant fails to pay any installment of Base Rent, additional rent or any other sum covenanted to be paid by Tenant hereunder and such failure continues for fifteen (15) days after written notice of such failure from Landlord; (b) Tenant fails to perform any of the other terms, provisions and covenants of this Lease to be performed by Tenant and such failure continues for thirty (30) days after written notice of such failure from Landlord; provided, however, that if the cure for such failure cannot reasonably be accomplished within said thirty (30) day period, Tenant shall not be in default if it commences a cure within said thirty (30) days and diligently pursues completion thereof, with completion occurring no more than one hundred eighty (180) days from Landlord’s initial notice thereof; or (c) Tenant makes a general assignment for the benefit of creditors or files a voluntary petition in bankruptcy, or a decree is entered involuntarily adjudicating Tenant a bankrupt and such decree is not dissolved within sixty (60) days after the decree is entered, or Tenant generally admits its insolvency or inability to pay its debts; provided, however, that neither bankruptcy, insolvency, nor assignment for creditors shall constitute an Event of Default so long as the payment of all Base Rent, additional rent or any other sum covenanted to be paid by Tenant hereunder, and the other obligations to be performed by Tenant shall be fully and promptly performed by Tenant or someone claiming under Tenant.

Section 14.2 Remedies. (a) Upon the occurrence of an Event of Default by Tenant, Landlord shall, in addition to and not in lieu of all of the rights to which it may be entitled to hereunder and by law, but subject to the terms of this Article XIV, be entitled to: (i) cure such Event of Default and be reimbursed for all costs and expenses reasonably incurred with respect thereto, together with interest at the rate of 12% per annum, promptly upon written demand from Landlord to Tenant; (ii) seek monetary damages from Tenant and injunctive or other equitable relief; and (iii) enter upon and take possession of the Premises and Improvements by summary ejectment proceedings or by any suitable action or proceeding at law, with or without

terminating this Lease. In addition, Landlord may relet the whole or any part of the Premises from time to time, either in the name of Landlord or otherwise, to such tenants, for such terms ending before, on, or after the expiration date of the Term, at such rentals and on such other conditions as Landlord may determine to be appropriate. In the event this Lease is terminated after construction has commenced but before a certificate of occupancy has been issued for the improvements constructed by Tenant on the Premises, then Landlord may require Tenant to raze such improvements at Tenant's cost and expense.

(b) In the event that any action or proceeding is brought to enforce any term, covenant or condition of this Lease on the part of Landlord or Tenant, the prevailing party in such action or proceeding shall be entitled to recover all attorneys' fees and other costs and expenses of such enforcement from the other party.

(c) Upon expiration or earlier termination of this Lease, Tenant hereby covenants and agrees to surrender and deliver the Premises peaceably to Landlord together with all the Improvements described in this Lease in their then current "as is" condition. Tenant shall remove its personal property in a manner that will reasonably minimize any damage to the Improvements. If Tenant shall leave any property of any kind or character on or in the Premises thirty (30) days after vacating the Premises, such fact shall be conclusive evidence of intent by Tenant to abandon such property. Landlord or its agents shall have the right, without notice to Tenant, to remove such property without liability to Tenant, and such property when removed shall belong to Landlord as compensation for the expenses of removal and disposition of said property. However, if such property is, in Landlord's sole opinion, trash or rubbish and Landlord incurs any cost or expense in its removal, Tenant shall be responsible for reimbursing Landlord for such cost and expense.

(d) Notwithstanding anything to the contrary set forth in this Lease, Tenant shall have no liability for any consequential or incidental damages of Landlord, or anyone claiming by, through or under Landlord, for any reason whatsoever.

ARTICLE XV: ESTOPPEL CERTIFICATE

Landlord and Tenant shall each, without charge, at any time and from time to time hereafter within thirty (30) days after written request of the other, certify by written instrument duly executed and acknowledged to any person, firm or corporation specified in such request: (a) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Lease in accordance with its terms; (c) as to the existence of any default hereunder; (d) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other party; (e) as to the commencement and expiration dates of the terms of this Lease; and (f) as to any other matters as may be reasonably requested. Any such certificate may be relied upon by the party who requested it and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing the same.

ARTICLE XVI: LEASEHOLD FINANCING

Section 16.1 Leasehold Deeds of Trust. Tenant shall be responsible for funding the entire cost of, and securing all financing required, in order to complete construction of the Improvements in accordance with the Approved Plans, and Landlord hereby consents to the encumbrance of Tenant's leasehold estate created under this Lease; provided, however, that the fee simple ownership interest of Landlord to the Premises shall be prior, superior and paramount to the lien of any mortgage or deed of trust which may now or hereafter affect the leasehold interest of Tenant in and to the Premises, or any part thereof. Tenant acknowledges and understands that under no circumstances will any party providing financing for the Improvements be permitted to encumber in any manner by lien of a deed of trust, mortgage, security agreement or other encumbrance, Landlord's fee simple title to the Premises. All rights acquired under any encumbrance of Tenant's leasehold estate shall be subject and subordinate to the terms of this Lease and to all rights and interests of Landlord hereunder, and shall incorporate all relevant terms and requirements contained herein, including, without limitation, a statement that Lender disclaims any interest or lien against Landlord's fee simple interest in the Premises and Improvements thereon, a statement that insurance proceeds from casualty or proceeds from condemnation or payments in lieu thereof shall be used for the repair or rebuilding of the Improvements if so required by this Lease and not to the repayment of Lender (except as expressly set forth in this Lease), and a statement that Landlord shall have no liability whatsoever in connection with the financing under the agreement, notes, and security instruments executed, delivered and/or recorded in connection with such financing. If Tenant, or Tenant's permitted successors or assigns, shall mortgage said leasehold interest, and Tenant provides Landlord with written notice that it has so encumbered the leasehold estate, such notice to include a copy of the underlying deed of trust or other security instrument recorded in the office of the Orange County Register of Deeds and the name and address of the holder of such instrument, then so long as such leasehold deed of trust shall remain unsatisfied of record, the following provisions shall apply, notwithstanding anything to the contrary set forth in this Lease, and any pertinent provisions of this Lease shall be deemed to be amended and modified to the extent necessary so as to provide as follows:

(a) Landlord, upon serving upon Tenant any notice of default pursuant to the provisions of Section 20.11 hereof, or any other notice under the provisions of or with respect to this Lease, shall also serve a copy of such notice on the holder of such deed of trust, at the address provided for in subparagraph (d) of this Section 16.1, and no notice by Landlord to Tenant hereunder shall be deemed to have been duly given unless and until a copy thereof has been so served; provided, however, that Landlord's obligation to give or provide the holder of any such deed of trust with any notice shall be contingent upon such holder providing written notice to Landlord of its existence and setting forth the address to which all such notices are to be delivered.

(b) Such holder of a leasehold deed of trust, in the event Tenant shall be in default hereunder, shall have the right, within the period and otherwise as herein provided, to remedy or cause to be remedied such default, and Landlord shall accept such performance by or at the instigation of such leasehold deed of trust holder as if the same had been performed by Tenant. No default by Tenant in performing work required to be performed, acts to be done, or

conditions to be remedied, shall be deemed to exist, if steps, in good faith, have been properly commenced by Tenant or by said leasehold deed of trust holder, or by any other party, person, or entity to rectify the same no more than sixty (60) days from Landlord's initial notice thereof to the leasehold deed of trust holder and prosecuted to completion with reasonable diligence and continuity. Tenant constitutes and appoints said leasehold deed of trust holder as Tenant's agent and attorney-in-fact with full power, and in Tenant's name, place and stead, and at Tenant's cost and expense, to enter upon the Premises and make repairs thereto, maintain the same, remove any violations of law, or of the rules and regulations of governing authorities and to otherwise perform any of Tenant's obligations according to the provisions of this Lease as to the care, maintenance, or preservation of the land, buildings and improvements on the Premises.

(c) In the event of the termination of this Lease prior to the expiration of the Term, whether by summary proceedings to dispossess, service of notice to terminate, or otherwise, due to an Event of Default by Tenant, or any other default of Tenant, Landlord shall serve upon the holder of such deed of trust written notice that the Lease has been terminated together with a statement of any and all sums that would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. Such holder shall thereupon have the option to obtain a new or direct lease in accordance with and upon the following terms and conditions:

(i) On the written notice of the holder of said leasehold deed of trust, within sixty (60) days after service of the aforementioned notice of termination, Landlord shall enter into a new or direct lease of the Premises with the holder of such leasehold deed of trust, or its designee, as provided in the following clause (ii), provided, however, Tenant shall not be released of any liability arising under this Lease prior to its termination.

(ii) Such new or direct lease shall be entered into at the reasonable cost of the tenant thereunder, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term of this Lease and at the rent and upon all the agreements, terms, covenants and conditions hereof. Such new lease shall require the tenant to perform any unfulfilled obligation of Tenant under this Lease that is reasonably capable of being performed by such tenant if such tenant has been given notice of such unfulfilled obligation. Upon the execution of such new lease, the tenant named therein shall pay any and all sums that would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable counsel fees, court costs and disbursements incurred by Landlord in connection with such defaults and termination, the recovery of possession of said premises, and the preparation, execution and delivery of such new lease.

(d) Any notice or other communication that Landlord shall desire or is required to give to or serve upon the holder of a deed of trust on this Lease shall be in writing and shall be served by certified or overnight mail, addressed to such holder at its address as set forth in such deed of trust, or in the last assignment thereof delivered to Landlord pursuant to Section 13.2(b) hereof, or at such other address as shall be designated by such holder by notice in writing given to Landlord by certified or overnight mail. Any notice or other communication that the holder of a deed of trust on this Lease shall desire or is required to give to or serve upon Landlord shall be

deemed to have been duly given or served if sent in duplicate by certified or overnight mail addressed to Landlord at Landlord's addresses as set forth in Section 20.11 of this Lease or at such other addresses as shall be designated by Landlord by notice in writing given to such holder by certified or overnight mail. Each such notice and communication shall be governed by Section 20.11 hereof.

(e) Notwithstanding anything to the contrary set forth in this Lease, the provisions of this Article shall inure only to the benefit of the holders of leasehold deeds of trust which shall be, respectively, a first, second and third lien. If the holders of more than one such leasehold deed of trust shall make written requests upon Landlord for a new lease in accordance with the provisions of this Section, the new lease shall be entered into pursuant to the request of the holder whose leasehold deed of trust shall be prior in lien thereto and thereupon the written requests for a new lease of each holder of a leasehold deed of trust junior in lien shall be and be deemed to be void and of no force or effect.

(f) So long as the following covenants of this Lease are being complied with: (i) rent and other payments to be made by Tenant under the Lease are paid current, (ii) construction of the Improvements has been completed or Tenant is diligently pursuing construction of the Improvements, (iii) the Improvements are maintained in good repair, (iv) the Improvements are in compliance with all applicable laws, codes and regulations applicable to the Premises, (v) no financing or mechanics' liens, other than that of the leasehold deed of trust, against the Premises remain uncanceled, (vi) all insurance policies to be carried by Tenant are in full force and effect, and (vii) the other covenants and conditions of the Lease that are susceptible of being complied with by the holder of the leasehold deed of trust are being complied with, Landlord shall not exercise any default remedies due to a Tenant default which is not susceptible to being cured by the holder of the leasehold deed of trust.

Section 16.2 No Mortgagee Obligations. Notwithstanding anything to the contrary set forth in this Lease, in no event shall the holder of a leasehold deed of trust be obligated to (i) construct any improvements on the Premises or (ii) cure any default with respect to or satisfy or discharge any lien or encumbrance against Tenant's interest in this Lease or the Premises if such lien or encumbrance is junior in priority to the senior leasehold deed of trust (provided, however, that Landlord shall in no event be required to cure any such default) or (iii) cure any defaults under subsection 14.1(c) of this Lease.

Section 16.3 Release of Deed of Trust. If any holder of a leasehold deed of trust shall acquire title to Tenant's interest in this Lease, by foreclosure of a deed of trust thereon or by assignment in lieu of foreclosure or by an assignment from a nominee or wholly owned subsidiary corporation of such holder, or under a new lease pursuant to this Article, such holder may assign such lease and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such lease contained on Tenant's part to be performed and observed from and after the date of such assignment, provided that the assignee from such deeds of trust shall have assumed this Lease and agreed to perform and observe the covenants and conditions in this Lease contained on Tenant's part to be performed and observed.

ARTICLE XVII: HAZARDOUS MATERIALS

Section 17.1 Landlord's Representation and Indemnification. To the best of its knowledge without independent investigation, the Premises is free of any hazardous or toxic materials, substances or wastes ("Hazardous Materials") now or hereunder regulated under federal, state and local environmental laws and regulations, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Public Law No. 96-510, 94 Stat. 2767, 42 USC 7601 *et seq.* and the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law No. 99-499, 100 Stat. 1613 (collectively, the "Environmental Laws"). Landlord shall, to the extent permitted by law, indemnify and hold Tenant, its members, managers, shareholders, directors, officers, employees and agents, harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs, judgments and expenses (including reasonable attorneys' fees) of every kind and nature suffered by or asserted against Tenant as a result of any Hazardous Materials brought into the Land or Parking Deck by Landlord or its agents during the Term hereof.

Section 17.2 Tenant's Indemnification. Tenant hereby covenants and agrees during the Term of this Lease not to bring, release, use or store Hazardous Materials in, on or above the Premises or the Parking Deck, except in compliance with the Environmental Laws and permits required thereby. Tenant shall indemnify and hold Landlord, its managers, directors, officers, employees and agents, harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs, judgments and expenses (including reasonable attorneys' fees) of every kind and nature suffered by or asserted against Landlord as a result of any Hazardous Materials brought, released or used by Tenant or its agents on, in, above or under the Premises or Parking Deck.

ARTICLE XVIII: DEFAULT BY LANDLORD AND REMEDIES

If Landlord shall fail to pay or perform, within a reasonable time after the due date for same, any obligation paramount to this Lease or affecting the Parking Deck or Premises that Landlord is legally obligated to pay or perform, or shall fail promptly to remove any other lien or charge that could jeopardize Tenant's right to possession of the Premises as hereby granted and which lien or charge is not an obligation of Tenant under this Lease, Tenant may pay or perform the items in question after first giving Landlord written notice of such failure if Landlord shall not have made such payment or performance or removed such lien or other charge with thirty (30) days following receipt of notice thereof from Tenant. Landlord shall have an opportunity to contest the validity of any obligation paramount to this Lease or affecting the Premises, and Landlord shall not be considered in default with respect to payment or performance thereof for so long as the validity or the amount thereof is contested by Landlord in good faith and with due diligence; provided, however, that payment may be deferred only if the proceeding to contest the same is legally permitted and such proceeding shall operate to suspend the obligation to make such payment. If any payment or performance is made by Tenant pursuant to this Article, Landlord shall be liable for immediate reimbursement to Tenant in accordance with this Article, but only in such amount as represents the reasonable cost or value of the obligations paid by Tenant, together with interest at the rate of 12% per annum. Landlord shall have no liability for

any consequential or incidental damages of Tenant, or anyone claiming by, through or under Tenant, for any reason whatsoever. Landlord's liability for any claim brought by Tenant shall be limited to the value of Landlord's equity in the Premises, and not to any other assets of Landlord.

**ARTICLE XIX: SPECIFIC PROVISIONS REGARDING
LANDLORD'S OPERATION OF THE PARKING DECK**

Section 19.1 Operation of the Parking Deck. During the Term of this Lease, Landlord, at its expense, shall operate the Parking Deck in good condition and in full compliance with all applicable laws, ordinances, regulations and directives of any governmental authority having jurisdiction (federal, state, and local), except when prevented from doing so by strikes, fire, casualty or other causes beyond Landlord's reasonable control. In connection with Landlord's operation of the Parking Deck, Landlord shall, at its expense:

(a) Not, without Tenant's prior written consent, use or permit the use of the Parking Deck for any purpose other than the parking of automobiles on a transient basis and ancillary uses associated therewith.

(b) Procure and maintain any licenses, permits or approvals that may be required in connection with the operation of the Parking Deck.

(c) Operationally comply with all requirements of the Americans with Disabilities Act (Public Law 101-336 (July 26, 1990) applicable to the Parking Deck to accommodate any persons to whom such acts apply. Landlord shall be solely responsible for the cost associated with any accommodations or alterations that need to be made to the Parking Deck to comply with such acts as the same may be amended from time to time, including any striping of the Parking Deck.

(d) Hire, supervise and pay all persons necessary to be employed for the efficient operation of the Parking Deck.

(e) Keep the Parking Deck open for parking during all such hours as Tenant may be open for business in the Premises.

(f) Keep the elevators serving the Parking Deck open and operational during all such hours as Tenant may be open for business in the Premises.

(g) Not charge parking fees inconsistent with those charged by other parking facilities in the Chapel Hill market from time to time.

Section 19.2 No Material Alterations. Landlord shall not materially alter the structural elements of the Parking Deck, or construct material additions thereto, without the prior written consent of Tenant, which consent may not be unreasonably withheld, conditioned or delayed so long as the proposed alterations or additions would not materially interfere with Tenant's operation of, or access to, its Improvements. Landlord shall construct no barrier, curb or other

improvement within the Parking Deck that would impair free access by pedestrian and vehicular traffic through all levels of the Parking Deck to and from Tenant's Improvements.

Section 19.3 Short Term School Bus Drop-Off Zone. Landlord covenants and agrees to designate, prior to the opening of the children's museum on the Premises, and maintain during the remainder of the Term of this Lease, a short term drop-off zone for school buses on Rosemary Street in reasonable proximity to the Parking Deck for the purpose of loading and unloading visitors to the children's museum.

ARTICLE XX: MISCELLANEOUS PROVISIONS

Section 20.1 Holding Over. In the event that Tenant shall continue to occupy the Premises after the expiration of the Term of this Lease without entering into a new Lease or an appropriate written extension, said tenancy shall be construed to be a "tenancy from month to month" upon all of the other terms and conditions set forth herein, except where same are clearly not applicable, and except that Base Rent during such holdover period shall be the then-current fair market rent for the Premises.

Section 20.2 No Partnership. It is expressly understood that Landlord and Tenant are not partners or co-venturers, and that Landlord has no right, title or interest in and to the business of Tenant, and that Tenant has no right to represent or bind Landlord in any respect whatsoever. Nothing herein contained shall be deemed, held or construed as making Landlord a partner, co-venturer or associate of Tenant, or as rendering Landlord liable for any debts, liabilities or obligations incurred by Tenant; it being expressly understood that the relationship between the parties hereto is and shall at all times remain strictly that of Landlord and Tenant.

Section 20.3 Fee Interest Deeds of Trust and Subordination. (a) Nothing herein contained shall limit the right of Landlord to mortgage, pledge, hypothecate, or otherwise encumber its interest in this Lease, the Land, the Parking Deck or the Premises in accordance with the terms and provisions of this paragraph. Any such deed of trust encumbering Landlord's interest therein is hereinafter referred to as a "Mortgage" and the holder thereof is hereinafter referred to as a "Mortgagee." Any future Mortgage shall be expressly subject to this Lease; provided, however, that any such Mortgagee shall have the right to subordinate this Lease to such Mortgage if and only if such Mortgagee enters into a subordination, non-disturbance and attornment agreement with Tenant (the "SNDA"), which SNDA shall be on a form reasonably acceptable to Tenant and its counsel, shall be recorded, and shall contain commercially reasonable provisions recognizing the rights of Tenant under this Lease and any leasehold financing permitted hereunder. If a Mortgagee requires that this Lease have priority over its deed of trust, Tenant shall, upon request of such holder, execute, acknowledge and deliver to such Mortgagee an agreement acknowledging such priority. Provided Tenant is given notice in writing of the names and addresses to which notices should be sent, Tenant shall give prompt written notice of any default by Landlord to all Mortgagees, who shall have the right to cure Landlord's default within sixty (60) days after receipt of Tenant's notice; and no such rights or remedies shall be exercised by Tenant until the expiration of said sixty (60) days.

(b) Landlord shall obtain and record an SNDA from its current Mortgagee, which SNDA shall be on a form reasonably acceptable to Tenant and shall contain commercially reasonable provisions recognizing the rights of Tenant under this Lease and any leasehold financing permitted hereunder.

Section 20.4 Memorandum of Lease. Simultaneously with the parties' execution of this Lease, Landlord and Tenant each agree to execute and deliver a Memorandum of this Lease substantially in the form of the Memorandum of Lease attached hereto as Exhibit C. Tenant may, at Tenant's cost, record the Memorandum of Lease in the Orange County Public Registry. In the event of an early termination of this Lease, within fifteen (15) days after written request from Landlord, Tenant agrees to execute, acknowledge and deliver to Landlord an agreement terminating the Memorandum of Lease of record. If Tenant fails to execute such agreement within that fifteen (15) day period or fails to notify Landlord within that fifteen (15) day period of its reasons for refusing to execute such agreement, Landlord is hereby authorized to execute and record such agreement as Tenant's attorney-in-fact (which grant is coupled with an interest and cannot be terminated or withdrawn by Tenant without Landlord's consent) for the sole purpose of terminating the Memorandum of Lease of record, and any person shall be permitted to rely on such agreement as if executed by Tenant.

Section 20.5 Waiver. Failure on the part of Landlord to call a default hereunder shall not be deemed to be a waiver by Landlord of any other default by Tenant hereunder. Furthermore, no waiver by Landlord of any of the provisions hereof shall be construed as a waiver of any of the other provisions hereof; and a waiver at any time of any of the provisions hereof shall not be construed as waiver at any subsequent time of the same provisions. The consent or approval of Landlord to or of any action by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant. Similarly, failure on the part of Tenant to call a default hereunder shall not be deemed to be a waiver by Tenant of any other default by Landlord hereunder. Furthermore, no waiver by Tenant of any of the provisions hereof shall be construed as a waiver of any of the other provisions hereof; and a waiver at any time of any of the provisions hereof shall not be construed as waiver at any subsequent time of the same provisions. The consent or approval of Tenant to or of any action by Landlord requiring Tenant's consent or approval shall not be deemed to waive or render unnecessary Tenant's consent or approval to or of any subsequent similar act by Landlord.

Section 20.6 Representations and Warranties. (a) Landlord hereby represents and warrants to Tenant that: (i) Landlord has good and lawful authority to enter into this Lease for the full Term and any approvals or resolutions required in connection with Landlord's execution of this Lease have been properly obtained and are in full force and effect as of the Commencement Date; (ii) subject to the requirement that Tenant obtain an amendment to the special use permit currently in effect with respect to the Parking Deck, a children's museum consisting of between 10,000 square feet and 50,000 square feet with outdoor display and exhibit areas is allowed on the Premises by the Town of Chapel Hill's building and zoning ordinances in accordance with and subject to the approvals required by those ordinances, and Landlord is not aware of any title exceptions or development restrictions that would inhibit or interfere with such use of the Premises; and (iii) Landlord will notify Tenant and the holder of any leasehold deed of

trust of whose name and address it has been notified as provided herein, of any action of any lienholder to foreclose or otherwise assert said lienholder's interest in this Lease or in the Premises.

(b) Tenant hereby represents and warrants to Landlord that (i) Tenant is a duly created and validly existing North Carolina non-profit corporation, and has all requisite corporate power and authority to execute and deliver this Agreement; (ii) the person signing this Lease on behalf of Tenant has been duly authorized to sign and deliver this Lease on behalf of Tenant; (iii) at completion of the Improvements, all labor and services performed and materials furnished to the Premises will be paid for in full; (iv) there is no litigation, governmental proceeding or investigation pending or threatened in writing against Tenant or any of its affiliates which would have a material adverse effect on the business or financial condition of Tenant or which could have a material adverse effect upon Tenant's ability to fulfill its obligations under this Lease.

Section 20.7 Covenant of Quiet Enjoyment. Tenant, subject to the terms and provisions of this Lease, on payment of the rent and observing, keeping and performing all of the terms and provisions of this Lease on its part to be observed, kept and performed, shall lawfully, peaceably and quietly have, hold, occupy and enjoy the Premises during the Term hereof without hindrance or objection by any person lawfully claiming under Landlord, except as specifically set forth herein.

Section 20.8 Entire Agreement. All previous agreements between the parties pertaining to the subject matter hereof, whether oral or written, are superseded by and merged within this Lease. Subsequent changes to this Lease shall not be binding unless reduced to writing and signed by the parties hereto.

Section 20.9 Invalidation of Particular Provisions. If any term or provisions of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each such term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 20.10 Provisions Binding. Except as herein otherwise expressly provided, the terms hereof shall be binding upon and inure to the benefit of the heirs, successors, assigns and legally appointed representatives, respectively, of Landlord and Tenant.

Section 20.11 Notices. Any notice that is required or permitted under this Lease shall be deemed given upon hand delivery or upon the next business day when sent by reputable overnight delivery service such as FedEx or UPS for overnight delivery. Notices shall be addressed to each party at the address listed below or at such other address as a party may from time to time designate in writing.

Tenant: Kidzu Children’s Museum

 Attn: Jonathan B. Mills

Landlord: The Town of Chapel Hill

 Attn: _____

Section 20.12 Headings. The headings, section numbers and article numbers appearing in this Lease are for reference purposes only.

Section 20.13 Governing Law. The parties hereto agree that for purposes of enforcing the terms and conditions of this Lease, the laws of the State of North Carolina shall govern.

Section 20.14. Annual Reporting. Tenant agrees to provide to Landlord, no more than once per calendar year, a written report estimating the number of visitors to the museum during the previous calendar year, the number of employees retained by the museum, and any other items reasonably requested by Landlord. Although Tenant will cooperate in good faith to honor any requests made by Landlord for annual reporting information, in no event shall Tenant be required to deliver proprietary information to Landlord and under no circumstances shall Tenant’s failure, or alleged failure, to comply with the requirements of this paragraph be deemed a default under the provisions of this Lease.

Section 20.15. Use of Premises by the Town of Chapel Hill. (a) In the event that Tenant, at any time during the Term, makes the indoor portion of the museum available to the general public for rent outside of museum operating hours, then The Town of Chapel Hill shall have the right to rent such space on the same terms and rents offered to members of the general public without any priority given for requested rental dates. Notwithstanding the foregoing, base rent for the first three (3) uses of such space by The Town of Chapel Hill in any twelve (12) month period shall be reduced to zero, provided that (i) the request for the use of such space on a free rent basis is made in writing from the mayor’s office and is for an event to be held by the Town Council or Town staff, (ii) no more than one hundred (100) persons may occupy the Premises during any such free rent event, (iii) The Town of Chapel Hill shall either reimburse Tenant for the actual and reasonable costs incurred by Tenant to secure and clean the Premises during the rental period or The Town of Chapel Hill shall make arrangements to provide its own cleaning and security services, which arrangements shall be approved in writing by Tenant (such approval not to be unreasonably withheld), (iv) The Town of Chapel Hill shall reimburse Tenant for the actual and reasonable costs incurred by Tenant to staff the Premises with Tenant’s employees during the rental period at the level of staffing Tenant typically requires for similar events and (v) The Town of Chapel Hill shall remain responsible for any administrative fees charged to members of the general public in connection with rentals of museum space.

[remainder of page intentionally blank; signature page follows]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed by their duly authorized officers as of the Commencement Date.

LANDLORD:

THE TOWN OF CHAPEL HILL, a North Carolina municipal corporation

Duly adopted by the Council of the Town of Chapel Hill, North Carolina, this the ____ day of _____, 2009

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

TENANT:

THE CHAPEL HILL-CARRBORO CHILDREN'S MUSEUM, a North Carolina corporation d/b/a Kidzu Children's Museum

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Exhibit A

Legal Description of the Land

Exhibit B

Depiction of Portion of Rooftop Included in Premises
(Include Identification of Northeast Corner and Southeast Corner)

Exhibit C

**Drawn by and mail after recording to:
 Moore & Van Allen PLLC (HHH)
 430 Davis Drive, Suite 500
 Morrisville, North Carolina 27560**

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into this ____ day of _____, 2009, by and between the **TOWN OF CHAPEL HILL**, a North Carolina municipal corporation, having an address of _____ (“Landlord”), and **THE CHAPEL HILL-CARRBORO CHILDREN’S MUSEUM**, a North Carolina corporation d/b/a Kidzu Children’s Museum, having an address of _____ (together with its assigns, “Tenant”).

WITNESSETH:

1. Landlord, in consideration of the rents and upon the terms, conditions, covenants and agreements set forth in that certain Air Rights Lease Agreement by and between Landlord and Tenant, dated as of _____, 2009 (the “Lease”), has leased to Tenant certain premises situated on the plaza level of the parking deck known as the Wallace Parking Deck located at 150 E. Rosemary Street in Chapel Hill, Orange County, North Carolina (together with all improvements now or hereafter located thereon, the “Premises”), as the Premises are more particularly described in the Lease. The land on which the Premises are situated is described on Exhibit A attached hereto and incorporated herein by this reference.

2. The term of the Lease shall be for a maximum period of ninety-nine (99) years, subject to prior termination provisions which are set forth in the Lease, commencing on _____, 2009.

3. The addresses of Landlord and Tenant are as set forth above and copies of the Lease are on file with Landlord and Tenant at said addresses.

4. The purpose of this Memorandum of Lease is to give record notice of the Lease and of the rights created thereby, the terms and conditions of which Lease are hereby incorporated by reference as if fully set forth herein. If any term or condition of this Memorandum of Lease shall conflict with any term or condition of the Lease, the terms and conditions of the Lease shall control.

IN WITNESS WHEREOF, the undersigned have duly executed these presents as of the day and year first above written.

LANDLORD:

THE TOWN OF CHAPEL HILL

Duly adopted by the [Council] of the Town of Chapel Hill, North Carolina, this the ____ day of _____, 2009

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

I, _____, a Notary Public of the aforesaid County and State, do hereby certify that _____ and _____ personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of the Town of Chapel Hill.

Witness my hand and notarial seal this ____ day of _____, 2009.

Notary Public

My Commission Expires:

[NOTARIAL SEAL]

TENANT:

**THE CHAPEL HILL-CARRBORO
CHILDREN’S MUSEUM**, a North
Carolina corporation d/b/a Kidzu Children’s
Museum

By: _____
Name: _____
Title: _____

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

I, _____, a Notary Public for said County and State,
do hereby certify that _____, _____ of
THE CHAPEL HILL-CARRBORO CHILDREN’S MUSEUM, a North Carolina
corporation d/b/a Kidzu Children’s Museum, personally came before me this day and
executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this ____ day of
_____, 2009.

Notary Public

My Commission Expires:

[NOTARIAL SEAL]

**THE CHAPEL HILL-CARRBORO
CHILDREN’S MUSEUM**, a North
Carolina corporation d/b/a Kidzu Children’s
Museum

By: _____
Name: _____
Title: _____

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

I, _____, a Notary Public for said County and State,
do hereby certify that _____, _____ of
THE CHAPEL HILL-CARRBORO CHILDREN’S MUSEUM, a North Carolina
corporation d/b/a Kidzu Children’s Museum, personally came before me this day and
executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this ____ day of
_____, 2009.

Notary Public

My Commission Expires:

[NOTARIAL SEAL]

Exhibit A to
Memorandum of Lease

Legal Description of the Land on which the Premises are Situated