

ORDINANCE 2016-03

**AN ORDINANCE AUTHORIZING THE LEASE OF REAL
PROPERTY OWNED BY THE CITY OF FRUITA LOCATED AT 550 JURASSIC
COURT IN THE CITY OF FRUITA
(DINOSAUR JOURNEY MUSEUM LEASE)**

WHEREAS, the City of Fruita is the owner of land located in Mesa County, Colorado, described as Lot 2 of the Dinosaur Minor Subdivision located in Section 18, Township 1 North, Range 2 West, Ute P.M., Fruita, Mesa County, Colorado, and

WHEREAS, the City of Fruita has an existing lease dated April 18, 2000, with the Museum of Western Colorado for a portion of this property and desires to replace the existing lease and enter into a new long-term lease agreement with the Museum of Western Colorado pursuant to the terms of a Memorandum of Understanding dated August 29, 2014 between the City of Fruita and the Museum of Western Colorado, and

WHEREAS, pursuant to Section 2.11 of the Fruita City Charter, the Fruita City Council must, by ordinance, authorize the lease or conveyance of real property of the City, and

WHEREAS, it is the intent of this ordinance to authorize the mayor to execute the necessary documents to lease property owned by the City of Fruita to the Museum of Western Colorado.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO, AS FOLLOWS:

Section 1: The Mayor is hereby authorized to execute the Lease Agreement (With Option to Purchase) between the City of Fruita and the Museum of Western Colorado attached hereto as Exhibit A.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL
ON THE ____ DAY OF _____, 2016**

City of Fruita

Mayor Lori Buck

ATTEST:

Margaret Sell
City Clerk

**ORDINANCE 2016-03
EXHIBIT A**

LEASE AGREEMENT

(WITH OPTION TO PURCHASE)

BETWEEN THE

CITY OF FRUITA AND MUSEUM OF WESTERN COLORADO

DATED APRIL 5, 2016

**ORDINANCE 2016-03
EXHIBIT A**

**LEASE AGREEMENT
(WITH OPTION TO PURCHASE)**

**BETWEEN THE
CITY OF FRUITA AND MUSEUM OF WESTERN COLORADO
DATED APRIL 5, 2016**

LEASE AGREEMENT (WITH OPTION TO PURCHASE)

THIS LEASE AGREEMENT (the "Lease") is effective January 1, 2015 (the "Effective Date") by and between the City of Fruita, Colorado, 325 E. Aspen, Suite 155, Fruita, CO 81521, a home rule municipal corporation ("Lessor") and the Museum of Western Colorado, Inc., a Colorado not-for-profit corporation, P.O. Box 20,000 (462 Ute Ave.) Grand Junction, CO 81502 ("Lessee).

RECITALS

- A. Lessee and Lessor entered into a lease agreement dated April 18, 2000 (herein "Original Lease") for the Property which Lessee utilizes to operate and maintain a dinosaur museum known as "Dinosaur Journey" ("DJ"). The Original Lease was amended and renewed for an additional five year period on October 19, 2010 ("Original Lease Amendment").
- B. Lessee and Lessor entered into a Memorandum of Understanding dated August 29, 2014 (herein "MOU") which proposes a renegotiation of the Original Lease and Original Lease Amendment. Changes proposed in the MOU include reduction in rent beginning on January 1, 2015 and potential elimination of rent payments beginning on January 1, 2016. All monies representing the difference in the amount of rent paid by Lessee under the Original Lease and Original Lease Amendment and the rent paid by Lessee under the terms of this Lease shall be dedicated to improving and marketing DJ. The MOU also stipulates that Lessor will regain control of the entire Property except the existing DJ building (the "Premises"). The parties also identified a DJ expansion area for the purpose of providing a larger museum and an educational campus.
- C. The Original Lease granted to Lessee an option to purchase the Property, and granted a credit to Lessee for a percentage of its rent payments towards the Option Price. This credit amount will be \$449,649 through December 31, 2015.
- D. This Lease shall replace the Original Lease and Original Lease Amendment.

IN CONSIDERATION of the mutual promises, covenants and obligations contained in this Lease Agreement, the parties agree as follows:

**ARTICLE 1
PREMISES**

1.1 PREMISES AND PROPERTY DEFINED. Subject to the terms and conditions stated in this Lease and the reservations contained in section 1.2 below, Lessor leases to Lessee, and Lessee accepts and leases from Lessor the building (“Building”) and the “Expansion Area” located at 550 Jurassic Ct. in the City of Fruita, County of Mesa, State of Colorado, as more specifically depicted on the attached Exhibit “A”(the Building and the Expansion Area together shall be referred to as the “Premises”): both located on a portion of Lot 2, Dinosaur Minor Subdivision (a replat of Lot 2, Horsethief Park Subdivision) as depicted on Exhibit “B” and hereinafter referred to as the “Property”.

1.2 USE OF PROPERTY. During the Term, and any Renewal Term or Holdover Term, Lessee, and Lessee’s employees, invitees, visitors, agents, and guests of DJ shall have the non-exclusive right to park motor vehicles in the paved parking area (“Parking Lot”) located on the Property, as depicted in the attached Exhibit A. Lessee and Lessee’s employees, invitees and agents shall also have the non-exclusive right to use the loading and unloading area, the access area(s), and the common areas as described in the attached Exhibit A.

- A. Lessee shall not use the Parking Lot, the loading and unloading area, the access area(s) and the common areas for storage.
- B. Lessee shall not block, obstruct, or close off any access areas or common areas located on the Property without Lessor’s prior written consent.

**ARTICLE II
TERM**

2.1 LENGTH OF TERM. The term (“Term”) of this Lease shall be ten (10) years, beginning on January 1, 2015 (the “Commencement Date”) and ending at noon, local time, on December 31, 2024 unless sooner terminated as provided elsewhere in this Lease.

2.2. OPTION TO RENEW.

- A. Provided Lessee is not then in Default under the terms or conditions of this Lease and provided that there shall not have occurred prior to that time any Default under any of subsections (E) through (H) of section 11.2 (whether or not such Default was subsequently cured by Lessee or waived by Lessor), Lessee may renew this Lease for the Building for up to four (4) additional periods of five (5) years (“Renewal Term(s)”), which shall commence upon the expiration of the Term (December 31, 2024) or upon

expiration of a previous Renewal Term, as applicable. Lessee shall have the option of renewing this Lease for the entire Premises only upon Lessor's written approval, which approval shall only be granted if Lessee has either begun expansion of the Dinosaur Journey Museum into the Expansion Area or if Lessor is satisfied that Lessee has secured funding to begin an expansion project within the first Renewal Term. If this Lease is renewed by Lessee for the Building only and not the entire Premises, upon the commencement of the Renewal Term and each successive Renewal Term, the term "Premises" used throughout this Lease shall refer to the Building only.

- B. This option to renew shall be exercised by Lessee by providing to Lessor written notice of Lessee's intention to exercise this option to renew at least six (6) months prior to the expiration of the Term, or any subsequent Renewal Term, as applicable.
- C. Lessor reserves the right to increase the Base Rent at the commencement of each Renewal Term by no more than 12.5%.
- D. Each Renewal Term of this Lease shall be subject to all other terms and conditions stated in this Lease.

2.3 HOLDOVER. If Lessee shall continue in possession of the Premises with Lessor's permission but without providing to Lessor written notice of Lessee's intent to renew after expiration of the Term or any Renewal Term, this Lease shall automatically renew for an additional five (5) year term ("Holdover Term") subject to Base Rent, and subject to all other rentals, terms, and conditions of this Lease, in effect on the last day of the Term or any Renewal Term, as applicable. Either party may terminate such Holdover Term by providing written notice to the other party no later than ninety (90) days prior to the end of the Holdover Term.

ARTICLE III RENT

3.1 BASE RENT. Lessee shall pay to Lessor as rent for the premises the sum of \$28,800 for the calendar year 2015; and then for 2016 and succeeding years of the Term, to an annual rent of \$57,600.00 ("Base Rent"), which may be offset as described below. The Base Rent for 2015 shall be payable in installments on the first day of each month beginning on January 1, 2015 in the amount of \$2,800. The annual Base Rent for 2016 and succeeding years shall be payable on or before the second day of January of the following year.

- A. Rent can be offset, dollar for dollar, by Lessee for all improvements and repairs made to the Building ("Improvements"). For the purposes of this Section (3.1) "Improvements" shall mean real property improvements and repairs (i.e., walls, electric, heating and air

conditions systems, roof, overhead doors, etc.) rather than personal property improvements (i.e., furniture, trade fixtures, etc.) to the Building. Improvements shall not include any improvements constructed in the Expansion Area. At a minimum, twenty percent (20%) of the rent reduction will be allocated towards Improvements on an annual basis. Any amount less than the minimum amount not spent on Improvements on an annual basis shall be placed in a reserve fund for future Improvements until said reserve fund reaches a minimum balance of sixty thousand dollars (\$60,000). The reserve fund may be used to offset costs of Improvements in excess of the annual allocation for Improvements.

- B. Rent can also be offset, dollar for dollar, by Lessee for maintenance of the building, parking lot and common areas. For the purposes of this Section (3.1) "Maintenance" shall mean keeping the building, building systems, parking lot and common areas in good repair. Maintenance includes service that Lessor has provided in the past such as upkeep of the common areas (irrigation, mowing, etc.) and parking lot (snow removal, crack sealing, striping) whether provided by Lessor or other service provider. At a minimum, fifteen percent (15%) of the rent reduction will be allocated towards Maintenance on an annual basis.
- C. Rent can also be offset, dollar for dollar, by Lessee for the following purposes:
 - 1. Property Damage and Casualty insurance premiums paid by Lessor pursuant to the terms of this agreement.
 - 2. Marketing of the Dinosaur Journey museum ("Marketing Expenses"). Marketing Expenses must relate solely to the Dinosaur Journey museum and may include expenses related to print media, signage, online advertising, commercials, radio advertisements, and website development.
 - 3. Exhibits for the Dinosaur Journey museum.
 - 4. Expenses for professional staff specifically related to operations of Dinosaur Journey such as a curator, paleontologist, site manager.
- D. Lessee shall annually account to Lessor the total cost of expenses used to offset rent as outlined in this Section (3.1) above on each anniversary of this Lease. To receive Rent offset credit, Lessee's accounting shall include invoices for each Expense made along with proof of payment of same. Any remaining balance of Rent shall be paid to Lessor on the anniversary of this Lease for the applicable year.

3.2 ADDITIONAL RENT. All other sums payable by Lessee to Lessor under the terms of this Lease shall constitute “additional rent,” including, without limitation, those charges described in Article IV.

3.3 PAYMENT OF RENT. All rent due under this Lease shall be payable to Lessor, at its address stated in the introductory paragraph of this Lease unless Lessor gives Lessee notice to the contrary, or unless otherwise provided in the Lease.

ARTICLE IV ADDITIONAL CHARGES PAYABLE BY LESSEE

4.1 TAXES.

- A. Real Property Taxes. The parties understand and agree that Lessor is a municipal corporation and is exempt from the payment of real property taxes. Similarly, the parties state and agree that Lessee is a tax exempt non-profit corporation not required to pay real or personal property taxes under applicable law. In the event that Lessee is not exempt from the payment of real property taxes or personal property taxes and such taxes are assessed, Lessee shall be solely responsible for the payment of such taxes.
- B. Sales Taxes. Lessee shall account for, collect, and remit when due all applicable sales taxes related to Lessee’s operations on the Premises.
- C. Other Taxes. Lessee shall pay when due all other taxes and governmental fees and charges associated with Lessee’s occupation and operation of the Premises and use of the Property throughout the Term or any Renewal Term, including without limitation (if applicable) use, income, and employment taxes.

4.2 UTILITIES. Lessee shall pay, directly to the appropriate supplier, the cost of all utilities supplied to the Premises, including, without limitation, natural gas, heat, light power, sewer service, telephone, cable television service, water, drainage fees, irrigation water and refuse disposal.

4.3 INSURANCE

- A. Liability Insurance. During the Term, and any Renewal or Holdover Term, Lessee shall, at its sole cost and expense, obtain and maintain at all times a policy of commercial general liability insurance, insuring Lessee and Lessor against liability arising out of the ownership, use occupancy or maintenance of the Premises, including, for example, bodily

injury, property damage, and personal injury. Lessee's general liability insurance shall also insure Lessee and Lessor against liability arising out of volunteer negligence. Lessor shall be an additional named insured, and the policy shall provide for no fewer than 30 days prior written notice to Lessor of any cancellation or change to such policy. The initial amount of such insurance shall have an aggregate limit of not less than \$2 million on an "occurrence" and not on a "claims made" basis. This policy limit shall be subject to periodic increase based upon inflation, increased liability awards, recommendations of professional insurance advisors, and other relevant factors. However, the existence or amount of such insurance shall not limit Lessee's liability nor relieve Lessee of any obligation hereunder. The policy shall contain cross-liability endorsements, if applicable, and shall insure Lessee's performance of the indemnity provisions of Section 5.4. Lessee shall also maintain umbrella liability insurance in a minimum amount of not less than \$1,000,000 for each occurrence and in the aggregate. Such insurance shall cover any liability arising from Lessee's use of the Premises, any liability arising from use of the Property, and any signs of Lessee permitted under this Lease. The deductible for any insurance policies required by this Section shall not exceed \$10,000.00. Lessee may, at Lessee's expense, maintain such other liability insurance as Lessee deems necessary or appropriate to protect Lessee.

- B. **Employers Liability Insurance.** During the Term, and any Renewal or Holdover Term, Lessee shall maintain, at its sole expense, employer's liability insurance with coverage of at least \$500,000.
- C. **Worker's Compensation Insurance.** Lessee shall maintain, at its sole expense, worker's compensation and disability insurance covering all employees of Lessee in accordance with the laws of the State of Colorado, and other insurance required from time to time by any governmental authority.
- D. **Property Damage and Casualty Insurance.** During the Term and any Renewal Term or Holdover Term, Lessee shall maintain a policy or policies of insurance at Lessee's sole expense, covering loss of or damage to any or all improvements on the Premises in an amount not less than the full insurable replacement cost of the insured property, less applicable deductibles, at the time the insurance is purchased and at each renewal date. Such policy shall provide for broad form covered causes of loss and provide protection against all perils included within the classification of fire, extended coverage ("all risk"), vandalism, malicious mischief and special extended perils. Lessor shall be an additional named insured, and the policy shall provide for no fewer than thirty (30) days prior written notice to Lessor of any cancellation, nonrenewal or change to such policy.

- E. Volunteer Accident Insurance. During the Term and any Renewal Term or Holdover Term, Lessee shall maintain a policy or policies of insurance at Lessee's sole expense, covering injuries to volunteers which injuries occur as a result of or arise out of the individual's volunteer activities with Lessee, whether such injuries occur on or off of the Premises.
- F. Other Insurance. Lessee must also obtain insurance coverage for Lessee's fixtures, equipment displays, exhibitry and its other personal property located in or on the Premises or building improvements or "betterments" installed by Lessee in or on the Premises. Lessor shall be named as an additional insured in each such policy, all of which shall contain provisions for prior notice to Lessor of change or cancellation comparable to that described in Paragraph A above.
- G. Proof and Carriers. All insurance required under this section shall be written by carriers licensed to do business in Colorado and approved by Lessor. Lessor shall not unreasonably withhold this approval. Lessee shall furnish Lessor with proof of such insurance annually on the anniversary of this Lease and at any time a change is made to insurance. In addition, Lessee shall furnish Lessor with satisfactory proof of all insurance policies required to be maintained together with evidence of payment of premiums for those policies, within 10 days of request from Lessor, and will deliver copies of all renewals to Lessor without notice or demand from Lessor within 30 days of renewal.
- H. If Lessee fails to obtain or maintain insurance as required under this Lease or fails to furnish Lessor proof of insurance upon request, Lessor shall have the right (but no obligation), in addition to all other rights and remedies granted Lessor in this Lease, to obtain and maintain such insurance; provided, however, Lessor shall have given Lessee at least 10 days written notice that Lessor intends to acquire such insurance and Lessor shall not have received evidence that Lessee has obtained the required insurance within that 10 day period. All sums paid by Lessor in this respect shall be paid by Lessee to Lessor within 10 days of the written demand.

4.4 LATE CHARGES AND INTEREST. Lessee's failure to pay all Rent or all other financial obligations or charges due Lessor pursuant to this Lease when due may cause Lessor to incur administrative costs including, but are not limited to, processing and accounting charges and late charges which may be imposed on Lessor by any ground lease, mortgage or trust deed encumbering the Property. Therefore, if Lessor does not receive any rent payment or other charge due Lessor within fifteen (15) days following notice from Lessor to Lessee of a delinquency, Lessee shall pay Lessor a late charge equal to ten percent (10%) of the overdue amount. Any amount owed by Lessee to Lessor that is not paid within ten (10) days of the date due shall bear interest at a rate of 1 ½% per month. If the interest rate specified in this Lease is

higher than the maximum rate permitted by law, the interest rate is hereby decreased to the maximum legal interest rate permitted by law. Assessment, payment, or collection of these charges shall not excuse or cure any Default by Lessee under this Lease nor shall it constitute a waiver of, or limit Lessor's remedies upon any Default by Lessee under this Lease.

ARTICLE V USE OF THE PROPERTY

5.1 REQUIRED USES. Lessee may use the Premises only for the following purposes: as a quality dinosaur and regional history museum for the enjoyment and education of the residents of the City of Fruita, Colorado, and its other visitors, with state-of-the-art displays, laboratory capacity, lectures, expeditions or dig activities, presentations and special events.

Lessee's operations upon the Premises will provide a place for gaining experiences that lead to learning how to learn, think and to communicate while using dinosaurs as a focus. It is understood by Lessee that displays need to be rotated on a regular basis in such a fashion that displays do not become "stale" resulting in loss of interest on the part of the public and a reduction in attendance and repeat visits. There will be a working fossil laboratory as an activity exhibit on methods and techniques of fossil extraction. Public programming may consist of regular classes, workshops, seminars, teachers' workshops, lectures, films and children's activities. Advertising by Lessee will be accomplished through a variety of means such as radio, TV, internet/website, advertising, magazines and periodicals, direct mail, brochures, billboards, creature shows/exhibits, special events, feature stories and regular public service announcements.

The museum located on the Premises shall be operated and open to the general public on a year round basis during reasonable business hours, excluding major holidays. Lessee shall be obligated at all times to have fully qualified persons on staff to assure that the requisite purposes and quality of Lessee's operations, as expressed herein, are met.

5.2 MANNER OF USE. Lessee shall not cause or permit the Premises to be used in any way which constitutes a violation of any law, ordinance, governmental regulation or order, or which annoys or interferes with the rights of occupants or users of the subdivision of which the Property is part, or which constitutes a public or private nuisance or waste.

5.3 SIGNS. All signage for advertising or other purposes shall be approved in writing in advance by Lessor and must be approved through normal City of Fruita procedures. All approved signage shall be erected, maintained and repaired at the sole cost of Lessee. Signage shall be erected and maintained in accordance with all applicable federal, state, county and local sign codes and regulations and shall be submitted for Lessor's prior written approval of the design, which shall not be unreasonably withheld.

5.4 INDEMNITY AND RELEASE. Lessee shall defend and indemnify Lessor against and hold Lessor harmless from any and all losses, expenses, costs (including, without limitation, reasonable attorney fees, court costs, and litigation expenses), claims or liability incurred by or asserted against Lessor, except to the extent caused by Lessor's negligent or willful acts or omissions, arising from:

- A. Lessee's use of the Premises;
- B. the conduct of Lessee's business or anything else done or permitted by Lessee to be done in or about the Premises;
- C. any breach, Default, or violation in the performance of Lessee's obligations under this Lease; or
- D. any misrepresentation (by act or omission) or breach of warranty by Lessee under this Lease.

Lessee shall defend Lessor against any such cost, claim or liability at Lessee's expense with legal counsel reasonably acceptable to Lessor. Or, at Lessor's election, Lessee shall reimburse Lessor for any legal fees or costs incurred by Lessor in connection with any such claim. As a material part of the consideration to Lessor, Lessee hereby assumes all risk of damage to property or injury to persons in or about the Premises arising from any cause except for Lessor's negligent or willful misconduct, and Lessee hereby waives all claims in respect thereof against Lessor, except for any claim arising out of Lessor's negligent or willful misconduct. Nothing contained herein shall act or be construed as a waiver of the protections granted to Lessor under the Governmental Immunity Act.

5.5 LESSOR'S ACCESS. Lessor or its agents may enter the Premises for any reasonable purpose (a) without prior notice at any time during normal business hours; (b) without prior notice in case of emergency at any time; and (c) at any other time upon at least 24-hour prior notice.

5.6 QUIET POSSESSION. If Lessee satisfies the Rent requirement and complies with all the other terms of this Lease, Lessee may occupy and enjoy the Premises for the full Term and any Renewal Term, subject to the provisions of this Lease.

ARTICLE VI
CONDITIONS OF PROPERTY, MAINTENANCE, REPAIRS AND ALTERATIONS

6.1 EXISTING CONDITIONS. Lessee accepts the Premises in its condition as of the execution of the Lease and subject to all recorded documents, laws, ordinances and governmental regulations and orders. Lessee acknowledges that neither Lessor nor any agent of Lessor has made any representation as to the condition of the Premises or improvements to be constructed upon it or the suitability of the Property for Lessee's intended use.

6.2 EXEMPTION OF LESSOR FROM LIABILITY. Lessor shall not be liable for any damage or injury to the person, business (or any loss of income there from), exhibitry, displays, goods, wares, fixtures, merchandise or other property of Lessee, Lessee's employees, invitees, customers or any other person in or about the Premises, whether such damage or injury is caused by or results from:

- A. Fire, steam, electricity, water, gas, rain, vandalism, malicious mischief, earthquake, or flood;
- B. The breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause;
- C. Conditions arising in or about the Premises or upon other portions of any building of which the Property is a part, or from other sources or places.

Lessor shall not be liable for any such damage or injury even though the cause of or the means of repairing such damage or injury are not accessible to Lessee.

6.3 LESSEE'S OBLIGATIONS. It is the intention of Lessor and Lessee that, at all times during the Term and any Renewal Term, Lessee shall maintain the Premises in a professional, fully operative, good, clean and safe condition.

- A. Lessee shall perform all maintenance and repairs necessary to keep the Premises (including, without limitation, all structural, nonstructural, interior and exterior portions of the Premises and landscape areas, systems and equipment) in good order, condition and repair throughout the Term and any Renewal Term. Lessee shall promptly replace any portion or improvement of the Premises or system or equipment in or about the Premises that cannot be fully repaired, regardless of whether the benefit of such replacement extends beyond the Term or any Renewal Term. Lessee shall also maintain a preventive maintenance contract providing for the regular inspection and maintenance of the heating, ventilation and air conditioning systems by a licensed heating and air

conditioning contractor. Lessor shall have the right, if Lessee does not undertake any required preventive maintenance, upon thirty (30) days' notice to Lessee, to undertake the responsibility for such preventive maintenance of the heating, ventilation and air conditioning systems, at Lessee's expense. In such case, Lessee shall reimburse Lessor for all costs so incurred immediately upon demand. It is the intention of Lessor and Lessee that, at all times during the Term and any Renewal Term, Lessee shall maintain the Premises in an attractive, first-class and fully operative condition, ordinary wear and tear excepted.

- B. Lessee shall have the obligation to maintain the common areas including sidewalks, landscaping, driveways, loading and unloading area, parking lot, and signage. Lessee's maintenance duties include keeping those areas free from snow and ice, litter, dirt (including, for example, petroleum products), debris, and obstructions. Lessor shall have the right, if Lessee does not undertake any required maintenance, upon thirty (30) days' notice to Lessee, to undertake the responsibility for such maintenance of the parking lot at Lessee's expense. In such case, Lessee shall reimburse Lessor for all costs so incurred immediately upon demand. Should the Property become subdivided or condominiumized during the Term or any Renewal Term of this Lease, Lessor or the HOA, whichever is applicable, shall then be obligated to maintain the parking lot and other common areas, and Lessee shall be invoiced for its pro-rata share of the expense of maintaining same.
- C. All of Lessee's obligations to maintain and repair shall be accomplished at Lessee's sole expense. If Lessee fails to maintain or repair the Property, Lessor may, on ten (10) days' prior notice (except that no notice shall be required in case of emergency) enter the Premises and perform such repair and maintenance on behalf of Lessee. In such case, Lessee shall reimburse Lessor for all costs so incurred immediately upon demand.
- D. In undertaking maintenance and repairs of the Premises, Lessee shall have the benefit of any and all warranties extended to Lessor relative to the work. Lessor will cooperate with Lessee in order for Lessee to receive these benefits; provided that all costs and expenses of Lessor other than attorneys fees associated with such cooperation shall be paid by Lessee to Lessor immediately upon demand.

6.4 ALTERATIONS, ADDITIONS AND IMPROVEMENTS

- A. Lessee shall not make any alterations, additions or Improvements to the Premises without Lessor's prior written consent (as set forth in paragraph B1 below), except for non-structural alterations which do not exceed Fifteen Thousand Dollars (\$15,000) in cost cumulatively over the Term and any Renewal Term and which are not visible from the outside of the Building on or included within the Premises. Lessee shall promptly

remove any alterations, additions or Improvements constructed in violation of this paragraph upon Lessor's written request. Upon completion of any such work, Lessee shall provide Lessor with "as-built" plans, copies of all construction contracts, and proof of payment for all labor and materials.

- B. Any alteration, addition, or improvement to the Premises by Lessee shall be in strict compliance with the provisions of this paragraph.
1. All work shall be completed at Lessee's sole expense (and payment personally guaranteed by Lessee) pursuant to plans and specifications prepared by an architect licensed in the state of Colorado approved by Lessor and employed by Lessee at Lessee's expense. After all plans have been approved by Lessor (which approval shall not be unreasonably withheld, except for the determination that planned work is not in the general style of the existing Building, as to which Lessor may withhold approval in Lessor's sole discretion), work shall be commenced and completed with due diligence and in substantial conformity with the approved plans and specifications. Any deficiency in design or construction shall be Lessee's sole responsibility. All plans, specifications, and work shall be in strict compliance with all applicable governmental laws, rules, regulations, and codes and shall not adversely affect any of the Premises systems, such as heating, ventilation and cooling systems.
 2. No representations are made by Lessor with respect to zoning, building, regulations, location, availability, or adequacy of utilities required for any alteration or improvement of the Premises.
 3. Lessee, at Lessee's expense, shall obtain all permits and pay all fees required for the completion of any such work and provide proof of the same to Lessor upon request.
 4. All materials shall be new, all workmanship and materials shall be of first-class quality, and all individuals performing services or providing materials shall be duly licensed and skilled in their profession or trade.
 5. In all aspects of any alterations, Lessee shall use its best efforts to minimize interference with the regular operation of the Premises (such as constructing alterations during low visitor months), including without limitation, noise, dust, accumulation of waste, or storage of materials outside the Premises.
 6. Lessee shall assure that all workers shall be covered by workers' compensation insurance to the extent required by law and provide proof of the same to Lessor upon request.

7. Title to all alterations, additions, improvements (excluding trade fixtures) constructed shall vest in Lessor upon completion of construction free and clear of any liens or claims of Lessee or any other person or entity.
 8. Lessor may place its supervisory personnel or representatives on the job during the course of construction, at Lessor's expense, for the purposes of making inspections and insuring compliance with these conditions. Despite anything to the contrary stated elsewhere, Lessor may at any time during the course of work impose such other restrictions, rules or conditions as may be necessary to insure proper completion of the work and to minimize interference with operation of the Premises.
 9. Prior to commencement of work, the general contractor shall secure builder's risk insurance and a corporate surety performance bond with Lessor and Lessee as additional named insureds in an amount not less than 100% of the value of the work. In addition, Lessee shall indemnify and hold Lessor and any mortgagee harmless from and against all claims, damages, actions, losses, liabilities, and expenses of every nature (including, without limitation, reasonable attorney fees) asserted against or incurred by Lessor or any mortgagee arising from or related to the work contemplated by this provision.
- C. Lessee shall pay when due all claims for labor and material furnished to the Premises. Despite anything to the contrary stated elsewhere in this Lease, Lessee shall give Lessor at least ten (10) day's prior written notice of the commencement of any work on the Premises for which a mechanic's or materialmen's lien could be claimed. Lessor may elect to record and post notices of non-responsibility on the Premises. If, in connection with any work being performed by Lessee or in connection with any materials being furnished to Lessee, any mechanic's lien or other lien or charge shall be filed or made against the Premises or any part or interest in it, or any buildings or improvements now or hereafter erected and maintained, or on any appurtenances, or if any such lien or charge shall be filed or made against Lessor as owner, then Lessee, at Lessee's cost and expense, within thirty (30) days after such lien or charge shall have been filed or made, shall cause the same to be canceled and discharged of record by payment thereof or filing of a bond or otherwise, and shall also defend, at Lessee's sole cost and expense, any action, suit, or proceeding which may be brought for the enforcement of such lien or charge, and shall pay any damages incurred by or asserted against Lessor and shall satisfy and discharge any judgment entered therein. If Lessee fails to discharge within the above mentioned 30-day period any mechanic's lien or charge herein required to be paid or discharged by Lessee, Lessor may pay such items or discharge such liability by payment or bond, or both, and Lessee will repay to Lessor upon demand any and all amounts paid by Lessor

therefor, or by reason of any liability on any cash bond, and also any and all incidental expenses, including attorneys fees in a reasonable amount, incurred by Lessor in connection therewith, together with interest thereon; provided, however, Lessee shall have the right to contest any such mechanic's lien or other lien, provided that Lessee (1) diligently continues such contest in good faith, and (2) deposits or delivers to Lessor satisfactory indemnification or other security reasonably satisfactory to Lessor.

If any improvement, alteration, structural modification, or addition to any portion or improvement of the Premises is required subsequent to the commencement of the Term or any Renewal Term by any change in laws, ordinances, rules, regulations, or orders of any governmental or quasi-governmental authority having jurisdiction over the Premises, Lessee shall make such improvement, alteration, modification, or addition, and Rent may be accordingly offset for Lessee's Improvements as more fully described above. Should Lessee fail to make the required improvement, alteration, modification, or addition within thirty days following receipt of written notice from Lessor, Lessor may, at its option, make the required improvement, alteration, modification, or addition and adjust the Rent so that Lessee pays the cost of such improvement, alteration, modification, or addition.

6.6 CONDITION UPON TERMINATION. Upon the termination of this Lease for any reason, Lessee shall surrender the Premises to Lessor in the same condition as existed upon completion of the work and alteration in compliance with section 6.5, except for ordinary wear and tear which Lessee was not otherwise obligated to remedy under any provision of this Lease. Lessee shall remove all of Lessee's machinery, equipment, displays, exhibitry, other personal property and trade fixtures which can be removed without material damage to the Property. Lessee shall repair, at Lessee's sole expense, any damage to the Property caused by the removal of any such machinery, equipment, displays, exhibitry, other personal property and trade fixtures. In no event, however, shall Lessee remove any of the following materials, equipment or light fixtures without Lessor's prior written consent: any power wiring or power panels, lighting or lighting fixtures other than those special light fixtures installed by Lessee; wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; heaters, air conditioners or any other heating, ventilation or air conditioning equipment; fencing or security gates; or other similar operating equipment and decorations on the Premises.

ARTICLE VII DAMAGE OR DESTRUCTION OF PREMISES

7.1 LESSEE'S OBLIGATION TO REPAIR. In the event the demised Premises are damaged by fire or other casualty, Lessee, at Lessee's sole cost and expense shall, as soon as reasonably possible thereafter, commence repair, restoration, and reconstruction of the Premises and prosecute such work diligently until completion. In the event the damage to the

Premises is of a nature that cannot be repaired, restored or reconstructed within one hundred eighty (180) days of the date of damage, Lessor, at its sole option, may cancel and terminate this Lease by giving Lessee notice in writing of its intention to cancel this Lease no later than thirty (30) days after the determination that the repair will require more than one hundred eighty (180) days to complete, whereupon the Term, and any Renewal Term of this Lease shall terminate on the thirty-first (31st) day after such notice is given.

7.2 RELEASE OF OBLIGATIONS. On any termination of this Lease under any of the provisions of this Article, the parties shall be released without further obligation to the other as of the termination date, provided that each party shall remain liable to the other for obligations that have accrued as of the termination date and remain unfulfilled.

ARTICLE VIII CONDEMNATION

8.1 CONDEMNATION. If all or any portion of the Property is taken under the power of eminent domain or sold under the threat of that power (all of which are called “Condemnation”), this Lease shall terminate as to the part taken or sold on the date the condemning authority takes title or possession, whichever occurs first. If more than twenty percent (20%) of the floor area of the Building which is located on the Property is taken, either Lessor or Lessee may terminate this Lease as of the date the condemning authority takes title or possession, by delivering written notice to the other within ten (10) days after receipt of written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority takes possession). If neither Lessor nor Lessee terminates this Lease, this Lease shall remain in effect as to the portion of the Property not taken, except that the Base Rent shall be reduced in proportion to the reduction in the floor area of the Building. If this Lease is not terminated, Lessee shall repair any damage to the Property caused by the Condemnation.

Any Condemnation award or payment shall be distributed in the following order:

- A. first, to a mortgagee or beneficiary under a deed of trust encumbering the Property, only in the amount of its interest in the Property (if required by that mortgage or trust deed);
- B. second, to Lessee, only the amount of any award specifically designated for loss of, or damage to, Lessee’s trade fixtures or removable personal property; and
- C. third, to Lessor, the remainder of such award, whether as compensation for reduction in the value to the leasehold, the taking of the fee, or otherwise.

**ARTICLEIX
ASSIGNMENT AND SUBLETTING**

9.1 CONSENT OF LESSOR AND LESSEE REQUIRED. No portion of, or interest in, the Premises, Property, or Lessee's interest in this Lease may be acquired by any other person or entity, whether by assignment, mortgage, sublease, transfer (voluntary or involuntary), operation of law, or act or omission of Lessee, without Lessor's prior written consent, which may be withheld for any reason. No portion of Lessor's interest in this Lease may be acquired by any other persons or entity by assignment, without Lessee's prior written consent.

9.2 RELEASE OF OBLIGATIONS. Any instance of consent by Lessor under section 9.1 shall not be deemed to be a consent to any other or further such instance. Any permitted assignment, mortgage, sublease, or transfer shall not release Lessee of its obligations under this Lease unless such release is specifically granted by Lessor to Lessee in writing and signed by Lessor.

**ARTICLEX
SUBORDINATION**

10.1 SUBORDINATION. This Lease is subject and subordinate at all times to the lien of any and all existing and future mortgages (which also includes, for example, trust deeds and security interests) of all, any part of, or any interest in the Premises. Although no instrument or act on the part of Lessee shall be necessary to effectuate such subordination, Lessee will, nevertheless, execute and deliver such further instruments subordinating this Lease to the lien of all such mortgages as may be desired by the mortgagee. Lessee hereby appoints Lessor as its attorney-in-fact, irrevocably, to execute and deliver any such instruments for Lessee.

**ARTICLEXI
DEFAULTS; REMEDIES**

11.1 COVENANTS AND CONDITIONS. Lessee's performance of each of Lessee's obligations under this Lease is a condition as well as a covenant. Lessee's right to continue in possession of the Premises is conditioned upon such performance. Time is of the essence in the performance of all covenants and conditions.

11.2 DEFAULTS. Lessee shall be in default ("Default") under this Lease if it fails to perform any of its obligations or covenants under this Lease including, but not limited to, the following:

- A. If Lessee vacates or abandons the Premises (abandonment shall include, but not be limited to, Lessee's failing to be open for business as required in section 5.1 for seven consecutive days;
- B. If Lessee fails to pay rent, insurance premiums, or any other charges required to be paid by Lessee, as and when due;
- C. If Lessee fails to pay or properly account for, collect and remit when due taxes required to be paid by Lessee under this Lease;
- D. If Lessee performs or permits any act or omission which constitutes a Default or violation under any mortgage or trust deed encumbering the Property or Premises;
- E. If Lessee makes a general assignment or general arrangement for the benefit of creditors;
- F. If a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Lessee and is not dismissed within thirty (30) days;
- G. If a trustee or receiver is appointed to take possession of substantially all of Lessee's assets located on the Property or if Lessee's interest in this Lease and possession is not restored to Lessee without restriction within thirty (30) days; or
- H. If substantially all of Lessee's assets located on the Property or in the Premises or of Lessee's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days. If a court of competent jurisdiction determines that any of the acts described in this paragraph H of this section 11.2 is not a Default under this Lease, and a trustee is appointed to take possession (or if Lessee remains a debtor in possession) and such trustee or Lessee transfers Lessee's interest hereunder, then Lessor shall receive, as Additional Rent, the difference between the rent (or other consideration) paid in connection with such assignment or sublease and the rent payable by Lessee hereunder.

11.3 NOTICE OF DEFAULT; OPPORTUNITY TO CURE. In the event of any Default or breach by Lessee of a covenant, term, condition, or obligation under this Lease, Lessor shall give written notice to Lessee of the nature of the Default and an opportunity to be heard by the Fruita City Council concerning such Default. Said written notice shall be personally served upon Lessee or sent to Lessee by United States certified mail, postage prepaid, return receipt requested. Said notice shall state with specificity the nature of such Default. If such Default has not been remedied within fifteen (15) days of the date of delivery or mailing of the notice

or of the date of any hearing before the Fruita City Council, whichever is later (or such reasonable time period as is necessary to cure the Default provided that Lessee has commenced with due diligence to cure the Default within such fifteen (15) day period), Lessor shall have such remedies as provided in section 11.4. Provided, however, Lessor shall not be required to provide the notice specified in this section in order to have the remedies stated in section 11.4 if the nature of the breach or Default by Lessee cannot be cured, or if the Default is of a nature described in paragraphs E, F, G and H of section 11.2.

11.4 REMEDIES. Upon the occurrence of any Default, and upon Lessor giving notice as required by section 11.3, and upon Lessee's failure to cure such Default as set forth in section 11.3 above, Lessor may, at any time thereafter, without limiting Lessor in the exercise of any right or remedy which Lessor may have under the applicable law:

- A. Give Lessee written notice of its intent to terminate this Lease on the date of such notice or on any later date as may be specified therein, whereupon Lessee's right to possession of the Premises shall cease and this Lease, except as to Lessee's liability, shall be terminated. In the event this Lease is terminated in accordance with the provisions of this subsection A, Lessee shall remain liable to Lessor for damages in an amount equal to the rent and other sums which would have been owing by Lessee under this Lease for the balance of the Term had this Lease not been terminated, less the net proceeds, if any, of any reletting of the Premises by Lessor subsequent to such termination, after deducting all Lessor's reasonable expenses, including, without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys fees, expenses of employees, alteration and repair costs and expenses of preparation for such reletting. Lessor shall be entitled to collect such damages from Lessee monthly on the days on which the Rent and other charges would have been payable hereunder if this Lease had not been terminated.

- B. Reenter and take possession of the Premises or any part thereof, and repossess the same as of Lessor's former estate and expel Lessee and those claiming through or under Lessee, and remove the effects of both or either (and may, but shall not be obligated to, store them for and at the expense of the owner of the effects), using such force for such purposes as may be necessary, without being liable for prosecution thereof, without being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of Rent or other breach of covenants or conditions. Should Lessor elect to reenter as provided in this paragraph, or should Lessor take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor may, from time to time, without terminating this Lease, relet the Premises or any part thereof in Lessor's or Lessee's name, but for the account of Lessee, for such term or terms which may be greater or less than the period which would otherwise have

constituted the balance of the Term of this Lease and on such conditions and upon other terms (which may include concessions of free rent and alteration and repair of the Premises) as Lessor, in its sole discretion, may determine, and Lessor may collect and receive the rents therefor. Lessor shall in no way be responsible or liable for any failure to relet the Premises, or any part thereof, or for any failure to collect any rent due upon such reletting, except that Lessee does not hereby waive any defense which Lessee may have for Lessor's failure to mitigate its damages. No such reentry or taking possession of the Premises by Lessor shall be construed as an election on Lessor's part to terminate this Lease unless a written notice of such intention is given to Lessee. No notice from Lessor hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by Lessor to terminate this Lease unless a written notice of such intention is given to Lessee. No notice from Lessor hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by Lessor to terminate this Lease unless such notice specifically so states. Lessor reserves the right following such reentry and/or reletting to exercise its right to terminate this Lease by giving Lessee such written notice, in which event the Lease will terminate as specified in such notice.

In the event that Lessor does not elect to terminate this Lease, but takes possession as provided for in this subsection B, Lessee shall pay to Lessor (1) the Rent and other charges as herein provided which would be payable hereunder if such repossession had not occurred, less (2) the net proceeds, if any, of any reletting of the Premises after deducting all Lessor's reasonable expenses, including, without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys fees, expenses of employees, alteration and repair costs, and expenses for preparation of such reletting. Lessee shall pay such rent and other sums to Lessor monthly on the days on which the Rent would have been payable hereunder if possession had not been taken.

- C. Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Property. In such event, Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.
- D. Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state in which the Property is located.

11.5 CUMULATIVE REMEDIES. Lessor's exercise of any right or remedy shall not be exclusive or prevent it from exercising any other right or remedy. All of Lessor's rights and remedies under this Lease and applicable law shall be cumulative.

**ARTICLE XII
LEGAL COSTS**

12.1 LEGAL COSTS. In addition to any other right or remedy of Lessor under this Lease, Lessee shall reimburse Lessor, upon demand, for any costs and expenses incurred by Lessor in conjunction with any breach or Default of Lessee under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include reasonable legal fees and all costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, if any other action to enforce the provisions of this Lease is commenced, the court in such action shall award to the party in whose favor a judgment is entered, a reasonable sum as attorney's fees and costs. Such attorney's fees and costs shall be paid by the losing party in such action. Lessee shall also indemnify Lessor against and hold Lessor harmless from all costs (including, without limitation, reasonable attorneys fees), expenses, demands and liability incurred by Lessor if Lessor institutes or becomes or is made a party to, any claim or action:

- A. instituted by Lessee, or by any third party against Lessee, or by or against any person holding any interest under or using the Premises by license of or agreement with Lessee;
- B. for foreclosure of any lien for labor or material furnished to or for Lessee or such other person;
- C. otherwise arising out of or resulting from any act or transaction of Lessee or such other person; or
- D. necessary to protect Lessor's interest under this Lease in an action or proceeding, including, without limitation, bankruptcy proceedings or other proceeding under Title 11 of the United States Code, as amended. Lessee shall defend against Lessor any such claim or action at Lessee's expense with counsel reasonably acceptable to Lessor or, at Lessor's election, Lessee shall reimburse Lessor for any legal fees or costs incurred by Lessor in any such claim or action.

**ARTICLE XIII
HAZARDOUS MATERIALS**

13.1 PROHIBITION. Lessee shall not cause or permit any hazardous materials to be placed, used, stored, or disposed of in the Premises without Lessor's prior written consent, which Lessor may withhold in his sole discretion.

13.2 INDEMNIFICATION BY LESSEE. Whether caused by hazardous materials present with or without permission of Lessor, Lessee agrees to indemnify, defend, and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liability, and losses of every nature (including, without limitation, diminution in value of the Premises, damages for loss or restriction of use of rentable or usable space or any amenity or any part or portion of the Premises, Building, or Property; damages arising from any adverse impact on marketing of space and sums paid in settlement of the claims, attorneys fees, consultant fees, and expert fees) arising during or after the Term or any Renewal Term as a result of the presence of or contamination by hazardous materials. This indemnification includes, without limitation, costs incurred in investigation, remediation, or restoration work required by any federal, state, or local governmental agency or political subdivision because of hazardous material present in the Premises or in the soil or groundwater in or under the Premises, Building, or Property. Without limiting the foregoing, if the presence of any hazardous materials on the Premises caused by or permitted by Lessee results in a contamination of the Premises, Building, or Property, Lessee will promptly take all actions at Lessee's sole expense as are necessary to return the Premises, Building, and Property to the condition which existed prior to the introduction of any hazardous materials to the Premises; provided, Lessor's approval of such actions shall be obtained first, which approval shall not be unreasonably withheld so long as such actions would not potentially or materially adversely affect the Premises, Building, or Property.

13.3 DEFINITION. "Hazardous materials" for the purposes of this section means any hazardous or toxic substance, material, or waste which is, or subsequently becomes, regulated by any local governmental authority, the State of Colorado, or the United States or any of its departments, agencies, or political subdivision. Hazardous materials includes, without limitation, explosives; radioactive materials; any material or substance defined as a hazardous substance or a hazardous waste under state or federal law; petroleum; asbestos-containing materials; or any substance, material, or waste which is now or subsequently becomes regulated by any governmental entity.

ARTICLE XIV MISCELLANEOUS PROVISIONS

14.1 NON-DISCRIMINATION. Lessee promises, and it is a condition to the continuance of this Lease, that there will be no discrimination against, or segregation of, any person or group of persons on the basis of race, color, sex, creed, national origin or ancestry in the occupancy or use of the Property or any portion thereof or in any other manner related to this Lease.

14.2 ADA COMPLIANCE. Lessee shall comply, at Lessee's expense, with all the provisions of the ADA and all related laws and regulations applicable to Lessee's operations on the Premises at all times during the Term. Lessee shall indemnify and hold Lessor harmless from and against all losses, liabilities, damages, and claims of every nature (including, without limitation, reasonable attorneys fees and court costs) incurred by or asserted against Lessor in any way arising from or related to Lessee's failure to fulfill Lessee's obligation under this section.

14.4 LESSOR'S LIABILITY; CERTAIN DUTIES.

- A. As used in this Lease, the term "Lessor" means only the current owner or owners of the fee title to the Property or the leasehold estate under a ground lease of the Property at the time in question. Each Lessor is obligated to perform the obligations of Lessor under this Lease only during the time such Lessor owns such interest or title. Any Lessor who transfers its title or interest is relieved of all liability with respect to the obligations of Lessor under this Lease to be performed on or after the date of transfer. However, each Lessor shall deliver to its transferee all funds previously paid by Lessee if such funds have not yet been applied under the terms of this Lease. The liability of such Lessor shall be limited to its interest in the Property.
- B. Lessee shall give written notice of any failure by Lessor to perform any of its obligations under this Lease to Lessor and to any ground lessor, mortgagee or beneficiary under any deed of trust then encumbering the Property whose name and address have been furnished to Lessee in writing. Lessor shall not be in Default under this Lease unless Lessor (or such ground Lessor, mortgage or beneficiary) fails to cure such non-performance within fifteen (15) days after receipt of Lessee's notice. However, if such non-performance reasonably requires more than fifteen (15) days to cure, Lessor shall not be in Default if such cure is commenced within such fifteen (15) day period and thereafter diligently pursued to completion.

14.5 SEVERABILITY. A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect. Also, any provision of this Lease determined to be a violation of any mortgage on the Property or any part of the Property in which Lessor is the borrower, or promissory note secured by that mortgage, or applicable governmental regulations shall

be of no effect, but shall not invalidate the remainder of this Lease, which shall remain in full force and effect.

14.6 INTERPRETATION. The captions of the Articles or sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of the Lessee, the term "Lessee" shall include Lessee's agents, employees, contractors, invitees, successors or others using the Property with Lessee's expressed or implied permission.

14.7 INCORPORATION OF PRIOR AGREEMENTS; MODIFICATIONS. This Lease is the only agreement between the parties pertaining to the lease of the Property and no other agreements are effective. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void.

14.8 NOTICES. All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by United States certified mail, return receipt requested, postage prepaid. Unless otherwise specified in this Lease, all notices shall be effective upon delivery. Notices shall be delivered to the addresses stated in the introduction paragraph of this Lease. Either party may change its address by notice to the other party.

14.9 WAIVERS. All waivers must be in writing and signed by the waiving party. Lessor's delay or failure to enforce any provision of this Lease or its acceptance of rent at any time shall not be a waiver and shall not prevent Lessor from enforcing that provision or any other provision of this Lease on that occasion or in the future. No statement on a payment check from Lessee or in a letter accompanying a payment check shall be binding on Lessor. Lessor may, with or without notice to Lessee, negotiate such check without being bound to the conditions of such statement.

14.10 NO RECORDATION. Lessee shall not record this Lease without prior written consent from Lessor. However, either Lessor or Lessee may require that a "Short Form" memorandum of this Lease executed by both parties be recorded.

14.11 BINDING EFFECT; CHOICE OF LAW. Subject to the limitations stated in Article IX, this Lease binds Lessor, Lessee, and their successors and assigns. However, Lessor shall have no obligation to Lessee's successor unless the rights or interest of Lessee's successor are acquired in accordance with the terms of this Lease. The laws of

the State of Colorado shall govern this Lease. The parties agree that the District Court of Mesa County shall have jurisdiction over, and be the proper venue for, any litigation concerning this Lease.

14.12 CORPORATE AUTHORITY. If Lessee is a corporation, each person signing this Lease on behalf of Lessee represents and warrants that he has full authority to do so; or that this Lease binds the corporation and is within the authorized purposes of the corporation. Within thirty (30) days after this Lease is signed, Lessee shall deliver to Lessor a certified copy of a resolution of Lessee's Board of Directors authorizing the execution of this Lease or other evidence of authority reasonably acceptable to Lessor.

14.13 CONSENT NOT TO BE UNREASONABLY WITHHELD. Except as otherwise may be provided in this Lease, in the event any provision of this Lease requires the consent of the other party prior to undertaking an action, such consent by the other party shall not be unreasonably withheld.

14.14 FORCE MAJEURE. If Lessor or Lessee cannot perform any of its obligations due to events beyond such party's control, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond a party's control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, or government regulations.

14.15 LESSEE'S FINANCIAL CONDITION. Lessee shall provide Lessor with annual summary financial reports, with format to be agreed upon by both parties for Lessee's operations upon each anniversary of this Lease, as well as any annual audit or financial compilation prepared by a certified public accountant (CPA) within 10 days after such audit or financial compilation is prepared in its final format by the CPA. Additionally, within ten (10) days after written request from Lessor, Lessee shall deliver to Lessor such monthly summary financial reports as are reasonably required by Lessor to verify Lessee's financial health, including the net worth of Lessee, or any proposed assignee, subtenant, or guarantor of Lessee. Lessee represents and warrants to Lessor that each such financial report or statement is a true and accurate statement as of the date of such statement. All financial information provided to Lessor hereunder to verify the financial health of Lessee at the time provided shall be confidential and shall be used by Lessor only for the purposes set forth herein.

14.16 NO BROKER COMMISSION. Lessee warrants and represents to Lessor that no real estate broker or salesman has assisted Lessee with regard to this Agreement or is entitled to claim any commission with regard to it.

14.17 ESTOPPEL CERTIFICATES. Each party shall at any time or times, on not less than ten (10) days' prior notice from the other party, sign, acknowledge, and deliver a written statement certifying:

- A. That this Lease is in full force and effect, subject only to any modification specified in the written statement;
- B. That Lessee is in possession of the Premises and paying rent as provided in this Lease, or specifying any defects in possession or defaults in payment of rent;
- C. The dates to which any rents have been paid in advance;
- D. If there are not, to that party's knowledge, any uncured Defaults on the part of the other party to the Lease, or specifying any claimed Defaults; and,
- E. Addressing such further matters as may be reasonably request by the party seeking the estoppel certificate.

If Lessee fails to deliver such statement in a timely manner, Lessee shall be deemed to have acknowledged that this Lease is in full force and effect, without modification except as might be represented by Lessor, and that there are no uncured Defaults in Lessor's performance. Lessee further irrevocably appoints Lessor as Lessee's attorney-in-fact to sign, acknowledge, and deliver on Lessee's behalf any such statement which Lessee fails to sign, acknowledge, and deliver within the time period stated in this section.

14.18 RELATIONSHIP OF PARTIES. Nothing contained in this Lease shall create any relationship between the parties other than landlord and tenant. It is acknowledged and agreed that Lessor has not in any way, or for any purpose, become a partner, joint venture, or member of a joint or common enterprise with Lessee in the conduct of Lessee's business.

14.19 INTERPRETATION. All terms of this Lease have been fairly negotiated by the parties. Its provisions shall be construed as though drafted fully by both parties and no presumption for or against either party shall be made in that regard.

14.20 RECOMMENDATION OF LEGAL COUNSEL. Lessor has recommended to Lessee that it retain and consult with legal counsel of Lessee's choice prior to executing this Lease to counsel and advise Lessee concerning the Lease.

14.21 NON-MERGER. Each and all of the provisions and obligations of the parties contained in this Lease shall survive closing of the Option described in Article XV and shall not be merged in the deed of the Property to be delivered by Lessor to Lessee under the Option.

14.22 FACSIMILE SIGNATURES. For the purposes of this Lease, signatures transmitted by facsimile shall be accepted and binding and shall be followed within five (5) calendar days by a copy of the same document containing the original signature of the party or individual whose signature has been transmitted by facsimile.

14.23 COUNTERPARTS. This Lease may be signed in any number of counterparts, which together shall constitute a single agreement.

14.24 NO WAIVER OF IMMUNITY. Nothing contained in this Lease shall be deemed to constitute a waiver of Lessor's sovereign immunity, governmental immunity or limitations on liability under any applicable state law.

ARTICLE XV OPTION TO PURCHASE

15.1 PURCHASE OPTION. As additional consideration for Lessee's promises contained in this Lease, Lessor grants Lessee the right and option to purchase ("Option") the Building upon the terms and conditions stated in this Section.

15.2 EXERCISE OF OPTION. The Option may be exercised only by written notice from Lessee to Lessor, received by Lessor not less than six (6) months prior to the date of expiration of the Term; or the date of expiration of each and every Renewal Term or Holdover Term.

The Option may not be exercised if Lessee is in Default. If Lessee fails to close the Option within the time provided in Section 5.3 and in the manner and upon the conditions stated in this section, the Option shall expire without further notice to, or any action by, any person or entity.

15.3 CLOSING OF OPTION. If the Option is exercised by Lessee, closing and settlement shall occur upon the fifth anniversary date of the Term, the date of expiration of the Term, or the date of expiration of any Renewal Term or Holdover Term, as applicable, at a time and place agreed by Lessor and Lessee. All closing costs shall be

the sole responsibility of Lessee. There will be no real estate commissions paid as a result of this transaction.

15.4 CREDIT. Should Lessee choose to exercise the Option, Lessee shall receive a credit in the amount of \$449,649.00 that Lessor shall apply to the purchase price of the Building.

15.5 OPTION PRICE. The purchase price ("Option Price") to be paid by Lessee to Lessor for the Premises shall be based upon the average of two appraisals: one appraisal to be commissioned and paid for by Lessor, and one appraisal to be commissioned and paid for by Lessee. Each appraisal must be performed by an appraiser licensed in the state of Colorado and must be completed within sixty (60) days of the date of the written notice to exercise the Option described in Section 15.2.

15.6 TITLE WORK. Within twenty(20) days after completion of the appraisals described in section 15.5, Lessor shall furnish to Lessee, at Lessee's expense, a current commitment for an owner's title insurance policy on the Property in the amount of the Option Price, with copies of instruments (or abstracts on instruments) listed in the schedule of exceptions in the title commitment. This requirement pertains only to instruments shown of record in the office of the clerk and recorder of Mesa County. At closing, Lessee will pay the premium for issuance of the owner's policy based upon the commitment.

- A. If Lessor does not receive written notice signed by Lessee of unmerchantability of title or any other unsatisfactory title condition as shown by the commitment (or any endorsement adding new exceptions to the title commitment, with a copy of the document adding the new exception to title) within ten (10) calendar days after receipt of the title documents by Lessee, Lessee shall be deemed to have accepted as satisfactory the condition of the title to the Property as disclosed by the commitment or endorsement(s).

- B. If Lessor receives timely notice of unmerchantability of title or unsatisfactory title conditions(s), Lessor shall use reasonable effort to correct the unsatisfactory title condition(s) relative to the Property. If Lessor fails to correct any unsatisfactory title conditions(s) described in a timely notice from Lessee on or before thirty (30) days prior to the closing date, Lessee's sole remedy shall be to terminate the Option by written notice signed by the Lessee and received by Lessor on or before fifteen (15) days prior to the closing date.

- C. If Lessor does not receive Lessee's notice of termination by that date, Lessee shall be deemed to have waived objection to the unsatisfactory title condition(s) which is the subject of a timely notice from the Lessee and to have accepted title to the Premises subject to the unsatisfactory title condition.
- D. If Lessor timely receives Lessee's notice of termination as specified above, the Option shall immediately terminate without further notice or action by any party, which shall be Lessee's sole remedy; provided, if the Option terminates pursuant to this provision, Lessee shall have an additional fifteen (15) days in which to exercise the option to renew this Lease, described in section 2.4 of the Lease, if applicable, notwithstanding the time limits stated in said section.

15.7 CONDITION OF PROPERTY. The Premises will be conveyed to Lessee in "as is" condition. Lessee's exercise of the Option will constitute its agreement that the Premises is in satisfactory condition.

15.8 PRORATION. Real Property Taxes, if any, rents, and any comparable items will be prorated to the date of closing, except to the extent such items are already then being paid by Lessee, in which case no proration will take place. Fees for real estate closing and settlement services will be paid one-half by Lessor and one-half by Lessee. Any sales, use, and transfer taxes that may accrue because of the Option will be paid by Lessee.

15.9 CONVEYANCE. Lessor shall execute and deliver to Lessee a good and sufficient special warranty deed at closing, conveying the Premises free and clear of all taxes except the general taxes for the year of closing, if any, and subject to any mortgage, if applicable. Title shall be conveyed free and clear of all other liens and encumbrances including all liens for special improvements installed as of the date of Lessee's notice given pursuant to section 15.2, whether assessed or not, except (1) distribution utility easements (including cable TV service), (2) those matters reflected by the title documents accepted by Lessee in accordance with paragraphs A and C of section 15.7, (3) inclusion of the Premises within any special taxing district, (4) subject to the easement and other rights reserved by Lessor in this Lease, and (5) subject to building and land use regulations.

15.10 NO ASSIGNMENT. Lessee may not assign, transfer, or convey, voluntarily or involuntarily, all or any portion of its rights under this Option without Lessor's prior written consent. Lessor may withhold that consent in its sole discretion.

15.11 NO EQUITY IF OPTION NOT EXERCISED. Notwithstanding any of the provisions of this Lease to the contrary, in the event Lessee does not purchase the Premises in the manner set forth in this Section, Lessee shall not be deemed to have acquired any equity or ownership interest, including but not limited to the credit described in section 15.4, in the Building, whatsoever.

15.12 MODIFICATIONS. Any modification of this Section 15 must be made in writing and signed by both parties.

Wherefore, the parties have set their hands the day and year first above written.

MUSEUM OF WESTERN COLORADO

CITY OF FRUITA, COLORADO

Chairman of the Board

City Manager

Attest:

Attest:

Executive Director

City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

Acknowledged before me this _____ day of _____, 2016, by Michael Bennett as City Manager and Margaret Sell as Clerk of the City of Fruita, Colorado.

WITNESS my hand and official seal.

My commission expires:

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

Acknowledged before me this _____ day of _____, 2016, by _____
as Chairman of the Board of the Museum of Western Colorado, Inc. and Peter Booth, as
Executive Director of the Museum of Western Colorado, Inc.

WITNESS my hand and official seal.

My commission expires:

Notary Public



JURASSIC CT

JURASSIC AVE

340

KOKOPELLI BLVD

New Access

Exst. Access

Exst. Access

Common Area (Landscaped Frontage, Signage)

Existing DJM (The Building)

Existing Dropoff

New DJM Addition (The Expansion Area)

The Parking Lot

Common Area, Landscaped Frontage

Common Area, Loading & Unloading

New SEB

New Dropoff

Shared Entry/Courtyard

New M&S Center

Picnic & Playground

Learning Landscape

Exhibit A



Exhibit B

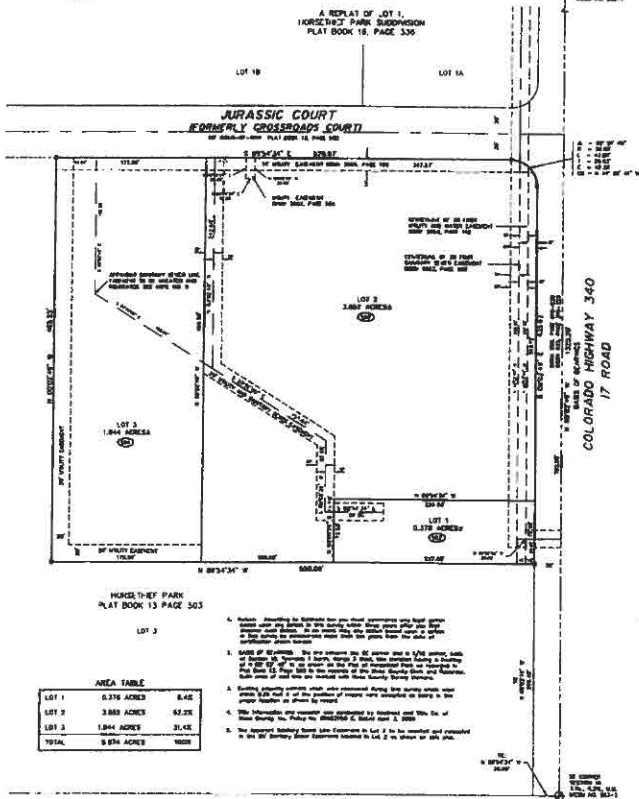
EXHIBIT B

DINOSAUR MINOR SUBDIVISION
REPLAT OF LOT 2, HORSENEY PARK
LOCATED IN THE SE 1/4 OF THE SE 1/4 OF SECTION 18, T.1 N., R.2 W., U.1.
CITY OF FRUITA, MESA COUNTY, COLORADO

LEGEND

- 1. 1" = 50' SCALE
- 2. 1" = 50' SCALE
- 3. 1" = 50' SCALE
- 4. 1" = 50' SCALE
- 5. 1" = 50' SCALE

A REPLAT OF LOT 1,
HORSENEY PARK SUBDIVISION
PLAT BOOK 18, PAGE 336

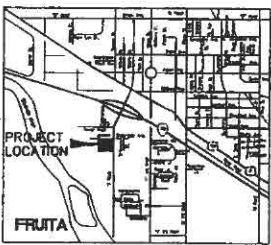


STATE DEPT. OF REVENUE, DENVER

State of Colorado
County of Mesa
I hereby certify that this instrument was filed for record in the office of the County Clerk on this 12th day of September, A.D. 2008, at 10:00 A.M. in Book 20 of the County Clerk's Office, at Frutta, Colorado.
Recorded at 10:00 A.M. on 9/12/08
[Signature]
County Clerk

BY THE COUNTY CLERK, DENVER, COLORADO
I hereby certify that this instrument was filed for record in the office of the County Clerk on this 12th day of September, A.D. 2008, at 10:00 A.M. in Book 20 of the County Clerk's Office, at Frutta, Colorado.
Recorded at 10:00 A.M. on 9/12/08
[Signature]
County Clerk

BY THE COUNTY CLERK, DENVER, COLORADO
I hereby certify that this instrument was filed for record in the office of the County Clerk on this 12th day of September, A.D. 2008, at 10:00 A.M. in Book 20 of the County Clerk's Office, at Frutta, Colorado.
Recorded at 10:00 A.M. on 9/12/08
[Signature]
County Clerk



CITY OF FRUITA, COLORADO

City of Frutta, Colorado
I hereby certify that this instrument was filed for record in the office of the City Clerk on this 12th day of September, A.D. 2008, at 10:00 A.M. in Book 20 of the City Clerk's Office, at Frutta, Colorado.
Recorded at 10:00 A.M. on 9/12/08
[Signature]
City Clerk

NOTARIAL PUBLIC

State of Colorado
County of Mesa
I, Notary Public, do hereby certify that this instrument was filed for record in the office of the Notary Public on this 12th day of September, A.D. 2008, at 10:00 A.M. in Book 20 of the Notary Public's Office, at Frutta, Colorado.
Recorded at 10:00 A.M. on 9/12/08
[Signature]
Notary Public

PLAT OF
DINOSAUR MINOR SUBDIVISION
REPLAT OF LOT 2, HORSENEY PARK
LOCATED IN THE SE 1/4 OF THE SE 1/4 OF
SECTION 18, T.1 N., R.2 W., U.1, MERRIAN,
CITY OF FRUITA,
MESA COUNTY, COLORADO
BANNER ASSOCIATES, INC.
GRAND JUNCTION, COLORADO
SCALE: 1" = 50' DATE: 9-12-08 SHEET NO. 1 of 1