

## BUTLER LONGHORN MUSEUM LEASE AGREEMENT

THIS LEASE AGREEMENT (“**Agreement**”) is made and entered into as of \_\_\_\_\_, 2016 (the “**Effective Date**”), by and between **THE CITY OF LEAGUE CITY** (“**City**”), and **BUTLER LONGHORN MUSEUM NON-PROFIT CORPORATION 501(c)(3)** (“**BLM**”).

### RECITALS

- A. The City is the owner of the land, with buildings and improvements thereon, located at 1220 Coryell, in League City, Texas, which property is currently known as the site of the Butler Longhorn Museum and is legally described in **Exhibit A** attached hereto and made a part hereof (such land, buildings and improvements are hereinafter together referred to as the “**Premises**”).
- B. BLM desires to lease the Premises from City, and City desires to lease the Premises to BLM, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

In addition to certain terms defined elsewhere in this agreement, the terms below shall have the following meanings:

“**Agreement**” shall mean the Lease Agreement

“**Applicable Laws**” means any statute, law, regulation, ordinance, rule, judgment, rule of law, order, decree, permit, approval, concession, grant, franchise, license, agreement, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, whether now or hereinafter in effect and in each case as amended, as interpreted and enforced at the time in question and applicable to the Site.

“**Base Rental**” shall mean the sum of \$100.00 per month and any utilities agreed to with this Agreement. The Base Rental due for the first month during the “**Lease Term**” (hereinafter defined) has been deposited with The City by BLM contemporaneously with the execution hereof.

“**Commencement Date**” shall mean September 1, 2016.

“**Governmental Authority**” means any political body (federal, state, parish, local or otherwise) and any governmental or regulatory department, agency, office, board, commission, court, official or other governmental or regulatory authority, entity, employee or official (whether federal, state, parish, local or otherwise).

**“Lease Term”** shall mean a term commencing on the Commencement Date and continuing for three (3) years (plus any partial calendar month in which the Commencement Date occurs).

**“Museum Collection”** means the collection of works of art that are now or hereafter owned or accessioned by loan by the City or BLM and maintained in the care and custody of the Museum, including (1) all works of art, artifacts, books, archeological objects and other personal property of various kinds of descriptions comprising the original gifts made to the Museum, and (ii) all works of art, artifacts, books, archeological objects and other similar items subsequently acquired by the City or BLM, whether by grant or by accession by loan.

**“Non-Emergency maintenance or inspections”** by the City’s employees, agents or representatives of the Premises shall include all scheduled maintenance that does not threaten the safety, liability or well-being of the Museum agents, officers, directors, licensees, concessionaires, employees, visitors or invitees or any other person entering the Premises under the express or implied invitation of BLM.

**“Normal Business Hours”** for the Premises shall mean a minimum of forty (40) hours a week, exclusive of the normal business holidays of New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**“Notice”** means any communication or notice required to be given pursuant to the terms of this Lease to BLM, The City or any other party which complies with the requirements of Article XIX of this Lease.

**“Person”** means any individual, corporation, partnership, limited liability company, joint venture, business trust, joint stock company, unincorporated association, organization, agency, trust, estate, Governmental Authority, custodian, nominee or any other individual or entity in its own or any representative capacity.

**“Premises”** shall mean the land, buildings and improvements located in the City of League City, Galveston County, Texas, consisting of the Butler Longhorn Museum main structure and appurtenant buildings and that portion of the grounds adjacent to such improvements consisting exclusively of the southeastern courtyard area generally located at the corner of Coryell and Landrum Streets in the City of League City, Texas, as more particularly described on the attached Exhibit “A” and contained within the shaded boundary lines noted therein. It is expressly understood that the term does not include the “Ghirardi House” improvements which are located on the grounds on the adjacent Heritage Park nor any other portion of the approximately 10 ½ acres of real estate and improvements comprising the Heritage Park.

## **ARTICLE II**

### **GRANT OF LEASE**

The City hereby leases and demises to BLM, and BLM hereby leases from The City, the Property, subject to and with the benefit of the terms, covenants, conditions and provisions set forth herein. The City agrees that if BLM shall perform all of the covenants and agreements herein required to be performed by BLM, BLM shall, subject to the terms of this Agreement, at

all times during the continuance of this Agreement, have the peaceable and quiet enjoyment and possession of the Property.

### **ARTICLE III**

#### **TITLE, CONDITION, USE AND QUIET ENJOYMENT**

##### **Section 3.1 Peaceful Enjoyment**

BLM shall, and may peacefully have, hold, and enjoy the Premises, subject to the other terms hereof, provided that BLM pays the rent and other sums herein recited to be paid by BLM and performs all of BLM's covenants and agreements herein contained. This covenant and any and all other covenants of the City shall be binding upon the City and its successors only with respect to breaches occurring during its or their respective periods of ownership of the City's interest hereunder.

##### **Section 3.2 Permitted and Prohibited Uses**

The Premises shall be used for the exclusive purpose of housing the Butler Longhorn Museum, all its artifacts, educational, fundraising functions and private events to provide support for an authentic Texas history museum to promote education, attract tourism and create a destination for League City. As owner of the Premises, the City provides this lease for this specific purpose and to use the Premises consistent with the following:

- a. BLM will conduct its business and control its agents, servants, employees, customers, licensees, and invitees.
- b. BLM will maintain the Premises in a clean and healthful condition, and comply with all laws, ordinances, orders, rules and regulations of the City with reference to the use, condition or occupancy of the Premises.
- c. BLM will maintain Normal Business Hours.
- d. BLM will manage the Museum Collection.
- e. Consistent with its 501(c)(3) purpose, BLM will use the Premises to engage in such advertising and promotional activities as the BLM deems necessary or appropriate to develop the potential of the Museum Collection, to attract visitors, and cultivate broad community support.
- f. In order for the City to confirm that the Premises are being used by the BLM for the above stated purposes, BLM shall provide financial quarterly reporting to the City during the term of the Lease. The quarterly financial report to the City will include:

- 1) BLM's Profit and Loss Statements
- 2) Summary of the Use of the Building including numerical

reporting of the attendance during Normal Business Hours and at Special Events

- 3) the quarterly financial report after the end of BLM's fiscal year (September 30th) will include a copy of the annual financial report required to be prepared in accordance with Business Organizations Code Section 22.352. This report contains (1) a statement of support, revenue, and expenses; (2) a statement of changes in fund balances; (3) a statement of functional expenses; and (4) a balance sheet for each fund.
  - 4) IRS 990 Form and supporting documentation
  - 5) Annual audit or in the alternative, an annual financial review for an amount not exceeding \$2,500. If an audit cannot be conducted for less than \$2,500 than the BLM is not required to conduct the audit. The audit/financial review must provide reasonable assurance about whether the financial statements are free of material misstatement, including examination of evidence supporting the amounts and disclosures in the financial statements. Written financial policies and procedures regarding cash receipts/disbursements are to be provided to the City within 90 days of the commencement of the agreement. The City shall have the right to conduct its own audit should it so elect, at its own expense, and the BLM agrees to make all of its financial records available to the City within 120 days after receipt of written request.
- g. BLM agrees not to commit or allow any waste to be committed on any portion of the Premises, and at the termination of this Agreement to deliver up the Premises to the City in as good condition as at the Commencement Date, ordinary wear and tear excepted.

## ARTICLE IV

### TERM

#### **Section 4.1 Term**

The term of this Lease (the "**Term**") shall commence on the Effective Date (sometimes referred to herein as the "**Commencement Date**"). The Term of the '**Initial Term**' shall run from the Commencement Date to August 31, 2019 (the "**Expiration Date**"), unless sooner terminated as provided herein or extended as provided for in this Agreement.

#### **Section 4.2 Automatic Renewal Option**

The Lease shall automatically renew at the for one additional three (3) year term (the "**Renewal Term**", which shall commence on the Expiration Date of Initial Term, unless the City elects to terminate the Lease at the end of the Initial Term. If the City elects to terminate the Lease at the end of the Initial Term, the City must notify BLM in writing, via mail or electronically, at

least ninety (90) days before the expiration of the Initial Term that it does not wish to renew the Lease.

## ARTICLE V

### RENT, UTILITIES AND TAXES

#### **Section 5.1 Rent**

Commencing on the Commencement Date and continuing throughout the term of the Lease until the Expiration Date, BLM shall pay each month as rent to the City the sum of One Hundred Dollars (\$100.00) ("**Rent**"), for the Premises. Such Rent shall be payable on the first day of each month during the First Renewal Term. All Rent payable hereunder shall be paid without deduction or offset and is to be delivered by mail or in person to the City to the address referenced in Article XVI (or such other address as may be designated by the City in writing from time to time). If the term of this Agreement commences on a day other than the first day of a month or terminates on a day other than the last day of a month, then the installments of Base Rent and any adjustment thereto for such month or months shall be prorated, based on the number of days in such month. The Base Rent for the first partial month, if any, shall be payable at the beginning of said period. All such payments shall be by a good and sufficient check (subject to collection) drawn on a bank acceptable to the City.

#### **Section 5.2 Utilities and Cleaning/Janitorial Services.**

The City shall furnish all electricity, phone and fax services to the Premises. BLM shall provide cleaning and janitorial services to the Premises.

## ARTICLE VI

### COMPLIANCE WITH LAW AND CITY POLICY

#### **Section 6.1 Compliance with Law**

BLM will comply with all Applicable Laws and League City Code affecting BLM's operations on the Premises.

#### **Section 6.2 Building Code**

All improvements and modifications to the Premises shall comply with applicable building and electric codes covering the location and type of structure constituting the Premises and all other Applicable Laws.

#### **Section 6.3 Permits**

BLM must obtain and maintain in effect at all times during the Term of this Lease all permits, licenses and consents if any required or necessary by any Applicable Law for the

construction, installation, maintenance, use and operation of BLM's improvements and BLM's use and occupancy of, and operations at, the Premises.

## ARTICLE VII

### MAINTENANCE

The City agrees to furnish BLM the following services:

- a. Hot and cold water at those points of supply provided for general use of BLM in the Building, central heat and air conditioning in season, at such temperatures and in such amounts as are considered by the City to be standard or as required by governmental authority.
- b. Routine maintenance and electric lighting service for the outside areas of the Building and Premises in the manner and to the extent deemed by the City to be standard.
- c. Subject to the provisions of Section 8 hereof, City to provide all electrical current required by BLM in its use and occupancy of the Building and Premises.
- d. All fluorescent and /or incandescent bulb replacement in the outside areas of the Building and Premises necessary to maintain the lighting provided by the City.
- e. Passenger elevators for ingress and egress to and from the floor of the Building on the Premises during Normal Business Hours.
- f. All improvements that are to be made by the City include improvements to the Air Conditioning units and to the Building for controlled and less wasteful air usage.
- g. The city will maintain the grounds and landscaping of the Building and Premises at a level commensurate with the maintenance and landscaping standards applicable to the grounds surrounding a premier museum, but in any event not less than the maintenance and landscaping standards which have been maintained in the past. Without limiting the generality of the foregoing, the City will be responsible for mowing, trimming and maintaining all lawns and for maintaining all gardens, flowers, shrubs, trees and other landscaping located in, on or about the Building and Premises.
- h. The City will make whatever repairs, alterations or improvements that are necessary for the premises to be in compliance with all building and fire codes, all applicable law, ordinances, rules and regulations.
- i. The City will provide internet access in the Building at no additional cost to BLM.

## ARTICLE VIII

### MUSEUM COLLECTION

(a) Property of the City. BLM agrees to not transfer ownership, possession and/or title of any property/artifacts the City has title to. The BLM may not sell, transfer or otherwise dispose of any work of art or other items included in the City owned portion of the Museum Collection, furniture or equipment without written consent of an authorized City Representative.

(b) Property of the BLM. The City agrees to not transfer ownership, possession and/or title of any property/artifacts the BLM has title to and that is located on the Premises. The City may not sell, transfer or otherwise dispose of any work of art or other items included in the BLM owned portion of the Museum Collection. If this lease were to terminate for any reason in accordance with the terms of this Agreement, the City agrees to provide BLM thirty (30) days written notice to remove property/artifacts which are part of the BLM owned portion of the Museum Collection.

## ARTICLE IXB

### INDEMNIFICATION

Except as permitted by the Tort Claims Act, the City shall not be liable for injury, loss of life or damages which may be sustained by BLM, its agents, officers, directors, licensees, concessionaires, employees, visitors or invitees or any other person entering the Building and Premises under the express or implied invitation of BLM, (all such persons and entities being hereafter collectively referred to as "BLM's Invitees"), or for damage to or loss of their goods, wares, merchandise or property, caused by or resulting from any cause whatever, including but not limited to the type or manner of construction or state of repair of the Premises or the Building, the IAQ within the Premises or the Building or criminal acts, or fire, steam electricity, gas, water or rain which may leak or flow from or into any part of the Premises, or breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, heating, air conditioning, lighting fixtures or other parts or areas of the Premises or the Property, or the use of or conduct of business in the Building and Premises by BLM, or any breach or default by BLM under this Agreement, or the negligence or misconduct of BLM or any of BLM's Invitees, and to the fullest extent permitted by applicable law, BLM HEREBY INDEMNIFIES THE CITY AND ITS AFFILIATED COUNSEL MEMBERS, MAYOR, EMPLOYEES AND AGENTS, (COLLECTIVELY "INDEMNITEES") AGAINST AND HOLDS THE INDEMNITEES HARMLESS FROM ALL LOSS, DAMAGES, EXPENSE OR CLAIMS (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, EXPERT FEES, COURT COSTS AND OTHER COSTS OF LITIGATION), ARISING OUT OF ANY SUCH INJURY, LOSS OF LIFE, DAMAGES OR OTHER LOSS OR DAMAGE. THIS INDEMNITY IS LIMITED TO THE LIMITS OF INSURANCE PURCHASED BY BLM AS SET FORTH IN SECTION 10 OF THIS AGREEMENT.

**ARTICLE X**  
**INSURANCE**

**Section 10.1 Property Insurance**

(a) The City shall maintain fire and extended coverage, boiler and machinery and loss of rental insurance on the Building and the Premises in such amounts as the City elects; provided, the City shall not be obligated in any way or manner to insure any personal property of BLM upon or within the Building and Premises, any fixtures, installed or paid for by BLM upon or within the Building and Premises, or any improvements which BLM may construct on the Building and Premises. The cost of such insurance and any deductible paid by the City shall be included as a part of the responsibility of the City, and payments for losses thereunder shall be made solely to the City or the mortgagees of the City as their interests shall appear. The City shall also maintain contents and fine arts insurance to cover contents and/or artifacts owned by the City within the Building and Premises and loaned to BLM for the Butler Longhorn Museum.

(b) BLM shall maintain at its expense, in an amount equal to full replacement cost, fire and extended coverage insurance on all of its personal property, including removable trade fixtures and leasehold and BLM improvements, located in the Building and Premises and in such additional amounts as are required to meet BLM's obligations, such insurance shall be in BLM's name and proceeds shall be payable on any loss to BLM. BLM shall also maintain insurance on the contents of the Museum including Fine Arts Insurance and property and casualty insurance which covers all owned or loaned artifacts in the Butler Longhorn Museum. BLM shall furnish evidence satisfactory to the City of the maintenance and timely renewal of such insurance on the contents of the Museum, and BLM shall obtain and deliver to the City a written obligation on the part of each insurer to notify the City at least sixty (60) days prior to the modification, cancellation or expiration of such insurance policies.

**Section 10.2 Liability and Worker's Compensation Insurance**

(a) BLM shall procure and maintain throughout the term of this Agreement, at its sole cost and expense, (a) Comprehensive General Liability Insurance (with contractual liability endorsement) including host liquor liability for events involving alcohol, insuring the City and BLM against all claims arising out of BLM's use or occupancy of the Building and Premises or the condition of the Building and Premises, in an amount not less than \$1,000,000 in respect of injuries to, or death of any one person, in an amount not less than \$2,000,000 in respect of any one occurrence or disaster, and in an amount not less than \$300,000 in respect of property damaged or destroyed, and (b) business interruption insurance, insuring loss of profits in the event of an insured peril damaging the Building and Premises. BLM's insurance policy shall name the City as an additional insured and shall include coverage for the contractual liability of BLM to indemnify the City pursuant to Section 14 of this Agreement, and (c) Worker's Compensation Insurance shall be maintained by BLM covering any employees of BLM and with customary limits for Employer liability.

(b) During the term of this Agreement, the City may, at the City's option, procure and maintain in full force and effect with respect to the Property a policy or policies of general and



umbrella liability insurance in such reasonable sums as the City shall determine. The cost of said insurances, if the City exercises the option, shall be included as part of the City's Responsibility for the premises.

(c) The City and BLM each hereby waive subrogation on its behalf and on behalf of its insurer, to the extent subrogation on a paid claim can be legally waived prior to loss by contract between the parties, in respect of any payment made by such insurer under any liability policy. Neither the City nor BLM shall be liable to the other or any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other tangible property, or bodily injury or personal injury, or any resulting loss of income, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees, if any such loss or damage is covered by insurance benefiting the party suffering such loss or damage or was required to be covered by insurance pursuant to this Agreement.

(d) BLM shall use its good faith efforts to cause its general liability policy to be endorsed by the issuing insurer waiving rights of subrogation of such insurer against the other party hereto. The failure of any insurer to issue such endorsement shall not be deemed to limit or alter the force and effect of Section 13(c) of this Agreement.

### **Section 10.3 Evidence of Acceptable Insurance**

On or before five (5) days following the date of this Agreement, BLM will cause its insurer(s) to issue and deliver to the City certificate(s) of insurance evidencing the existence and coverage of insurance required herein. Any and all insurance required to be maintained by BLM under the terms of this Agreement must be in form and content satisfactory to the City and must be issued by insurance companies acceptable to the City, in the City's sole discretion.

## **ARTICLE XI**

### **RIGHTS RESERVED TO THE CITY**

BLM agrees to permit the City or its employees, agents or representatives to enter into and upon any part of the Building and Premises at all Normal Business hours (and in emergencies at all times, by any means the City may deem proper, and without liability therefore) to inspect the same with City employees, agents and representatives agreeing to provide the requisite notice for Non-Emergency maintenance and inspections. Due to the necessary protection of the Museum and the City's respective artifacts and property in the Museum Collection, every City employee, agent and representative should provide this requisite notice to the Museum Director and their stated purpose of maintenance or inspections so that the Museum Collection can be secured in anyway if necessary to avoid liability and damage. The requisite notice for all Non-Emergency maintenance or inspections by any City employee, agent or representative to the Museum Building and Education Center will be arranged with the Museum Director so a mutually agreeable time can be scheduled to avoid the disruption of Museum functions, tours and damage to the Museum Collection. The exception to this notice is when a City employee, agent and representative is attending a BLM function as a guest and not to perform City maintenance or inspections.

The City shall reserve the right to use and occupy the Premises, at no charge, up to one time each month during the term of this Lease upon mutually agreed dates by the BLM and the City. The City shall give the BLM a minimum ten (10) days notice before use of the Premises. Such notice shall be in writing and shall describe the time of such usage by the City. Prior to giving such notice, the City shall contact the BLM to establish the date that the Building and Premises will be available. Such dates cannot conflict with prescheduled events. In no event shall this usage by the City, of the Building and Premises, involve activities of a political nature and/or the advocacy of a political candidate, proposition or message.

## **ARTICLE XII**

### **ASSIGNMENT AND SUBLETTING**

BLM shall not assign, sublease, transfer or encumber this Agreement or any interest therein or grant any license, concession or other right of occupancy of the Building and Premises or any portion thereof or otherwise permit the use of the Building and Premises or any portion thereof by any party other than BLM (any of which events is hereinafter called an “assignment”) without the prior written consent of the City.

Not subject to this provision is BLM’s right to use Premises for third party functions, including but not limited to weddings and private parties which will serve as fundraisers for the BLM, under a limited “short term” use permit and/or agreement between BLM and the third parties. The term “short term” shall be understood to mean an event that does not exceed 2 weeks in length, inclusive of set up and break down time.

## **ARTICLE XIII**

### **HOLDING OVER**

If the BLM holds over and continues in possession of the Building and Premises after the lease term as provided above (or any extension of it ) expires, other than as provided in Section 3, the holding over may be considered by the City and at the City’s option a month to month tenancy binding the BLM to all terms and conditions as set forth in this Agreement with the following exceptions: The rental payments due to the City shall be One Hundred (\$100.00) dollars per month, payable on the first day of each month thereafter until the tenancy is terminated in a manner provided by law or as a remedy elected by City under the terms of this Agreement.

## **ARTICLE XIV**

### **TERMINATION**

#### **Section 14.1 Early Termination.**

This Agreement may be terminated at any time by mutual agreement of the City and the

BLM.

This Agreement may be terminated by the City after the Commencement Date and prior to the expiration of the stated Lease Term under any of the following circumstances:

1. If the BLM defaults in any material respect in the performance of any of its obligations under this Agreement hereunder and such default continues un-remedied for more than thirty (30) days after written notice of default is given by the City to the BLM.
2. Upon the application by the BLM for, or consent to, the appointment of a receiver, trustee, liquidator, custodian or similar official of all or a substantial part of its assets, or if the BLM becomes insolvent, or if the BLM files a voluntary petition in bankruptcy, or if an involuntary petition in bankruptcy is filed against the BLM and not dismissed within 90 days thereafter, or if the BLM makes a general assignment for the benefit of creditors, or if the BLM is unable to pay or states in writing that it is unable to pay its debts as they become due.
3. If the BLM is dissolved.

This Agreement may be terminated by the BLM prior to the expiration of the stated Lease Term if the City fails to satisfy any of its obligations under this Agreement and such default continues un-remedied for more than ninety (90) days after written notice of default is given by the BLM to the City.

**Section 14.2 Notice of Termination.**

If the City or the BLM elects to terminate this Agreement, it shall provide written notice of termination to the other party specifying the date on which termination is to become effective, which date shall be not less than 30 days following the date on which notice of termination is provided. Termination of this Agreement by any non-defaulting party shall not relieve the defaulting party of responsibility or liability for any loss, damage or expense caused by the defaulting party's failure to perform its duties and obligations under this Agreement.

**Section 14.3 Effect of Expiration or Termination.**

Upon the expiration of this Agreement or, in the event of early termination, on the date specified for any termination of this Agreement to become effective or, if reasonably necessary, within five (5) business days after the specified effective date of such early termination, the following actions shall occur:

1. The parties will undertake to resolve in good faith, and make payment for, any obligations outstanding under this Agreement on the effective date of expiration or termination. The BLM will deliver to the City the sole possession, custody and control of the City-owned portion of the Museum Collection, in no worse condition than they were at the Commencement

Date or applicable subsequent date of acquisition, allowing for normal wear and tear or, with respect to the Museum Collection together with subsequent additions thereto, deterioration which could not be prevented with the exercise of reasonable care in accordance with standard practices employed by established premier museums.

2. The BLM will retain ownership of all property owned by the BLM, including, without limitation, (i) all works of art and other personal property owned by the BLM, and (ii) the BLM Intellectual Property.
3. At the Expiration Date or earlier termination of this Lease per the terms hereof, BLM shall surrender possession of the Premises to the City and deliver all keys to the Premises to the City and make known to the City the combination of all locks of vaults then remaining in the Premises, and shall, subject to the following paragraph, return the Premises to the City in as good condition as when BLM took possession on the Commencement Date, ordinary wear, loss or damage by insured casualty excepted.

#### **ARTICLE XV**

#### **NONWAIVER**

No waiver of any condition expressed in this Lease shall be implied by any failure of The City to enforce any remedy on account of the violation of such condition whether or not such violation be continued or repeated subsequently, and no express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated. Without limiting The City's rights under Article XVII it is agreed that no receipt of monies by The City from BLM after the termination in any way of the Term or of BLM's right of possession hereunder or after the giving of any Notice shall reinstate, continue or extend the Term or affect any Notice given to BLM prior to the receipt of such monies. It is also agreed that after the service of Notice or the commencement of a suit or after final judgment for possession of the Premises, The City may receive and collect any monies due, and the payment of said monies shall not waive or affect said Notice, suit or judgment.

#### **ARTICLE XVI**

#### **NOTICES**

Any notice in this Agreement provided for must, unless otherwise expressly provided herein, be in writing, and may, unless otherwise in this Agreement expressly provided, be given or be served by depositing the same in the United States mail, postage paid and certified with return receipt requested, or by prepaid telegram, when appropriate, addressed to the party to be notified at the address stated in this Agreement or such other address notice of which has been given to the other party or by delivering the same in person to such party or an officer or partner of such party. Notice deposited in the mail in the manner hereinabove described shall be effective as of the date it is so deposited.

The addresses of the City and BLM for purposes of this Lease, until notice to the contrary has been given as above provided, shall be their respective addresses set forth below.

Notices to or demands upon BLM shall be addressed to 1) BLM, attn: BLM Board of Directors, 1220 Coryell, League City, Texas 77573, with a copy sent to their legal counsel of record, Trisha A. Barita, Coats Rose Yale Ryman & Lee, 2600 South Shore Blvd., Suite 200, League City, Texas 77573 and 2) Barita & Keogh Law Firm, PLLC, attn: Trisha A. Barita, 1120 Nasa Parkway, Suite 316, Houston, Texas 77058. In addition, notices or demands upon BLM shall also be addressed to

Notices to or demands upon The City shall be addressed to The City of League City, attn: City Manager, 300 W. Walker, League City, Texas 77573.

## **ARTICLE XVII**

### **MISCELLANEOUS**

#### **Section 17.1 Successors and Assigns**

Each provision of this Lease shall extend to and shall bind and inure to the benefit not only of The City and BLM, but also their respective heirs, legal representatives, permitted successors and assigns, but this provision shall not operate to permit any transfer, assignment, mortgage, encumbrance, lien, charge or subletting by BLM.

#### **Section 17.2 Modifications in Writing**

No modification, waiver or amendment of this Lease or of any of its conditions or provisions shall be binding upon either party unless in writing signed by both parties.

#### **Section 17.3 No Option; Irrevocable Offer**

Submission of this instrument for examination shall not constitute a reservation of or option for the Premises or in any manner bind the City or BLM, and no lease or obligation of the City or BLM shall arise until this instrument is signed and delivered by the City and BLM.

#### **Section 17.4 Headings**

The headings of Articles and Sections are for convenience only and do not limit, expand or construe the contents of the Sections.

#### **Section 17.5 Time of Essence**

Time is of the essence of this Lease and of all provisions hereof.

**Section 17.6 Severability**

The invalidity of any provision of this Lease shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Lease.

**Section 17.7 Entire Agreement**

All understandings and agreements, oral or written, heretofore made between the parties hereto are merged in this Lease, which alone fully and completely expresses the agreement between the City and BLM.

**Section 17.8 Casualty Damage**

If the Premises or any part thereof shall be damaged by fire or other casualty, BLM shall give prompt written notice thereof to the City. In case the Premises shall be so damaged and either a substantial alteration or reconstruction of the Premises shall, in the City's sole opinion, be required, or if there is a material uninsured loss to the Premises, then the City may, at its option, terminate this Agreement by notifying BLM in writing of such termination within ninety (90) days after the date of such casualty. If the City does not thus elect to terminate this Agreement, the City shall commence and proceed with reasonable diligence to restore the Premises, and the improvements located within the Premises, if any, for which the City had financial responsibility pursuant to the Agreement. The City's obligation to restore the Premises, and the improvements located within the Premises, if any, for which the City had financial responsibility pursuant to the Agreement, shall not require the City to expend for such repair and restoration work more than the insurance proceeds actually received by the City as a result of the casualty. During the period of restoration, BLM shall not be required to pay the Base Rental for any period of time that the building is inhabitable. If part of the Premises may be partially used, a pro-rated base rental will be paid equal to this portion of the building that is habitable.

**Section 17.9 Force Majeure**

“**Force Majeure**” shall mean any delay in completing or performing any obligation under this Lease (other than a monetary obligation) which arises from causes beyond the control and without the fault or negligence of the party claiming such delay. Examples of such causes include:

- (a) Acts of God or of the public enemy or enemy action or war or terrorism,
- (b) Acts of the government in its sovereign capacity,
- (c) Hurricanes, Tornados, Tropical Storms,
- (d) Fires,
- (e) Floods,
- (f) Epidemics,

- (g) Quarantine restrictions,
- (h) Strikes or the inability to obtain labor or materials,
- (i) Freight embargoes,
- (j) Unusually severe weather, and
- (k) Civil commotion.

In the case of delay due to Force Majeure, the time within which the claiming party must comply with any of the terms, covenants and conditions of this Lease shall be extended by a period of time equal to the period of time that performance by the claiming party is reasonably delayed or prevented by the causes specified above, provided that within five (5) days of the commencement of the cause of delay, BLM shall have notified the City of the existence of such cause of delay.

**Section 17.10 Relationship of Parties**

Nothing contained in this Lease shall be deemed or construed by the parties to this Lease, or by any third party, to create the relationship of principal and agent, partnership, joint venture, lender and borrower, or any association between The City and BLM, it being expressly understood and agreed that neither the method of computing rents hereunder nor any other provisions contained in this Lease nor any acts of the parties to this Lease shall be deemed to create any relationship between the City and BLM, other than the leasehold relationship contemplated hereby.

**Section 17.11 Governing Law**

This Lease shall be governed by and construed and enforced in accordance with the laws of the State of Texas.

**Section 17.12 Recording**

This Lease shall not be recorded with the Clerk of Court.

**Section 17.13 Authority**

BLM is a corporation and each individual executing or attesting this Agreement on behalf of BLM hereby covenants, warrants and represents: (i) that such individual is duly authorized to execute or attest and deliver this Agreement on behalf of BLM in accordance with the organizational documents of BLM; (ii) that this Agreement is binding upon BLM; (iii) that BLM is duly organized and legally existing in the state of its organization, and is qualified to do business in the State of Texas; (iv) and (v) that the execution and delivery of this Agreement by BLM will not result in any breach of, or constitute a default under any mortgage, deed of trust, lease, loan, credit agreement, partnership agreement or other contract or instrument to which BLM is a party or by which BLM may be bound.

**[Signature Page to BUTLER LONGHORN MUSEUM 501(c)(3) LEASE RENEWAL]**

]

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed as of the date first written above.

**LESSOR:**

**AUTHORIZED REPRESENTATIVE OF THE  
CITY OF LEAGUE CITY**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LESSEE:**

**AUTHORIZED REPRESENTATIVE OF THE  
BUTLER LONGHORN MUSEUM**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT A**

Legal Description of the Property

(Attach Exhibit A – Legal Description of the Property)