



# City of Grand Island

Tuesday, April 28, 2009

Council Session

## Item F2

**#9215 - Consideration of Lease-Purchase Agreement, Ground Lease and Escrow Agreement for Building and Related Improvements to Serve as a Recreational Facility for State Fair Activities (First Reading)**

Staff Contact: Jeff Pederson

# Council Agenda Memo

**From:** Jeff Pederson, City Administrator

**Meeting:** April 28, 2009

**Subject:** Lease-Purchase Agreement, Ground Lease and Escrow Agreement for Building and Related Improvements to Serve as a Recreational Facility for State Fair Activities

**Item #'s:** F-2

**Presenter(s):** Jeff Pederson, City Administrator

## Background

The City Council has heretofore taken action intended to facilitate the contribution of the sum of \$5 million towards the relocation of the Nebraska State Fair to Grand Island. That action includes the passage on September 9, 2008 of Ordinance No. 9189 implementing an occupation tax upon the sale of prepared food and non-alcoholic beverages. With the collection of the occupation tax to occur over a period of time, it becomes necessary to institute some form of borrowing in order to meet the requirements of LB 1116 that the \$5 million be available for State Fair construction at the Fonner Park site.

## Discussion

In order to contribute \$5 million to the State Fair relocation effort, it is necessary for the City to own an asset of commensurate value. Research of financing and asset ownership options has resulted in a determination that the most workable and compliant means available to the City to make the contribution is a Lease-Purchase Agreement for facility construction. The facility that will be leased by the City, and which will be owned by the City upon the final lease payment, is a 70,000 sq. ft. building that will be located in the North-Central area of the Fonner Park campus. The building will function as an Exposition Building during the State Fair run, and will be available to the City to use as a community recreational facility for the remainder of the year.

The attached Ordinance authorizes the City to enter into a Lease-Purchase Agreement with Wells Fargo Brokerage Services, LLC. to acquire, construct, and lease the 70,000 sq. ft. facility. Wells Fargo and the City will also enter into an Escrow Agreement, (draft

attached), whereby a construction account will be created to be drawn upon as construction costs accrue.

Attached also is the current draft of the Ground Lease Agreement between Fonner Park and the City granting use of a site on Fonner Park for placement of the building. Both of these Agreements are nearly complete, and will be complete at the time of the third reading of this Ordinance. A copy of the Lease-Purchase Agreement is also attached for Council information and review. This Ordinance will be read at three consecutive Regular City Council meetings.

Please note that the building is referred to in the Ordinance as a “Recreational Facility for the City of Grand Island”. This reference is used at the advice of Bond Counsel in order to state the clearest public usage intent and benefit in accordance with IRS requirements for eligibility for tax-exempt financing.

### **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

### **Recommendation**

Approve the Agreements.

### **Sample Motion**

Move to approve Ordinance No. 9215 authorizing the Lease-Purchase Agreement, Ground Lease and Escrow Agreement and authorize execution.

*Initial Presentation Draft*

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LEASE-PURCHASE AGREEMENT

Between

WELLS FARGO BROKERAGE SERVICES, LLC

As Lessor

and the

The City of Grand Island, Nebraska

As Lessee

Dated as of the first day of July, 2009

**LESSOR'S ORIGINAL**

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THIS LEASE-PURCHASE AGREEMENT dated as of the first day of July, 2009 (the Lease), by and between WELLS FARGO BROKERAGE SERVICES, LLC, as lessor (Lessor), whose address is 608 Second Avenue South – 10th Floor; MAC: N9303-105, Minneapolis, MN 55479, Attention Public Finance, and the City of Grand Island, Nebraska, as lessee (Lessee) whose address is P.O. Box 1968, 100 East First Street, Grand Island, Nebraska 68802-1968.

WITNESSETH:

WHEREAS, Lessee is authorized under the terms of Section 13-304, R.R.S. Neb. 2007 to acquire, hold, improve and operate a recreational facility and to acquire such property by entering into lease-purchase agreement under Section 19-2421, R.R.S. Neb. 2007; and

WHEREAS, Lessee, Lessor and Hall County Livestock Improvement Association (the “Association”) have entered into a Ground Lease dated as of July 1, 2009 (the Ground Lease), whereby the Association has leased to Lessor and Lessee certain land described therein and as set forth on Exhibit A hereto (the Land); and

WHEREAS, Lessor has agreed to acquire and construct on the Land certain improvements constituting a building and related improvements on the Land (the “Improvements”) to Lessee, pursuant to this Lease in accordance with Lessee’s requirements and specifications; and

WHEREAS, Lessee has determined that it is necessary and desirable for it to obtain lease-purchase financing under this Lease for the construction and acquisition of such Improvements upon the Land;

NOW THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

## ARTICLE I

### DEFINITIONS AND EXHIBITS

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified.

Closing Date: The date upon which the amount specified in Section 2.3 is deposited with the Escrow Agent.

Escrow Agent: Wells Fargo Bank, National Association, acting as escrow agent, pursuant to the terms and conditions of the Escrow Agreement, or any successor appointed and so acting under the terms of the Escrow Agreement.

Escrow Agreement: The Escrow Agreement dated as of the date hereof, by and between the Escrow Agent, Lessee, and Lessor and any replacement thereof or supplement thereto.

Fiscal Year: The twelve month fiscal period of Lessee which commences on October 1 in every year and ends on the following September 30.

Ground Lease: The Ground Lease dated as of the date hereof, by and between the Association, Lessor and Lessee, whereby the Association has leased the Land to Lessee and Lessor.

Independent Counsel: An attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of Lessor or Lessee.

Improvements: The improvements described on Exhibit A hereto, and all repairs, replacements, substitutions and modifications thereto.

Interest: The portion of any Rental Payment designated as and comprising interest as shown in the attached Exhibit B.

Land: The land described on Exhibit A hereto.

Net Proceeds: Any insurance proceeds or condemnation award, paid with respect to the Project, remaining after payment therefrom of all expenses incurred in the collection thereof.

Payment Date: The date upon which any Rental Payment is due and payable as provided in Exhibit B.

Permitted Encumbrances: As of any particular time: (i) liens for taxes and assessments not then delinquent, or which Lessee may, pursuant to provisions of Section 7.3 hereof, permit to remain unpaid, (ii) this Lease and the Ground Lease and amendments to either thereof, (iii) Lessor's interest in the Project, and (iv) any construction, mechanic's, laborer's,

materialmen's, supplier's or vendor's lien or right not filed or perfected in the manner prescribed by law which Lessee may, pursuant to Article VIII hereof, permit to remain unpaid.

Principal: The portion of any Rental Payment designated as principal in the attached Exhibit B.

Project: The interest of Lessor in the Land under the Ground Lease and the Improvements.

Purchase Option Price: With respect to the Project, as of the Payment Dates specified in the attached Exhibit B, the amount so designated and set forth opposite such date.

Rental Payment: The payment due from Lessee to Lessor on each Payment Date during the Term of this Lease, as shown on Exhibit B.

State: The State of Nebraska.

State and Federal Law or Laws: The Constitution and any law of the State and any rule or regulation of any agency or political subdivision of the State; and any law of the United States, and any rule or regulation of any federal agency.

Term of this Lease or Lease Term: The period during which this Lease is in effect as specified in Section 4.1.

Certain other terms used in this Lease are defined in parentheses elsewhere in this Lease.

Section 1.2. Exhibits.

The following Exhibits are attached to and by reference made a part of this Lease:

Exhibit A: A description of the Land and Improvements subject to this Lease.

Exhibit B: A schedule indicating the date and amount of each Rental Payment coming due during the Lease Term, the amount of each Rental Payment comprising Principal and Interest, and the price at which Lessee may exercise its option to purchase Lessor's interest in the Project in accordance with Article X.

Exhibit C: A certificate of officers of Lessee as to certain matters relating to the Lease, the Ground Lease and the Escrow Agreement.

Exhibit D: A form of opinion of counsel to Lessee.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. Representations, Covenants and Warranties of Lessee. Lessee represents, covenants and warrants as follows:

(a) Lessee is a duly formed and validly existing political subdivision of the State, governed by the Constitution and laws of the State.

(b) Lessee is authorized under the Constitution and laws of the State (specifically Section 19-2421, R.R.S. Neb. 1997, referred to herein as the Act) to enter into this Lease and the Escrow Agreement and the transactions contemplated thereby, and to perform all of its obligations thereunder.

(c) The officers of Lessee executing this Lease, the Ground Lease and the Escrow Agreement have been duly authorized to execute and deliver such documents under the terms and provisions of an ordinance of Lessee's governing body, or by other appropriate official action.

(d) In authorizing and executing this Lease, Lessee has complied with all public bidding and other State and Federal Laws applicable to this Lease and the acquisition of the Improvements by Lessee.

(e) Lessee will not pledge, mortgage or assign this Lease, or its duties and obligations hereunder to any other person, firm or corporation except as provided under the terms of this Lease.

(f) Lessee will use the Project during the Lease Term only to perform essential governmental functions or governmental and proprietary functions.

(g) Lessee will take no action that would cause the Interest portion of the Rental Payments to become includable in gross income of the recipient for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code") and Treasury Regulations promulgated thereunder (the "Regulations"), and Lessee will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the Interest portion of the Rental Payments does not become includable in gross income of the recipient for federal income tax purposes under the Code and Regulations.

(h) Lessee has funds available and properly appropriated or subject to appropriation to pay Rental Payments until the end of the current Fiscal Year and under the terms of the Act the Lessee is (i) authorized to acquire title to the Improvements, (ii) the term of this Lease is not restricted to a single year and (iii) this Lease may provide for the purchase of the Improvements in installment payments.



(i) Lessee will execute and deliver on the Closing Date a certificate substantially in the form of Exhibit C hereto, and Lessee will cause its legal counsel to provide a legal opinion to Lessor substantially in the form of Exhibit D hereto, dated as of the Closing Date.

Section 2.2. Representations, Covenants and Warranties of Lessor. Lessor represents, covenants and warrants as follows:

(a) Lessor is a limited liability company duly organized, existing and in good standing; has power to enter into this Lease, the Ground Lease and the Escrow Agreement; is possessed of full power to own and hold real and personal property, and to lease the same; and has duly authorized the execution and delivery of this Lease, the Ground Lease and the Escrow Agreement.

(b) Neither the execution and delivery of this Lease, the Ground Lease and the Escrow Agreement, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Lessor is now a party or by which Lessor is bound, constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessor, or upon the Project except Permitted Encumbrances.

Section 2.3. Deposit of Funds. Upon execution and delivery of this Lease and the Ground Lease, Lessor shall deposit the sum of \$5,000,000 into escrow pursuant to the terms and conditions of the Escrow Agreement which amount shall be disbursed by the Escrow Agent in payment of the costs of the Improvements in accordance with this Lease and the Escrow Agreement.

## ARTICLE III

### LEASE OF PROJECT

Section 3.1. Lease. (a) Lessor hereby leases the Improvements (as and when constructed and acquired under the terms of this Lease and as paid for from amounts deposited by Lessor under the Escrow Agreement) to Lessee, and Lessee hereby leases the Improvements from Lessor, upon the terms and conditions set forth in this Lease. Lessee hereby confirms the rights of Lessor to construct, acquire, own and operate the Improvements as set forth in the Ground Lease. Such rights are hereby acknowledged to include full access and use by Lessor for the location, construction, acquisition, installation, operation and maintenance of the Improvements. The Improvements as financed pursuant hereto are hereby acknowledged to be the separate property of the Lessor, subject to the rights provided for Lessee under the terms of this Lease.

(b) Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, upon and subject to the terms and conditions hereinafter set forth, the Improvements, as and to the extent constructed and acquired under the terms of this Lease. Lessor shall lease the Improvements to Lessee (as and to the extent constructed or acquired) for a term beginning on date hereof and ending on \_\_\_\_\_, 20\_\_. Until payment in full of all Rental Payments due hereunder the Improvements shall remain the property of the Lessor and shall not become a part of the real estate described on Exhibit A hereto attached. Upon the final payment of all rental obligations under this Lease the Improvements shall be conveyed to Lessee by the Lessor by quitclaim deed and bill of sale to be executed and delivered by Lessor upon the written request of Lessee.

(c) Lessor and Lessee agree that, as and to the extent that this Lease may be regarded as relating to goods, goods which may become fixtures, fixtures, furniture or equipment, this Lease shall constitute a "finance lease" within the meaning of such term as used in Article 2A of the Nebraska Uniform Commercial Code. In such connection Lessee acknowledges (a) that neither Lessor nor the Escrow Agent has selected, manufactured or supplied any goods constituting the Improvements, (b) that Lessor is acquiring the Improvements in connection with this Lease and (c) that Lessee has received a copy of the contract with the contractor constructing the Improvements prior to the execution of this Lease. Lessee further acknowledges that Lessee has been informed in writing before the execution of this Lease that Lessee is entitled under said Article 2A to the promises and warranties provided by such contractor and any other person supplying the Improvements or items incorporated therein and that Lessee may communicate with any such person and obtain a complete and accurate statement of any such promises and warranties, including any disclaimers and limitations of them or of remedies.

Section 3.2. Possession and Enjoyment. Lessor hereby covenants to provide Lessee during the Term of this Lease with the quiet use and enjoyment of the Project, and Lessee shall during the Term of this Lease peaceably and quietly have and hold and enjoy the Project, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Lease. Lessor will, at the request of Lessee and at Lessee's cost, join in any legal action in which Lessee asserts its right to such possession and enjoyment to the extent Lessor lawfully may do so.

Section 3.3. Lessor Access to Project. Lessee agrees that Lessor shall have the right at all reasonable times to examine and inspect the Project. Lessee further agrees that Lessor shall have such rights of access to the Project as may be reasonably necessary to cause the proper maintenance of the Project in the event of failure by Lessee to perform its obligations hereunder.

## ARTICLE IV

### TERM OF LEASE

Section 4.1. Lease Term. This Lease shall be in effect for a Term commencing upon its date of execution and ending as provided in Section 4.5.

Section 4.2. Agreement Concerning Rental Payments. Lessee covenants that the Rental Payments do not exceed any limitation imposed by law. Until all Rental Payments have been made in full, Lessee covenants and agrees to make and continue to make for so long as permitted by law an annual levy on the taxable property within its geographical area pursuant to Section 16-702, R.R.S. Neb. 2007, which will be sufficient, along with any other funds available for the purpose, specifically including amounts collected from sales taxes imposed under the Local Option Revenue Act (Sections 77-27,142 to 77-27,148, R.R.S. Neb. 2003, as amended) and any occupation taxes designated for such purpose, to enable Lessee to make all of the Rental Payments and to perform all other obligations of Lessee under this Lease and to take all action required to provide funds to make the Rental Payments and perform such obligations as herein required. Lessee covenants and agrees that throughout the term of this Lease it will observe all budget, tax and spending limitations now or hereafter imposed by law in such a manner that a sufficient portion of its tax levy or other monies shall be lawfully available to make all the Rental Payments and perform all other obligations of Lessee hereunder. Lessee agrees that commencing with its budget for the next-ensuing fiscal year it will include amounts sufficient to make the Rental Payments as the same fall due in its annual budget and appropriations. Lessee covenants and agrees that it shall neither take any action nor omit to take such action which such action or omission would have the affect of causing the interest portion of the Rental Payments due under the terms of this Lease and identified as such herein to be no longer excludable from gross income under the Internal Revenue Code of 1986, as amended, (the Code).

Section 4.3. Intent to Continue Lease Term; Appropriations. As authorized under the terms of Section 19-2421, R.R.S. Neb. 2007, Lessee hereby obligates itself to continue this Lease for its entire Term and to pay all Rental Payments specified in Exhibit B, as the installment payments related to the purchase of the Improvements. The officer of Lessee responsible for budget preparation will include in the budget request for each Fiscal Year the Rental Payments to become due in such Fiscal Year, and will use all reasonable and lawful means available to secure the appropriation of money for such Fiscal Year sufficient to pay the Rental Payments coming due therein.

Section 4.4. Termination of Lease Term. The Term of this Lease will terminate upon the occurrence of the first of the following events:

(a) the exercise by Lessee of its option to purchase Lessor's interest in the Project pursuant to Article X;

(c) a default by Lessee and Lessor's election to terminate this Lease pursuant to Article XII; or

(d) the payment by Lessee of all Rental Payments and other amounts authorized or required to be paid by Lessee hereunder.

## ARTICLE V

### RENTAL PAYMENTS

Section 5.1. Rental Payments. Lessee agrees to pay Rental Payments during the Term of this Lease, in the amounts and on the dates specified in Exhibit B. All Rental Payments shall be paid to Lessor at its offices at the address specified in the first paragraph of this Lease, or to such other person or entity to which Lessor has assigned such Rental Payments as specified in Article XI, at such place as such assignee may from time to time designate by written notice to Lessee. Lessee shall pay the Rental Payments exclusively from moneys legally available therefor, in lawful money of the United States of America, to Lessor or, in the event of assignment of the right to receive Rental Payments by Lessor, to its assignee. Interest shall accrue from the time of the deposit into escrow of funds by the Lessor.

Section 5.2. Current Expense. The obligations of Lessee under this Lease, including its obligation to pay the Rental Payments due with respect to the Project, in any Fiscal Year for which this Lease is in effect and shall constitute a current expense of Lessee for such Fiscal Year.

Section 5.3. Interest Component. A portion of each Rental Payment is paid as and represents the payment of Interest. Exhibit B sets forth the Interest component of each Rental Payment.

Section 5.4. Rental Payments to be Unconditional. In accordance with the terms of the Act, the obligation of the Lessee to make Rental Payments shall be binding upon the Lessee from year to year. The obligation of Lessee to make Rental Payments or any other payments required hereunder shall be absolute and unconditional in all events. Notwithstanding any dispute between Lessee and Lessor or any other person, Lessee shall make all Rental Payments and other payments required hereunder when due and shall not withhold any Rental Payment or other payment pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such Rental Payments or other payments required under this Lease. Lessee's obligation to make Rental Payments or other payments during the Lease Term shall not be abated through accident or unforeseen circumstances (including, without limitation, the occurrence of any environmental liability). However, nothing herein shall be construed to release Lessor from the performance of its obligations hereunder; and if Lessor should fail to perform any such obligation, Lessee may institute such legal action against Lessor as Lessee may deem necessary to compel the performance of such obligation or to recover damages therefor.

## ARTICLE VI

### INSURANCE AND NEGLIGENCE

Section 6.1. Liability Insurance. Upon receipt of possession of the Project, Lessee shall take such measures as may be necessary to insure that any liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition or the operation of the Project or any part thereof, is covered by a blanket or other general liability insurance policy maintained by Lessee. The Net Proceeds of all such insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which any Net Proceeds may be paid.

Section 6.2. Property Insurance. Lessee shall have and assume the risk of loss with respect to the Project. Lessee shall procure and maintain continuously in effect during the Term of this Lease, all-risk insurance, subject only to the standard exclusions contained in the policy, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part of the Project damaged or destroyed and to pay the applicable Purchase Option Price of the Project. Such insurance may be provided by a rider to an existing policy or under a separate policy. Such insurance may be written with customary deductible amounts and need not cover land and building foundations. The Net Proceeds of insurance required by this Section shall be applied to the prompt repair, restoration or replacement of the Project, or to the purchase of the Project, as provided in Section 6.6. Any Net Proceeds not needed for those purposes shall be paid to Lessee.

Section 6.3. Worker's Compensation Insurance. If required by State law, Lessee shall carry worker's compensation insurance covering all employees on, in, near or about the Project, and upon request, shall furnish to Lessor certificates evidencing such coverage throughout the Term of this Lease.

Section 6.4. Requirements For All Insurance. All insurance policies (or riders) required by this Article shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State; and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten (10) days before the cancellation or revision becomes effective. All insurance policies or riders required by Sections 6.1 and 6.2 shall name Lessee and Lessor as insured parties, and any insurance policy or rider required by Section 6.3 shall name Lessee as insured party. Lessee shall deposit with Lessor policies (and riders) evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy (or rider), Lessee shall furnish to Lessor evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article, unless such insurance is no longer obtainable in which event Lessee shall notify Lessor of this fact.

Section 6.5. Lessee's Negligence. Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Project and for injury to or death

of any person or damage to any property, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such property damage be to Lessee's property or the property of others, which is proximately caused by the negligent conduct of Lessee, its officers, employees and agents. Lessee hereby assumes responsibility for and agrees to reimburse Lessor for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees, to the extent permitted by law) of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part upon the negligent conduct of Lessee, its officers, employees and agents, to the maximum extent permitted by law.

Section 6.6. Damage to or Destruction of Project. If all or any part of the Project is lost, stolen, destroyed or damaged beyond repair, Lessee shall as soon as practicable after such event replace the same at Lessee's sole cost and expense with property of equal or greater value to the Project immediately prior to the time of the loss occurrence, such replacement to be subject to Lessor's reasonable approval, whereupon such replacement shall be substituted in this Lease by appropriate endorsement. The Net Proceeds of all insurance payable with respect to the Project shall be available to Lessee and shall be used to discharge Lessee's obligation under this Section. Until all obligations of the Lessee to make Rental Payments under this Lease have been satisfied in full, the Lessee shall make restoration and repair of the Project in such manner as will prevent any termination of the Ground Lease.



## ARTICLE VII

### OTHER OBLIGATIONS OF LESSEE

Section 7.1. Use; Permits. Lessee shall exercise due care in the use, operation and maintenance of the Project, and shall not use, operate or maintain the Project improperly, carelessly, in violation of any State and Federal Law or for a purpose or in a manner contrary to that contemplated by this Lease. Lessee shall obtain all permits and licenses necessary for the installation, operation, possession and use of the Project. Lessee shall comply with all State and Federal Laws applicable to the installation, use, possession and operation of the Project, and if compliance with any such State and Federal Law requires changes or additions to be made to the Project, such changes or additions shall be made by Lessee at its expense.

Section 7.2. Maintenance of Project by Lessee. Lessee shall, at its own expense, maintain, preserve and keep the Project in good repair, working order and condition, and shall from time to time make all repairs and replacements necessary to keep the Project in such condition. Lessor shall have no responsibility for any of these repairs or replacements.

Section 7.3. Taxes, Other Governmental Charges and Utility Charges. Except as expressly limited by this Section, Lessee shall pay all taxes and other charges of any kind which are at any time lawfully assessed or levied against or with respect to the Project, the Rental Payments or any part thereof, or which become due during the Term of this Lease, whether assessed against Lessee or Lessor. Lessee shall also pay when due all gas, water, steam, electricity, heat, power, telephone, and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due. Lessee shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate, or other similar tax payable by Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of Lessee under this Section.

Lessee may, at its own expense and in its own name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay such taxes, assessments, utility or other charges or provide Lessor with full security against any loss which may result from nonpayment, in form satisfactory to Lessor.

Section 7.4. Advances. If Lessee shall fail to perform any of its obligations under this Article, Lessor may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 12% per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.

## ARTICLE VIII

### TITLE

Section 8.1. Title. During the Term of this Lease, legal title to the Improvements and any and all repairs, replacements, substitutions and modifications thereto shall be in Lessor. Legal title to the Land shall remain in the Association, subject to the Lessor's and the Lessee's interests under the Ground Lease. Upon the payment by Lessee of all Rental Payments as indicated in Exhibit B, or the exercise by Lessee of its option to purchase the Project pursuant to Article X, full and unencumbered legal title to the Project shall pass to Lessee, and Lessor shall have no further interest therein; and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the passage of legal title to the Project to Lessee and the termination of Lessor's interest therein. Nothing herein shall require Lessor to remove any lien, charge or encumbrance upon legal title to the Project not arising through Lessor.

Section 8.2. Liens. During the Term of this Lease, Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Project, other than the respective rights of Lessor and Lessee as herein provided and Permitted Encumbrances. Except as expressly provided in Section 7.3 and this Article, Lessee shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. Lessee shall reimburse Lessor for any expense incurred by Lessor in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 8.3. Installation of Lessee's Equipment. Lessee may at any time and from time to time, in its sole discretion and at its own expense, install items of equipment in or upon the Project, which items shall be identified by tags or other symbols affixed thereto as property of Lessee. All such items so identified shall remain the sole property of Lessee, in which Lessor shall have no interest, and may be modified or removed by Lessee at any time provided that Lessee shall repair and restore any and all damage to the Project resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent Lessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease with option to purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Project.

Section 8.4. Modification of Project. Lessee shall, at its own expense, have the right to make repairs to the Project, and to make repairs, replacements, substitutions and modifications to all or any of the parts thereof. All such work and any part or component used or installed to make a repair or as a replacement, substitution or modification, shall thereafter comprise part of the Project and be subject to the provisions of this Lease. Such work shall not in any way damage the Project or cause it to be used for purposes other than those authorized under the provisions of State and Federal Law or those contemplated by this Lease; and the Project, upon completion of any such work, shall be of a value which is not less than the value of the Project immediately prior to the commencement of such work. Any property for which a

replacement or substitution is made pursuant to this Section may be disposed of by Lessee in such manner and on such terms as are determined by Lessee. Lessee will not permit any construction, mechanic's or other lien to be established or remain against the Project for labor or materials furnished in connection with any repair, addition, modification or improvement made by Lessee pursuant to this Section; provided that if any such lien is established and Lessee shall first notify Lessor of Lessee's intention to do so, Lessee may in good faith contest any lien filed or established against the Project, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such item the interest of Lessor in the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessor will cooperate fully with Lessee in any such contest, upon the request and at the expense of Lessee.

Section 8.5. Management Contract. Lessee shall have the right to contract for management services with respect to the Project in its discretion so long as the effect and operation under such contract does not affect the tax-exempt status of the interest component of the Rental Payments.

## ARTICLE IX

### WARRANTIES

Section 9.1. Selection, Design and Construction of Improvements. The Improvements have been or will be selected, designed and constructed by or on behalf of Lessee, and Lessor shall have no responsibility in connection with the selection, design or construction of the Improvements or their suitability for the use intended by Lessee. In connection with any contracting for the construction or acquisition of the Improvements, Lessor hereby appoints Lessee as its agent to make any such contract, with the express understanding that all items of property so obtained shall be and become the property of the Lessor in accordance with the terms of this Lease.

Section 9.2. Maintenance of Project. Lessor shall have no obligation to test, inspect, service or maintain the Project under any circumstances, but such actions shall be the obligation of Lessee.

Section 9.3. Contractor's Warranties. Lessor hereby assigns to Lessee for and during the Term of this Lease, all of its interest in all contractor's warranties and guarantees, if any, express or implied, issued on or applicable to the Improvements or any portion thereof, and Lessor hereby authorizes Lessee to obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense.

Section 9.4. Patent Infringement. Lessor hereby assigns to Lessee for and during the Term of this Lease all of its interest in patent indemnity protection provided by any contractor with respect to the Improvements. Such assignment of patent indemnity protection by Lessor to Lessee shall constitute the entire liability of Lessor for any patent infringement by Improvements furnished pursuant to this Lease.

Section 9.5. Disclaimer of Warranties. THE IMPROVEMENTS ARE AND ARE TO BE DELIVERED AS IS, AND LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE IMPROVEMENTS, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE IMPROVEMENTS.

## ARTICLE X

### OPTION TO PURCHASE

Section 10.1. When Available. Lessee shall have the option to purchase Lessor's interest in the Project on the Payment Dates for the Purchase Option Prices as set forth in Exhibit B, but only if Lessee is not in default under this Lease, and only in the manner provided in this Article.

Section 10.2. Exercise of Option. Lessee shall give notice to Lessor of its intention to exercise its option not less than sixty (60) days prior to the Payment Date on which the option is to be exercised and shall deposit with Lessor on the date of exercise an amount equal to all Rental Payments and any other amounts then due or past due (including the Rental Payment due on such Payment Date) and the Purchase Option Price. The closing shall be on the applicable Payment Date at such office as shall be designated by Lessor.

Section 10.3. Release of Lessor's Interest. Upon exercise of the Purchase Option by Lessee, Lessor shall convey or release to Lessee, all of its right, title and/or interest in and to the Project by delivering to Lessee such documents as Lessee deems necessary for this purpose.

## ARTICLE XI

### ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 11.1. Assignment by Lessor. Lessor shall not assign its obligations under this Lease, and no purported assignment thereof shall be effective. All of Lessor's rights, title and/or interest in and to this Lease, the Rental Payments and other amounts due hereunder and the Project may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor, but only upon the written consent of Lessee. Lessee shall pay all Rental Payments due hereunder to or at the direction of Lessor or the assignee named in the most recent assignment, if any. During the Lease Term Lessee shall keep a complete and accurate record of all such assignments, if any. Transfer of the Lessor's rights under this Lease shall be made only upon presentation of the Lessor's original of this Lease to the Lessee's Treasurer for notation of assignment and transfer on such original.

Section 11.2. Assignment and Subleasing by Lessee. Neither this Lease nor Lessee's interest in the Project may be assigned by Lessee without the written consent of Lessor. However, the Project may be subleased by Lessee, in whole or in part, without the consent of Lessor, subject, however, to each of the following conditions:

(i) This Lease and the obligation of Lessee to make Rental Payments hereunder, shall remain obligations of Lessee.

(ii) The sublessee shall assume the obligations of Lessee hereunder to the extent of the interest subleased.

(iii) Lessee shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to Lessor a true and complete copy of such sublease.

(iv) No sublease by Lessee shall cause the Project to be used for a purpose other than a governmental function authorized under the provisions of the Constitution and laws of the State.

(v) No sublease shall cause the Interest component of the Rental Payments due with respect to the Project to become includable in gross income of the recipient for federal income tax purposes.

Section 11.3. Restriction on Mortgage or Sale of Project by Lessee. Except as provided in Section 11.2, Lessee will not mortgage, sell, assign, transfer or convey the Project or any portion thereof during the Term of this Lease, without the written consent of Lessor. Lessee may make such contracts for the use of the Project with the Nebraska State Fair Board as Lessee shall deem appropriate so long as such contract shall not cause the Interest component of the Rental Payments due with respect to the Project to become includable in gross income of the recipient for federal income tax purposes.

## ARTICLE XII

### EVENTS OF DEFAULT AND REMEDIES

Section 12.1. Events of Default Defined. The following shall be “events of default” under this Lease and the terms “events of default” and “default” shall mean, whenever they are used in this Lease, any one or more of the following events:

(i) Failure by Lessee to pay any Rental Payment or other payment required to be paid under this Lease at the time specified herein and the continuation of said failure for a period of ten (10) business days after telephonic or telegraphic notice given by Lessor that the payment referred to in such notice has not been received, such telephonic or telegraphic notice to be subsequently confirmed in writing, or after written notice.

(ii) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Clause (i) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.

(iii) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental or proprietary function or adjudication of Lessee as a bankrupt, or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

The provisions of this Section 12.1 and Section 12.2 are subject to the following limitation: if by reason of force majeure Lessee is unable in whole or in part to carry out its obligations under this Lease, other than its obligation to pay Rental Payments with respect thereto which shall be paid when due notwithstanding the provisions of this paragraph, Lessee shall not be deemed in default during the continuance of such inability. The term “force majeure” as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other labor disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or their respective departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause



or event not reasonably within the control of Lessee and not resulting from its negligence. Lessee agrees, however, to remedy with all reasonable dispatch the cause or causes preventing Lessee from carrying out its obligations under this Lease; provided that the settlement of strikes, lockouts and other labor disturbances shall be entirely within the discretion of Lessee and Lessee shall not be required to make settlement of strikes, lockouts and other labor disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of Lessee unfavorable to Lessee.

Section 12.2. Remedies on Default. Whenever any event of default referred to in Section 12.1 hereof shall have happened and be continuing with respect to the Project, Lessor shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

(i) Lessor, with or without terminating this Lease, may declare all Rental Payments due or to become due during the Fiscal Year in effect when the default occurs to be immediately due and payable by Lessee, whereupon such Rental Payments shall be immediately due and payable.

(ii) Lessor, with or without terminating this Lease, may repossess the Project by giving Lessee written notice to surrender the Project to Lessor for the remaining term of the Ground Lease, whereupon Lessee shall do so in the manner provided in Section 12.3. If the Project or any portion of it has been destroyed or damaged beyond repair, Lessee shall pay the applicable Purchase Option Price of the Project, as set forth in Exhibit B (less credit for Net Proceeds), to Lessor. Notwithstanding the fact that Lessor has taken possession of the Project, Lessee shall continue to be responsible for the Rental Payments due during the Fiscal Year then in effect. If this Lease has not been terminated, Lessor shall return possession of the Project to Lessee at Lessee's expense when the event of default is cured.

(iii) If Lessor terminates this Lease and takes possession of the Project, Lessor shall thereafter use its best efforts to sell or lease its interest in the Project or any portion thereof in a commercially reasonable manner in accordance with applicable State laws. Lessor shall apply the proceeds of such sale or lease to pay the following items in the following order: (a) all costs incurred in securing possession of the Project; (b) all expenses incurred in completing the sale or lease; (c) the applicable Purchase Option Price of the Project; and (d) the balance of any Rental Payments owed by Lessee during the Fiscal Year then in effect. Any sale proceeds remaining after the requirements of Clauses (a), (b), (c) and (d) have been shall be the property of Lessee.

(iv) If the proceeds of sale or lease of the Project are not sufficient to pay the balance of any Rental Payments owed by Lessee during the Fiscal Year then in effect, Lessor may take any other remedy available at law or in equity to require Lessee to perform any of its obligations hereunder and to enforce the Ground Lease and Lessee's compliance with the terms of the Ground Lease.

Section 12.3. Surrender of Project. Upon the expiration or termination of this Lease prior to the payment of all Rental Payments in accordance with Exhibit B, Lessee shall surrender the Project to Lessor in the condition, repair, appearance and working order required in Section 7.2. If Lessee refuses to surrender the Project in the manner designated, Lessor may repossess the Project and charge to Lessee the costs of such repossession or pursue any remedy described in Section 12.2.

Section 12.4. No Remedy Exclusive. No remedy conferred upon or reserved to Lessor by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient by Lessor or its assignee.

## ARTICLE XIII

### ADMINISTRATIVE PROVISIONS

Section 13.1. Notices. All notices, certificates, legal opinions or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid to the addresses specified on the first page hereof; provided that Lessor and Lessee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates, legal opinions or other communications will be sent.

Section 13.2. Financial Information. During the Term of this Lease, Lessee annually will provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing Fiscal Year and such other financial information relating to the ability of Lessee to continue this Lease as may be requested by Lessor or its assignee.

Section 13.3. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.4. Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.5. Amendments, Changes and Modifications. This Lease may be amended or any of its terms modified only by written document duly authorized, executed and delivered by Lessor and Lessee.

Section 13.6. Captions. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provision, Article, Section or Clause of this Lease.

Section 13.7. Further Assurances and Corrective Instruments. Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project hereby leased or intended so to be, or for otherwise carrying out the expressed intention of this Lease.

Section 13.8. Execution in Counterparts. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.9. Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, Lessor has caused this Lease to be executed in its corporate name by its duly authorized officer; and Lessee has caused this Lease to be executed in its name by its duly authorized officers, as of the date first above written.

WELLS FARGO BROKERAGE SERVICES, LLC,  
as Lessor

By \_\_\_\_\_  
Its \_\_\_\_\_

CITY OF GRAND ISLAND, NEBRASKA  
as Lessee

By \_\_\_\_\_  
Its Mayor

ATTEST:

By \_\_\_\_\_  
Its City Clerk

**SIGNATURE PAGE TO LEASE-PURCHASE AGREEMENT**  
**DATED AS OF \_\_\_\_\_, 20\_\_**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009 by \_\_\_\_\_, agent on behalf of Wells Fargo Brokerage Services, LLC, a limited liability company.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

(SEAL)

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF HALL )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_, Mayor of the City of Grand Island, Nebraska, on behalf of said city.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

(SEAL)

EXHIBIT A

LAND

IMPROVEMENTS

EXHIBIT B

SCHEDULE OF RENTAL PAYMENTS

<u>Payment Date</u>	<u>Rental Payment</u>	<u>Interest</u>	<u>Principal</u>	<u>Purchase Option Price</u>
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## EXHIBIT C

### OFFICERS' CERTIFICATE

We, the undersigned, hereby certify that we are the duly qualified and acting Mayor and City Clerk of the City of Grand Island (the "Lessee"), and with respect to the Lease-Purchase Agreement dated as of July 1, 2009 (the "Lease"), by and between the Lessee and Wells Fargo Brokerage Services, LLC (the "Lessor"), that:

1. In our capacities as such officers we have executed the Lease, a Ground Lease dated as of July 1, 2009 (the "Ground Lease"), by and between the Lessee and Hall County Livestock Improvement Association and an Escrow Agreement dated as of July 1, 2009 (the "Escrow Agreement"), by and among the Lessor, the Lessee and Wells Fargo Bank, National Association, acting as Escrow Agent.

2. The Rental Payments provided for in Exhibit B to the Lease shall commence and be due and payable on \_\_\_\_\_, 2009, and thereafter during the Term of the Lease (as that term is defined in the Lease) as shown in Exhibit B to the Lease. Lessee has appropriated and/or taken all other lawful actions necessary to provide moneys sufficient to pay all Rental Payments required to be paid under the Lease in Lessee's current fiscal year, and such moneys will be applied in payment of such Rental Payments.

3. There is no litigation, action, suit or proceeding pending or before any court, administrative agency, arbitrator or governmental body, that challenges the organization or existence of the Lessee; the authority of its officers; the proper authorization, approval and execution of the Ground Lease, the Lease, the Escrow Agreement and other documents contemplated thereby; the appropriation of money to pay the Rental Payments due under the Lease; or the ability of the Lessee otherwise to perform its obligations under the Ground Lease, the Lease, the Escrow Agreement and the other documents and the transactions contemplated thereby.



4. Lessee has obtained from a reputable insurance company qualified to do business in the State of Nebraska insurance with respect to all risks required to be covered thereby pursuant to Article VI of the Lease.

Dated: \_\_\_\_\_, 2009.

CITY OF GRAND ISLAND, NEBRASKA

By \_\_\_\_\_  
Its Mayor

Attest:

By \_\_\_\_\_  
Its City Clerk

EXHIBIT D

OPINION

(may be provided by separate counsel for the City as to different matters set forth)

Mayor and Council  
City of Grand Island  
100 East First Street  
Grand Island, NE 68802-1968

Wells Fargo Brokerage Services, LLC  
Public Finance Department  
608 Second Avenue South – 10th Floor  
MAC: N9303-105  
Minneapolis, MN 55479

Re: Lease-Purchase Agreement dated as of July 1, 2009, by and between Wells Fargo Brokerage Services, LLC (“Lessor”) and the City of Grand Island, Nebraska, (“Lessee”)

Ladies and Gentlemen:

I have acted as counsel to Lessee with respect to the Lease-Purchase Agreement described above (the “Lease”) and various related matters, and in this capacity have reviewed a duplicate original or certified copy of the Lease, the Ground Lease dated as of July 1, 2009 (the “Ground Lease”) by and between Lessor and Lessee and the Escrow Agreement dated as of July 1, 2009 (the “Escrow Agreement”) among the Lessor, the Lessee and Wells Fargo Bank, National Association, acting as escrow agent, and the Exhibits attached to each of said documents. Based upon the examination of these and such other documents as I deem relevant, it is my opinion that:

1. Lessee is a political subdivision of the state of the State of Nebraska (the “State”), duly organized, existing and operating under the Constitution and laws of the State.
2. Lessee is authorized and has power under applicable law to enter into the Lease, the Ground Lease and the Escrow Agreement and to carry out its obligations thereunder and the transactions contemplated thereby.

3. The Lease, the Ground Lease and the Escrow Agreement have been duly authorized, approved, executed and delivered by and on behalf of Lessee, and are valid and binding contracts of Lessee enforceable in accordance with their terms, except to the extent limited by State and Federal laws affecting remedies and by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights.

4. The authorization, approval and execution of the Lease and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting, public bidding and all other laws, rules and regulations of the State.

5. The execution of the Lease and the appropriation of moneys to pay the Rental Payments coming due thereunder do not result in the violation of any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.

6. There is no litigation, action, suit or proceeding pending or before any court, administrative agency, arbitrator or governmental body, that challenges the organization or existence of Lessee; the authority of Lessee or its officers or its employees to enter into the Lease, the Ground Lease and the Escrow Agreement; the proper authorization, approval and/or execution of the Lease, the Ground Lease and the Escrow Agreement, Exhibits thereto and other documents contemplated thereby; the appropriation of moneys to make Rental Payments under the Lease for the current fiscal year of Lessee; or the ability of Lessee otherwise to perform its obligations under the Lease, the Ground Lease and the Escrow Agreement and the transactions contemplated thereby.

(Subject to qualifications determined appropriate by each opining counsel and acceptable to Lessor)

Dated \_\_\_\_\_, 20\_\_.

Very truly yours,

**GROUND LEASE**

THIS GROUND LEASE ("Lease") is made and entered into July 1, 2009, by and between HALL COUNTY LIVESTOCK IMPROVEMENT ASSOCIATION, a Nebraska nonprofit corporation ("Fonner Park"); WELLS FARGO BROKERAGE SERVICES, L.L.C. (Wells Fargo); and CITY OF GRAND ISLAND, NEBRASKA, a city of the first class of the State of Nebraska ("City");

WHEREAS, the City and Fonner Park have determined that Wells Fargo and the City should have title to a multi-purpose recreational exposition building and associated infrastructure improvements (the "Building"); and

WHEREAS, the City and Wells Fargo Brokerage Services, LLC ("Wells Fargo") have entered into a Lease Purchase Agreement dated July 1, 2009 ("Lease Purchase Agreement") regarding the Building.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the parties do hereby agree and contract as follows:

1. **Certain Definitions.** For purposes of this Lease, the following terms are defined:

(a) "Leased Premises" shall mean that certain real property located in Hall County, Nebraska, which has been identified by Fonner Park based upon the plans and specifications approved and provided by the Nebraska State Fair Board. The Leased Premises are deemed by the parties hereto to be suitable to construct the Building and are located outside the restricted security envelope required of Fonner by the State Racing Commission, so as to be usable throughout each year. The exact location and legal description of the Leased Premises as determined by survey, are shown on Exhibit "A" attached hereto and made a part hereof. As part of this Lease, Wells Fargo and the City are hereby granted during the term of the Lease proper ingress and egress on, over and across the land of Fonner Park for access and suitable parking, as is necessary for proper utilization of the Building. Such land of Fonner Park is defined in Exhibit "B" hereto attached and incorporated herein.

(b) "Building" shall mean the building, structures, fixtures and improvements constructed or installed upon the Leased Premises and related infrastructure improvements serving the Building.

Certain other defined terms shall have the respective meanings assigned to them elsewhere in this Lease.

2. **Demise and Term.** Fonner Park hereby leases and rents to Wells Fargo and the City, and Wells Fargo and the City hereby lease and rent from Fonner Park, the Leased Premises for the period commencing with the date of delivery hereof and ending on December 31, 2050 (the "Term"). Thereafter, the Term shall automatically continue for five (5) year successive terms unless terminated by either party upon ninety (90) days written notice prior to the end of the expiring term. The leasehold interest of Wells Fargo hereunder shall be assigned and transferred in full to City

upon the City's fulfillment of all of its obligations under the Lease Purchase Agreement with Wells Fargo.

3. **Use.** The Leased Premises shall be used for the construction and operation of the Building to be used by the City for public purposes, including, without limitation, for use as a recreational facility and also for State Fair purposes, if and when appropriate, and for any other suitable use as determined by the City. It is agreed by the parties hereto that the City shall not use the building for any sanctioned Nebraska School Athletic Activities Association or collegiate athletic event, or for any trade show, banquet, professional entertainment or convention without the permission of Fonner Park as long as Fonner Park is responsible under the current Management Agreement (or any successor agreement with the City) for management of the Heartland Event Center. Such permission from Fonner Park shall not be unreasonably denied.

4. **Building.** The Building on the Leased Premises shall be designed in accordance with plans and specifications provided by the Nebraska State Fair Board, with due consideration to be provided to the City to allow for the Building to be used for any of the City's purposes. This Lease shall apply solely to the Building and the Leased Premises (as defined in Exhibit A hereto) and to access and parking on, over and across the land described on Exhibit B hereto. All necessary utilities that will be needed for the Building are to be furnished out of the funds to be collected and utilized for the relocation of the Nebraska State Fair, which project is being administered by the Nebraska State Fair Board and Fonner Park. The costs and expenses of any of these utility lines shall be paid for with the relocation funds and not from the separate funds of Fonner Park. The City shall have the right at its cost, as and to the extent that it determines appropriate, to install utilities for the Building, on, over and across the real estate defined in Exhibit "B" hereto attached.

5. **Rent.** City shall pay to Fonner Park as gross rent ("Rent") for the Term hereof the sum of One Thousand and No/100 Dollars (\$1,000.00) per month, first payable upon the certificate of occupancy being provided for the facility to the City and then payable on the first day of each month thereafter. No rental increase shall occur until the City has received legal title to the Building from Wells Fargo and thereafter shall be subject to negotiation between the City and Fonner Park from time to time.

6. **Maintenance and Repair.** The maintenance, repairs and replacements of the Building and interior and the Leased Premises shall be the responsibility of the City. The maintenance, repairs and replacement of surrounding property shall be the responsibility of Fonner Park, including maintenance of suitable parking, all sidewalks, landscape, and exterior lighting not attached to the Building, for access, parking and green space areas.

7. **Insurance and Casualty.** During the Terms of this Lease, the City shall, at its own expense, insure the Leased Premises and the Building against loss or damage by fire and extended perils coverage in an amount not less than the full replacement value thereof, with such insurance to be under policies issued by responsible insurers authorized to do business in the State of Nebraska. The insurance policy shall name Wells Fargo, the City and Fonner Park as insured as their respective interests may appear, but so long as the City is not in default of this Lease, any loss shall be adjusted by and paid to Wells Fargo and the City. Upon occurrence of any damage covered by the foregoing property insurance, the City shall repair, replace or reconstruct the Building. The parties agree that if the available proceeds of the property insurance are insufficient to fully restore

the Building to the condition existing prior to the loss, the City shall provide funds for restoration beyond the funds available from such insurance if it so chooses. If the City chooses not to restore, the Lease can be terminated if at such time the City has legal title to the Building. The other provisions of this Lease shall apply as to any such disposition and surrender.

8. **Assignment and Subletting.** Except as may be provided in the Lease Purchase Agreement, City may not assign this Lease or sublet, in whole or in part, the Leased Premises, by operation of law or otherwise. The City shall have the right to contract for the use of the Building as it determines appropriate, consistent with the other terms of this Lease. The City has the right to charge admission fees, user fees, and to enter into usage agreements for its purposes for the Building.

9. **No Subordination.** Upon the prior written consent of Fonner Park, the City shall have the right to grant a mortgage or deed of trust upon the leasehold interest evidenced hereby subject to and upon the condition that the mortgagee or beneficiary shall execute an acknowledgment in form acceptable to Fonner Park acknowledging and agreeing that: (a) any such mortgage or deed of trust shall be junior and inferior in all respects to the interest of Fonner Park in the Leased Premises, (b) upon any foreclosure, such mortgagee or beneficiary shall be subject to the terms and conditions of this Lease, and (c) the expiration or termination of this Lease shall terminate any mortgage or deed of trust and such mortgagee or beneficiary shall cause the mortgage or deed of trust to be released and reconveyed upon any such termination. Fonner Park agrees that it will provide written notice of any default by City of the holder of any mortgage or deed of trust of which it has knowledge.

10. **Limitation on Termination as Against Wells Fargo/Disposition of Property.** This Lease shall not terminate until the City has acquired full legal title to the Building from Wells Fargo. Upon termination of this Lease, or any extension thereof, the Leased Premises shall remain the property of Fonner Park. The Building and any other structures or improvements or appurtenances of the City that have been constructed or installed shall remain the property of the City. Fonner Park, upon termination of this Lease, may purchase the City's interest in the Building, other structures or appurtenances for the Fair Market Value of the same. "Fair Market Value" shall mean the value of such interests, as determined by agreement of the parties or by a board of three (3) independent licensed appraisers chosen jointly by the parties. The City's interest may be purchased as determined by state or federal law or by agreement of the parties. If Fonner Park elects not to purchase the Building, structures and appurtenances on the Leased Premises, the City agrees to remove all buildings, structures and appurtenances on the Leased Premises at the City's cost, subject to any remonstrance requirements under applicable law.

11. **Default.** In the event City shall fail to observe and perform the terms and provisions of this Lease, and such failure continues for a period of thirty (30) days after written notice from Fonner Park to City and Wells Fargo (provided, in the event the nature of such failure reasonably requires more than thirty (30) days to cure, such thirty (30) day period shall be extended for as long as it is reasonably necessary provided City commences to cure such failure within such thirty (30) day period and thereafter diligently pursues the same to completion), then Fonner Park may terminate this Lease, City shall forfeit all rights, titles and interests in and to the Leased Premises and City shall remove the Building within ninety (90) days of such termination and shall immediately vacate the Leased Premises except for purposes of removing the building. Wells Fargo

as owner of the Building, shall have the right to cure any default of the City so long as Wells Fargo has legal title to the Building.

12. **Surrender.** City shall, upon termination of this Lease, whether by lapse of time or otherwise, peaceably and promptly surrender the Leased Premises, shall forfeit all rights, titles and interests in and to the Leased Premises and City shall remove the Building within ninety (90) days of such termination and shall immediately vacate the Leased Premises except for purposes of removing the Building. If City remains in possession after the termination of this Lease, without a written lease duly executed by the parties, City shall be deemed a tenant at will.

13. **Notices.** All notices, demands, requests, approvals, consents, offers, statements, and other instruments of communication required or permitted to be given pursuant to the provisions of this Lease, shall be in writing and shall be deemed to have been given when delivered in person, by Federal Express or other 24-hour delivery service, or three (3) business days after being deposited in the United States mail by certified mail, return receipt requested, postage prepaid, addressed to the other party at its address hereinbelow set forth:

City of Grand Island  
Attn: Mayor  
P.O. Box 1968  
100 East First Street  
Grand Island, NE 68802-1968  
mayor@grand-island.com

Hall County Livestock Improvement Association  
Attn: Registered Agent  
P.O. Box 490  
700 East Stolley Park Road  
Grand Island, NE 68802-0490  
fonnerpark@aol.com

For the purposes of this paragraph, any party may substitute its address by giving fifteen (15) days notice to the other party in the manner provided above.

14. **Recordation.** Fonner Park, the City and Wells Fargo each agree to execute and record a short form notice of this Lease.

15. **Entire Agreement.** This Lease constitutes the entire agreement between Fonner Park, Wells Fargo and the City regarding the subject matter hereof and supersedes all oral statements and prior writings relating thereto. Except for those set forth in this Lease, no representations, warranties or agreements have been made by Fonner Park, Wells Fargo or the City, to the other with respect to this Lease, or the obligations of Fonner Park, Wells Fargo or the City in connection therewith. The normal rule of construction that any ambiguities be resolved against the drafting party shall not apply to the interpretation of this Lease or any exhibits or amendments hereto.

16. **Binding Effect.** This Lease shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

The parties hereto hereby acknowledge that the proposed transfer of the State Fair from Lancaster County to Hall County has been authorized by LB 1116 as enacted by the Second Session (2008) of the One Hundredth Legislature of the State of Nebraska (“LB 1116”) and that there is currently pending in the District Court of Lancaster County, Nebraska, the case of \_\_\_\_\_ (\_\_\_\_\_) (the “Pending Litigation”); that the City and Fonner Park are

parties to the Pending Litigation; that no temporary restraining order, preliminary injunction, permanent injunction or other order restricting action by the City or Fonner Park has been entered or is expected to be entered prior to the time (the "Anticipated Commitment Time") when execution and delivery of this Lease are expected to be required in order for construction to be timely completed; that the City's authority to enter into this Lease for the benefit of the citizens of Grand Island, independent of the provisions of LB 1116, is not questioned or challenged in the Pending Litigation; that the Pending Litigation will not likely be finally resolved before the Anticipated Commitment Time; and the parties hereto have determined to proceed with entering into this Lease without respect of the validity of LB 1116 and in order to serve the general governmental purpose of obtaining a recreational facility for the benefit of the City and its citizens. Each of the parties hereto irrevocably waives any right to claim invalidity or seek other equitable or legal relief based upon the doctrine of commercial frustration.

17. **Authority.** Fonner Park, Wells Fargo and the City each acknowledge and represent that it has the right, power and authority to enter into this Lease and bind itself hereto through the party set forth as signatory for the party below.

18. **Indemnification.** Nothing in this Lease shall be construed as an indemnification by Fonner Park or the City of the other for liabilities of a party or third persons for property loss or damage or death or personal injury arising out of and during the performance of this lease. Any liabilities or claims for property loss or damage or for death or personal injury by a party or its agents, employees, contractors or assigns or by third persons, arising out of and during the performance of this Lease shall be determined according to applicable law including but not limited to the Political Subdivision and State Tort Claims Act.

19. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Nebraska.

20. **Effective Date.** This Lease has been dated for convenience of reference as shown on the initial page hereof.

ATTEST:

CITY OF GRAND ISLAND, NEBRASKA

\_\_\_\_\_  
RaNae Edwards, City Clerk

By: \_\_\_\_\_  
Margaret Hornady, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Dale M. Shotkoski, City Attorney

ATTEST:

WELLS FARGO BROKERAGE SERVICES, L.L.C.



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

ATTEST: HALL COUNTY LIVESTOCK IMPROVEMENT ASSOCIATION

\_\_\_\_\_ By: \_\_\_\_\_  
Charles Bosselman, Secretary Larry Toner, President

STATE OF NEBRASKA )  
 )SS:  
COUNTY OF HALL )

The foregoing instrument was acknowledged before me by Margaret Hornady, Mayor of the City of Grand Island, Nebraska, a city of the first class of the State of Nebraska, on behalf of such city.

Witness my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA    )  
  )SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by \_\_\_\_\_,  
\_\_\_\_\_ of Wells Fargo Brokerage Services, L.L.C., on behalf of such limited liability  
company.

Witness my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA    )  
                                  )SS:  
COUNTY OF HALL        )

The foregoing instrument was acknowledged before me by Larry Toner, President of Hall County Livestock Improvement Association, a Nebraska nonprofit corporation, on behalf of such corporation.

Witness my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

W489635.01  
State Fair:GroundLease  
DOCS/911286.2

*Initial Presentation Draft*

ESCROW AGREEMENT

Among

WELLS FARGO BROKERAGE SERVICES, LLC,

as Lessor,

THE CITY OF GRAND ISLAND, NEBRASKA,

as Lessee,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Escrow Agent

Dated as of July 1, 2009

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Escrow Agreement") is made and entered into as of July 1, 2009, by and among Wells Fargo Brokerage Services, LLC, a limited liability company organized under the laws of the State of Delaware (the "Lessor"), Wells Fargo Bank, National Association, a national banking association organized under the laws of the United States and having trust powers (the "Escrow Agent") and the City of Grand Island, Nebraska, a city of the first class of the State of Nebraska (the "Lessee").

In the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

### ARTICLE 1

#### RECITALS

**Section 1.01.** The Lessor and the Lessee are concurrently with the delivery of this Escrow Agreement entering into a Lease-Purchase Agreement (the "Lease") dated as of July 1, 2009 pursuant to Ordinance No. \_\_\_\_\_ passed and approved by the Mayor and Council of the Lessee on May \_\_, 2009 (the "Ordinance") in order to provide financing for the construction and acquisition of a recreational facility to be owned and operated by the Lessee (the "Project"). The parties hereto desire to provide for the holding and application of a deposit required to be made for payment of costs of the Project by the Lessor in accordance with the terms of the Lease for the payment of costs of the Project.

**Section 1.02.** The terms capitalized in this Escrow Agreement but not defined herein shall have the meanings given to them in the Lease.

**Section 1.03.** Under the Lease, the Lessor has agreed to deposit with Escrow Agent the sum of \$5,000,000, to be credited to the Escrow Fund established in Article 2 hereof and to be applied to pay costs of the Project. The Lessor hereby authorizes and instructs the Escrow Agent to receive such sum on its behalf in accordance with the terms of the Lease.

**Section 1.04.** Under the terms of the Lease Agreement, the Lessor and Lessee have agreed to contract for the construction and acquisition of the Project. Costs of the Project shall be paid from the amount deposited with Escrow Agent as described in Sections 1.03, under the terms of this Escrow Agreement.

**Section 1.05.** The Lessor and the Lessee hereby employ the Escrow Agent to receive, hold, invest and disburse the moneys paid to the Escrow Agent as described in Section 1.03, all as hereinafter provided; however, the Escrow Agent shall not be obligated to assume or perform any obligation of the Lessor or the Lessee under the Lease except as set forth in this Escrow Agreement.

**Section 1.06.** Each of the parties has authority to enter into this Escrow Agreement, and has taken all actions necessary to authorize the execution of this Escrow Agreement by the officers whose signatures are affixed hereto.

## ARTICLE 2

### ESCROW FUND

**Section 2.01.** Escrow Agent shall establish a special escrow fund designated as the “City of Grand Island Construction and Acquisition Fund” (the “Escrow Fund”), shall keep such Escrow Fund separate and apart from all other funds and moneys held by it and shall administer such Escrow Fund as provided in this Escrow Agreement.

**Section 2.02.** All moneys paid to Escrow Agent by Lessor pursuant to Section 1.03 of this Escrow Agreement shall be credited to the Escrow Fund. Escrow Agent shall use the moneys in the Escrow Fund to pay the costs of the Project upon receipt with respect thereto of a Payment Request in the form attached hereto as Exhibit A, executed by Lessee, fully completed and with all supporting documents described therein attached thereto. Upon receipt of a Payment Request, an amount equal to the cost for the Project as shown therein shall be paid directly to the person or entity entitled to payment as specified therein. Lessee shall submit Payment Requests, other than for permitted reimbursement, only for portions of the cost of the Project as billed by the contractor or supplier and currently owing.

**Section 2.03.** Lessee shall furnish to Escrow Agent and Lessor as soon as available a copy of each contract or purchase order for construction or acquisition of the Project. Amounts for payment of costs of the Project shall be disbursed no later than August 31, 2010. Amounts, if any, remaining undisbursed as of such date shall be applied on behalf of the Lessee to make prepayment of the Rental Payments due under the Lease on the next permitted date for prepayment under the terms of the Lease.

**Section 2.04.** Upon receipt of written notice from the Lessor that a default or event of default has occurred under the Lease or that Lessee has determined not to complete the construction and acquisition of the Project, Escrow Agent shall liquidate all investments held in the Escrow Fund and transfer the proceeds thereof and all other moneys held in the Escrow Fund to Lessor to be applied to the prepayment, in whole or in part of the Rental Payments due under the Lease.

**Section 2.05.** Escrow Agent shall only be responsible for the safekeeping and investment of the moneys held in the Escrow Fund, and the disbursement thereof in accordance with this Article, and shall not be responsible for the authenticity or accuracy of such certifications or documents, the application of amounts paid pursuant to such certifications by the persons or entities to which they are paid, or the sufficiency of the moneys credited to the Escrow Fund to make the payments herein required.

## ARTICLE 3

### MONEYS IN ESCROW FUND; INVESTMENT

**Section 3.01.** The moneys and investments held by Escrow Agent under this Escrow Agreement are irrevocably held in trust for the benefit of the Lessor and the Lessee and such moneys, together with any income or interest earned thereon, shall be expended only as provided in this Escrow Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of the Lessor or the Lessee. The Lessor and the Lessee intend that the Escrow Fund constitute an escrow account in which the Lessee has no legal or equitable right, title or interest until satisfaction in full of all conditions contained herein and in the Lease for the disbursement of funds by Escrow Agent. However, if the parties’ intention that Lessee shall have no legal or equitable right, title or interest until all conditions for disbursement are satisfied in

full is not respected in any legal proceeding, the parties hereto intend that Lessor shall have a security interest in the Escrow Fund, and such security interest is hereby granted to Lessor by the Lessee (to the fullest extent that it may lawfully do so), to secure payment of all sums due to Lessor under the terms of the Lease. Escrow Agent shall hold the Escrow Fund and the securities and monies therein for the purpose of perfecting Lessor's security interest therein and shall dispose of the Escrow Fund only in accordance with the terms and conditions of this Escrow Agreement. Escrow Agent hereby accepts appointment as agent and agrees to establish and maintain the Escrow Fund and the monies and securities therein as a financial intermediary or securities intermediary, as the case may be, for Lessor, as entitlement holder. Escrow Agent confirms that (i) the Escrow Fund is a "securities account" as such term is defined in §8-501 of the Nebraska UCC; (ii) Escrow Agent shall, subject to the terms of this Escrow Agreement, treat Lessor as entitled to exercise the rights that comprise any financial asset credited to the Escrow Fund; (iii) all property delivered to Escrow Agent for deposit into the Escrow Fund will be promptly credited to the Escrow Fund; and (iv) all securities and other property underlying any financial assets credited to the Escrow Fund shall be registered in the name of Escrow Agent, indorsed to Escrow Agent or in blank or credited to another securities account maintained in the name of Escrow Agent, and in no case will any financial asset credited to the Escrow Fund be registered in the name of Lessee, payable to the order of Lessee or specially indorsed to Lessee. Escrow Agent agrees that each item of property (whether investment property, financial asset, security, instrument or cash) credited to the Escrow Fund shall be treated as a "financial asset" within the meaning of §8-102(a)(9) of the Nebraska UCC. If at any time Escrow Agent shall receive an "entitlement order" (within the meaning of §8-102(a)(8) of the Nebraska UCC) issued by Lessor and relating to the Escrow Fund, Escrow Agent shall comply with such entitlement order without further consent by Lessee or any other person.

**Section 3.02.** Moneys held by Escrow Agent hereunder shall be invested and reinvested by Escrow Agent upon order of Lessee only in Qualified Investments, as defined in Section 3.05. Such investments shall be registered in the name of Escrow Agent and held by Escrow Agent for the benefit of the Lessor and for disbursement to pay costs of issuance and costs of the Project. With the approval of Lessee, Escrow Agent may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Article. Such investments and reinvestments shall be made giving full consideration for the time at which funds are required to be available.

**Section 3.03.** Escrow Agent shall, without further direction from Lessee, sell such investments as and when required to make any payment from the Escrow Fund. Any income received on such investments shall be credited to the Escrow Fund.

**Section 3.04.** Escrow Agent shall furnish to the Lessor and the Lessee reports accounting for all investments and interest and income therefrom. Such accounting shall be furnished no less frequently than every three months and upon request of the Lessor or the Lessee. Neither the Lessor nor the Escrow shall be responsible or liable for any loss suffered in connection with any investment of moneys made by Escrow Agent in accordance with this Article (other than the Escrow Agent in its capacity as obligor under any Qualified Investment). In the event funds in the Escrow Fund are insufficient to pay the costs of the Project, the Lessee shall provide for such costs from its other funds outside of and apart from the provisions for payment set forth in this Escrow Agreement.

**Section 3.05.** As used in this Escrow Agreement, the term "Qualified Investments" means (a) securities which are general obligations of or are guaranteed as to the payment of principal and interest by the United States of America; (b) obligations, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following: Federal Home Loan Bank System, Government National Mortgage Association, Farmers Home Administration, Federal Home Loan Mortgage Corporation or Federal

Housing Administration; (c) commercial paper issued by corporations organized under the laws of a state of the United States which is rated in the highest rating category by Standard & Poor's Ratings Services, a division of the McGraw Hill Companies, Inc., or Moody's Investors Service, Inc.; or (d) certificates of deposit issued by or other forms of deposit in any national or state bank to the extent that such deposits are fully insured by the Federal Deposit Insurance Corporation or any successor agency which is backed by the full faith and credit of the United States. By execution of this Escrow Agreement, the Lessee also consents to the investment and reinvestment by Escrow Agent of any moneys held as part of the Escrow Fund in shares of a money market fund (including a money market fund for which Escrow Agent and its affiliates provide advisory, custodial, administrative or similar services and receives fees), provided: (x) the money market fund is registered under the Investment Company Act of 1940; (y) the money market fund has been rated by a nationally recognized statistical rating organization in one of that organization's three highest mutual fund rating categories; and (z) the money market fund's investments are limited to those Qualified Investments listed in (a), (b) or (c) above. In the absence of duly authorized and complete directions regarding investment of moneys held in the Escrow Fund, the Escrow Agent shall automatically invest and reinvest the same in units of money market mutual funds, provided that such money market mutual funds constitute a Qualified Investment.

#### ARTICLE 4

##### ESCROW AGENT'S AUTHORITY; INDEMNIFICATION

**Section 4.01.** The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of any instrument deposited with it, nor as to the identity, authority or right of any person executing the same; and its duties hereunder shall be limited to those specifically provided herein.

**Section 4.02.** Unless the Escrow Agent is guilty of negligence or misconduct with regard to its duties hereunder, the Lessee, to the fullest extent that it may lawfully do so, hereby agrees to indemnify Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as the Escrow Agent under this Escrow Agreement; and in connection therewith, to indemnify the Escrow Agent against any and all expenses, including reasonable attorneys' fees (to the extent permitted by law) and the cost of defending any action, suit or proceeding or resisting any claim. The Escrow Agent shall be vested with a lien on all property deposited hereunder for indemnification, for reasonable attorneys' fees (to the extent permitted by law), court costs, for any suit, interpleader or otherwise, or any other expenses, fees or charges of any character or nature, which may be incurred by the Escrow Agent by reason of disputes arising among the Lessor and the Lessee as to the correct interpretation of the Lease or this Escrow Agreement and instructions given to the Escrow Agent hereunder, or otherwise, with the right of the Escrow Agent, regardless of the instructions aforesaid, to hold the said property until and unless said additional expenses, fees and charges shall be fully paid.

**Section 4.03.** If the Lessor and the Lessee shall be in disagreement about the interpretation of the Lease or this Escrow Agreement, or about the rights and obligations, or the propriety of any action contemplated by Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Escrow Agent shall be indemnified by the Lessee



for all costs, including reasonable attorneys' fees (to the extent permitted by law), in connection with such civil action, and shall be fully protected in suspending all or part of its activities under this Escrow Agreement until a final judgment in such action is received.

**Section 4.04.** The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection in acting in accordance with the opinion of such counsel. The Escrow Agent shall not otherwise be liable for any mistakes of facts or errors of judgment, or for any acts or omissions of any kind unless caused by its negligence or misconduct.

## ARTICLE 5

### ESCROW AGENT'S COMPENSATION

The Escrow Agent's compensation for the services to be rendered hereunder is set forth in Exhibit B hereto. Escrow Agent acknowledges that the Lessor and the Lessee have relied on its undertakings as set forth in this Escrow Agreement. The Lessee hereby agrees to pay and/or reimburse the Escrow Agent upon request for all expenses, disbursements and advances, investment fees or other charges, including reasonable attorneys' fees, incurred or made by it in connection with carrying out its duties hereunder and such fees and charges may be deducted from investment earnings on the Escrow Fund.

## ARTICLE 6

### CHANGE OF ESCROW AGENT

**Section 6.01.** A national banking association located in the United States or a state bank or trust company organized under the laws of a state of the United States, qualified as a depository of public funds, may be substituted to act as the Escrow Agent under this Escrow Agreement upon agreement of the Lessor and Lessee. Such substitution shall not be deemed to affect the rights or obligations of the parties. Upon any such substitution, the Escrow Agent agrees to assign to such substitute Escrow Agent its rights under this Escrow Agreement.

**Section 6.02.** The Escrow Agent or any successor may at any time resign by giving mailed notice to the Lessor and the Lessee of its intention to resign and of the proposed date of resignation, which shall be a date not less than thirty (30) days after such notice is deposited in the United States mail with postage fully prepaid, unless an earlier resignation date and the appointment of a successor Escrow Agent shall have been or are approved by Lessor and Lessee.

**Section 6.03.** The Escrow Agent may appoint an agent to exercise any of the powers, rights or remedies granted to the Escrow Agent under this Escrow Agreement, and to hold title to property or to take any other action which may be desirable or necessary.

## ARTICLE 7

### ADMINISTRATIVE PROVISIONS

**Section 7.01.** The Escrow Agent shall keep complete and accurate records of all moneys received and disbursed under this Escrow Agreement, which shall be available for inspection by the Lessor and Lessee, or the agent of either thereof, at any time during regular business hours.

**Section 7.02.** All notices, certificates, requests, demands and other communications provided for hereunder shall be in writing and shall be (a) personally delivered, (b) sent by first class United States mail, (c) sent by overnight courier of national reputation, or (d) transmitted by telecopy, in each case addressed to the party to whom notice is being given at its address as set forth below and, if telecopied, transmitted to that party at its telecopier number set forth below or, as to each party, at such other address or telecopier number as may hereafter be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section. All such notices, requests, demands and other communications shall be deemed to have been given on (a) the date received if personally delivered, (b) when deposited in the mail if delivered by mail, (c) the date sent if sent by overnight courier, or (d) the date of transmission if delivered by telecopy.

**Section 7.03.** This Escrow Agreement shall be construed and governed in accordance with the laws of the State of Nebraska.

**Section 7.04.** Any provisions of this Escrow Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Escrow Agreement or the Loan Agreement.

**Section 7.05.** This Escrow Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

**Section 7.06.** This Escrow Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Escrow Agreement.

**Section 7.07.** This Escrow Agreement shall terminate upon disbursement by the Escrow Agent of all moneys held by it hereunder.

**Section 7.08.** This Escrow Agreement together with the Lease and that related Ground Lease dated as of July 1, 2009 to which both Lessor and Lessee are parties, constitutes the entire agreement of the parties relating to the subject matter hereof.

**Section 7.09.** To the extent permitted by law, the terms of this Escrow Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the parties hereto, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

The Lessor and the Lessee may agree to amend the date specified in Section 2.03 for payment of costs of the Project to a date no more than three years after the date of delivery of the Lease. Such amendment shall be effected by written agreement signed by Lessor and the Lessee.

[REMAINDER OF PAGE INTENTIONALLY BLANK; EXECUTION PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the day and year first written above.

WELLS FARGO BROKERAGE SERVICES, LLC,  
Lessor

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, Escrow Agent

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

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

Address: MAC: 9303-105

608 Second Avenue South

9<sup>th</sup> Floor

Minneapolis, Minnesota 55479

Telephone (612) 667-7421

Telecopier (612) 667-9906

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

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

Address: Corporate Trust Department

1248 "O" Street

4<sup>th</sup> Floor

Lincoln, Nebraska 68501

Telephone (402) 434-4431

Telecopier (402) 434-4612

THE CITY OF GRAND ISLAND, NEBRASKA

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

Title: Mayor

PO Box 1968

100 East First Street

Grand Island, NE 68802-1968

Telephone (308) 385-5444, Ext. 169

Telecopier (308) 385-5486

**Exhibit A to Escrow Agreement**

(FORM OF PAYMENT REQUEST)

Payment Request No. \_\_\_\_\_

The City of Grand Island, Nebraska, as lessee (the "Lessee") under that Lease-Purchase Agreement dated as of July 1, 2009 (the "Lease") between Lessee and Wells Fargo Brokerage Services, LLC, (the "Lessor"), hereby requests Wells Fargo Bank, National Association, as escrow agent (the "Escrow Agent") under the Escrow Agreement dated as of July 1, 2009 (the "Escrow Agreement") among the Escrow Agent, the Lessor and the Lessee, to make payment from the Escrow Fund (as defined in the Escrow Agreement) to the following party or parties, at the addresses set forth below:

<i>Payee</i>	<i>Address</i>	<i>Amount To Be Paid</i>	<i>Cost of Issuance or Project Description</i>
--------------	----------------	------------------------------	--

In connection therewith, the undersigned officer of the Lessee hereby certifies as follows:

1. All of the provisions of the Lease and the Escrow Agreement are incorporated herein by reference and capitalized terms used herein and not defined shall have the meanings assigned to them in the Loan Agreement and the Escrow Agreement.

2. The payments to be made to the payees set forth above are for costs of construction and/or acquisition of the Project (as defined in the Escrow Agreement) described above, or reimbursement to Lessee therefor, and the payments have not been the basis for a prior request which has been paid. Any amounts to be reimbursed to the Lessee are for advances made by the Lessee from its own funds not earlier than May 1, 2009.

3. All of Lessee's representations, covenants and warranties contained in the Lease and the Certificate with Respect to Tax Matters (the "Tax Certificate") were true and accurate in all material respects as of the date made, and remain true and accurate in all material respects as of the date of this Payment Request, and the Lessee has fully and satisfactorily performed all of its covenants, representations and obligations to date required under the Lease, the Escrow Agreement and the Tax Certificate. No Default Event has occurred under the Lease.

4. The Lessee understands that the Lessor is relying on the certifications herein with regard to and in connection with approving the disbursement requested hereby.

5. ***Please indicate if this Payment Request relates to the final disbursement from the Escrow Fund: \_\_Yes \_\_No.***

If this Payment Request relates to the final disbursement from the Escrow Fund, the Lessee and the Lessor hereby instruct Escrow Agent to disburse to Lessor the remaining moneys held in the Escrow Fund to be applied to make a partial prepayment on the Rental Payments as set forth in the Lease.

6. ***Please indicate if this Payment Request reimburses Lessee for any payment or payments previously made by Lessee: \_\_Yes \_\_No.***

If this Payment Request requests such a reimbursement, the payment or payments for any obligations originally paid by Lessee, for federal income tax purposes, was after May 1, 2009.

7. ***Lessee attaches hereto the following items:***

(a) ***invoices and/or bills of sale and/or contractor's payment certifications*** relating to the Project and, if such invoices have been paid by Lessee, evidence of payment thereof;

(b) an ***insurance certificate*** showing coverages as required by the Lease if such insurance certificate has not been previously provided by Lessee to the Lessor.

LESSEE:

THE CITY OF GRAND ISLAND,  
NEBRASKA

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

- Attachments: 1. Invoices/Certificates for Payment  
2. Insurance Certificate (if not previously provided)

**Exhibit B to Escrow Agreement**

**SCHEDULE OF ESCROW AGENT'S FEES**

**STOPPED HERE**

**Exhibit C to Escrow Agreement**

**FORM OF AMENDMENT**

THIS AMENDMENT TO ESCROW AGREEMENT is dated as of \_\_\_\_\_, 20\_\_ (this "Amendment") by and between Wells Fargo Brokerage Services, LLC (the "Lessor"), the City of Grand Island, Nebraska, (the "Lessee") and Wells Fargo Bank, National Association, (the "Escrow Agent").

**RECITALS**

A. The Lessor, the Lessee and the Escrow Agent have entered into an Escrow Agreement dated as of July 1, 2009 (the "Escrow Agreement").

B. Pursuant to Section 7.09 of the Escrow Agreement, the Lessor and the Lessee may, without the consent of the Escrow Agent, amend the date specified in Section 2.03 of the Escrow Agreement to a date no more than three years after the date of delivery of the Lease.

C. The Lessor and the Lessee desire to amend the date specified in Section 2.03 of the Escrow Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, it is hereby agreed as follows:

1. The Lessor and the Lessee amend Section 2.03 of the Escrow Agreement by replacing the date "August 31, 2010" as it appears in the second sentence thereof with the date "\_\_\_\_\_, 20\_\_."

2. This Amendment shall become effective only upon execution hereof by duly authorized officers or representatives of the Lessor and the Lessee.

3. All other terms and conditions of the Escrow Agreement not specifically amended by this Amendment shall remain in full force and effect and are hereby ratified and confirmed by the Lessor and the Lessee.

4. This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in their respective corporate names by their duly authorized officers, all as of the date first written above.

WELLS FARGO BROKERAGE SERVICES, LLC, Lessor

THE CITY OF GRAND ISLAND, NEBRASKA CENTER, INC., Lessee

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

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

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ORDINANCE NO. 9215

AN ORDINANCE PROVIDING FOR THE PURCHASE AND LEASING OF A BUILDING AND RELATED IMPROVEMENTS TO SERVE AS A RECREATIONAL FACILITY FOR THE CITY OF GRAND ISLAND; AUTHORIZING EXECUTION AND DELIVERY OF A LEASE-PURCHASE AGREEMENT WITH WELLS FARGO BROKERAGE SERVICES, LLC RELATING TO THE CONSTRUCTION AND ACQUISITION OF SAID FACILITY; AUTHORIZING EXECUTION AND DELIVERY OF A RELATED GROUND LEASE AND ESCROW AGREEMENT; APPROVING THE FORMS OF DOCUMENTS WITH RESPECT TO SAID LEASE-PURCHASE AGREEMENT, GROUND LEASE AND ESCROW AGREEMENT; PROVIDING FOR THE APPROVAL OF AN APPRAISAL AND PROVIDING FOR THE PUBLISHING OF THIS ORDINANCE

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA (the "City") as follows:

Section 1. The Mayor and Council hereby find and determine: that the City is in need of a recreational facility (the "Project") to provide for indoor sporting programs and other indoor recreational activities and to serve as a facility for accommodating activities of the Nebraska State Fair Board (the "Board") upon transfer of State Fair activities to Hall County; that Wells Fargo Brokerage Services, LLC, ("Wells Fargo") has indicated its willingness to act as lessor for the purposes of acquiring, constructing and leasing such Project to the City for such purposes and has offered to enter into a Lease-Purchase Agreement (the "Lease") with the City whereby the City may acquire the Project to be built in accordance with specifications approved by the Mayor and Council and provided by the Board, all pursuant to the provisions of Section 19-2421, R.R.S. Neb. 2007; that Hall County Livestock Improvement Association ("Fonner Park") has agreed to provide a site for the Project under the terms of a Ground Lease (the "Ground Lease") between Fonner Park as ground lessor and the City and Wells Fargo as lessees; that for purposes of governing the disbursement of funds provided by Wells Fargo in accordance with the Lease, the City, Wells Fargo and Wells Fargo Bank, National Association, (the "Escrow Agent") shall enter into an Escrow Agreement (the "Escrow Agreement"); that the documents necessary for such purposes have been prepared and said documents should be approved and their execution authorized.

Section 2. The City of Grand Island shall enter into the Lease (to be dated as determined by the executing officers as of the time of its execution and delivery) with Wells Fargo and whereby Wells Fargo, with the City acting as its agent and contracting for construction and acquisition under a contract or contracts determined upon and awarded by the Board, will construct and acquire the Project in accordance with specifications approved or to be approved by the Mayor and Council of the City (with the schedule of rental payments ("Rental Payments") relating to the leasing and acquisition of the Project to be set forth in an exhibit to the Lease and that the Lease in the form presented at this meeting is hereby approved.

Approved as to Form <sup>2</sup> April 24, 2009	City Attorney
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Section 3. The City of Grand Island shall enter into the Ground Lease (to be dated as determined by the executing officers as of the time of its execution and delivery) with Wells Fargo and Fonner and whereby Wells Fargo and the City shall lease from Fonner the site for the Project and that the Ground Lease in the form presented at this meeting is hereby approved.

Section 4. The City of Grand Island shall enter into the Escrow Agreement (to be dated as determined by the executing officers as of the time of its execution and delivery) with Wells Fargo and the Escrow Agent and whereby amounts deposited by Wells Fargo for payment of construction and acquisition costs of the Project will be held and applied to payment of costs of the Project and that the Escrow Agreement in the form presented at this meeting is hereby approved.

Section 5. The City of Grand Island by separate resolution shall approve and enter into contracts for the construction and acquisition of the Project in accordance with terms and directions specified by the Board and in so acting shall be the agent of Wells Fargo such that title to the Project from and after the time of its acquisition shall be and constitute the separate property of Wells Fargo with the City having beneficial ownership under the terms of the Lease and the Ground Lease.

Section 6. The Mayor and City Clerk of the City be and they are hereby authorized and directed to execute and deliver on behalf of the City the Lease, the Ground Lease and the Escrow Agreement, including any necessary counterparts, in substantially the form and content as presented to the meeting at which final passage of this Ordinance has occurred, but with such changes or modifications therein as to them seem necessary, desirable or appropriate on behalf of the City; and said Mayor, the City Clerk, the City Finance Director and the City Administrator are further authorized and directed to execute and deliver any other documents or certificates and to do all other things necessary or appropriate in connection with the Lease, the Ground Lease and the Escrow Agreement.

Section 6. In connection with the execution and delivery of the Lease, the Ground Lease and the Escrow Agreement, the following determinations and approvals are hereby made by the Mayor and Council:

(a) The City hereby declares, as provided in the Lease, that it will take title to the Project when all of the Rental Payments specified in the Lease have been paid in full or otherwise satisfied.

(b) The designation in the Escrow Agreement of the City Administrator and/or the City Finance Director to act on behalf of the City in approving disbursements of funds deposited by Wells Fargo under the terms of the Lease and the Escrow Agreement is hereby approved.

(c) Prior to the execution and delivery of the Lease, the Ground Lease and the Escrow Agreement, there shall be placed on file with the City

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Clerk an appraisal report for the Project prepared by a certified appraiser in accordance with Section 13-403, R.R.S. Neb. 2007.

(d) The Mayor and Council hereby acknowledge that the proposed transfer of the State Fair from Lancaster County to Hall County has been authorized by LB 1116 as enacted by the Second Session (2008) of the One Hundredth Legislature of the State of Nebraska (“LB 1116”) and that there is currently pending in the District Court of Lancaster County, Nebraska, the case of \_\_\_\_\_ (\_\_\_\_\_) (the “Pending Litigation”); that the City is a party to the Pending Litigation but no temporary restraining order, preliminary injunction, permanent injunction or other order restricting action by the City has been entered or is expected to be entered prior to the time (the “Anticipated Commitment Time”) when execution and delivery of the Lease, the Ground Lease and the Escrow Agreement are expected to be required in order for construction to be timely completed; that the City’s authority to enter into the Lease, the Ground Lease and the Escrow Agreement for the Project as a recreational facility for the benefit of the citizens of Grand Island, independent of the provisions of LB 1116, is not questioned or challenged in the Pending Litigation; that the Pending Litigation will not likely be finally resolved before the Anticipated Commitment Time; and that the Mayor and Council hereby declare the City’s intention to proceed with entering into the Lease, the Ground Lease and the Escrow Agreement without respect of the validity of LB 1116 and in order to serve the general governmental purpose of obtaining a recreational facility for the benefit of the City and its citizens.

(e) The principal amount for financing to be arranged under the terms of the Lease, the Ground Lease and the Escrow Agreement shall not exceed \$5,000,000; the term of the Lease and the financing provided thereby shall not extend beyond ten years from the date of execution and delivery of the Lease and the interest rate relating to the interest component of the Rental Payments shall not exceed six percent per annum.

Section 6. The Mayor and Council hereby state that it is the intention of the City that interest on the interest component of the Rental Payments under the Lease shall be excludable from gross income under the federal income tax by virtue of Section 103 of the Internal Revenue Code of 1986, as amended, (the “Code”) and the Mayor and Council hereby authorize the Mayor, the City Clerk and the City Treasurer (Finance Director) (or any one of more of them) to take all actions necessary or appropriate to carry out said intention and for obtaining such interest exclusion. The City hereby covenants with Wells Fargo and any permitted assigns of Wells Fargo that it will make no use of the proceeds of said issue, including monies held in any sinking fund for the Rental Payments to be set forth in the Lease-Purchase Agreement which would cause the City’s obligation under the Lease to constitute an “arbitrage bond” within the meaning of Section 103 and 148 and other related sections of the Code and further covenants to comply with said Sections 103 and 148 and related sections and all applicable regulations thereunder throughout the term of the

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Lease, including all requirements with respect to reporting and payment of rebates, if applicable. The Lease is hereby designated by the City as one of its “qualified tax-exempt obligations” under Section 265(b)(3)(B)(i)(III) of the Code and the City in connection with entering into the Lease hereby covenants and warrants that it does not anticipate issuance directly by it or on its behalf of tax-exempt bonds or other tax-exempt interest bearing obligations in an amount exceeding \$30,000,000 in calendar 2009 (taking into consideration the exception for current refunding issues).

Section 7. This Ordinance shall be in force and take effect from and after its publication as provided by law.

Passed and approved this \_\_\_\_\_ day of May, 2009.

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Margaret Hornady, Mayor

Attest:

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RaNae Edwards, City Clerk