

AN ORDINANCE     **2012-12-06-0927**

**AUTHORIZING THE EXECUTION AND ASSIGNMENT OF A LEASE FOR THE SOUTHEAST MODEL CENTER TO BE LOCATED AT 2535 SE MILITARY DRIVE, A NEWLY CONSTRUCTED AND BUILT TO SUIT 50,000 SQUARE FOOT BUILDING FOR AN EIGHT-YEAR TERM COMMENCING UPON COMPLETION OF IMPROVEMENTS, SCHEDULED FOR AUGUST 1, 2013.**

\*       \*       \*       \*       \*

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager and her designee, severally, are authorized and directed to execute, deliver, and assign, on behalf of the City, a lease agreement for 2535 S.E. Military Drive in substantially similar form as that in **Attachment I**. The City Manager and designee, severally, should take any and all other actions reasonably necessary or convenient to effectuate the transaction and executing and delivering all ancillary instruments and agreements conducive to effectuating the transaction.

**SECTION 2.** Funding for this ordinance is available in Fund 29102000, Cost Center 3901020001 and General Ledger 5206010, as part of the Fiscal Year 2013 Budget.

**SECTION 3.** Payment not to exceed the budgeted amount is authorized to City Base West, LP and should be encumbered with a purchase order.

**SECTION 4.** Funding for this ordinance for property improvements after the tenant improvement allowance is exhausted not to exceed \$4,200,000.00 is available within SAP project 40-00441, Education Excellence Center South.

**SECTION 5.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

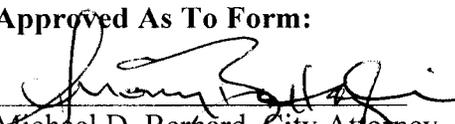
**SECTION 6.** This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio

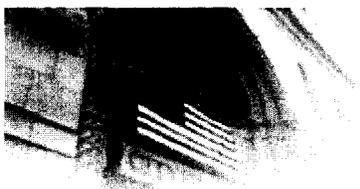
Municipal Code § 1-15, in which case it becomes effective immediately.

**PASSED AND APPROVED** this 6<sup>th</sup> day of December 2012.

M A Y O R  
  
Julián Castro

Attest:  
  
Leticia M. Vacek, City Clerk

Approved As To Form:  
  
Michael D. Bernhard, City Attorney



Request for  
**COUNCIL**  
 ACTION

City of San Antonio



### Agenda Voting Results - 10B

<b>Name:</b>	5, 6, 7, 8A, 8B, 9, 10A, 10B, 11, 12, 13, 14, 15, 16A, 16B, 17A, 17B, 17C, 18, 19, 20, 21, 23, 24, 25, 26A, 26B						
<b>Date:</b>	12/06/2012						
<b>Time:</b>	02:23:22 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the execution and assignment of a lease for the Southeast Model Center to be located at 2535 SE Military Drive, a newly constructed and built to suit 50,000 square foot building for an eight-year term commencing upon completion of improvements, scheduled for August 1, 2013.						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7	x					
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				x
Carlton Soules	District 10		x				

## **Attachment I**

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# Lease

Pre-K 4 SA Educational Initiative

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### 1. Basic Information, Definitions.

#### Authorizing Ordinance:

**Landlord:** Children's Cay, L.P.

**Landlord's Address:** 10003 NW Military Highway, Suite 2209  
San Antonio, Texas 78231

**Tenant:** City of San Antonio

**Tenant's Address:** P.O. Box 829966, San Antonio, Texas 78283-3966  
(Attention: Peter Zanoni) Deputy City Manager

(Attention: Peter Zaroni) Deputy City Manager

**Premises:**

A tract of land constituting approximately 5.0 acres of land, as more particularly described on **Exhibit A** attached hereto, to be improved in accordance with the terms and conditions contained herein with (i) a single story building containing approximately 30,000 rentable square feet ("Building"), (ii) a parking lot containing 200 parking spaces, or such lesser number as Tenant may otherwise approve or as may otherwise be available on the Premises after construction of the Expansion Area or other modifications to the Premises carried out by Landlord under the terms of this Lease ("Parking Facilities"), and (iii) multiple playground areas, (iv) upon Substantial Completion of the Expansion Area, the Expansion Area will become a part of the Premises and the Building for the purposes of this Lease.

**Premises Expansion Right**

At anytime subsequent to the Binding Date, Tenant shall have the right to request Landlord construct up to 20,000 rentable square feet of additional building area adjacent to the Building, ("Expansion Area"). In the event Tenant makes this request, upon Substantial Completion of the Expansion Area the monthly rent shall be increased based on annual rent of \$16.75 for each rentable square foot within the Expansion Area, plus all Additional Rent relating thereto. Landlord shall construct the Base Building Improvements for the Expansion Area in accordance with the terms of the Expansion Space Work Letter attached hereto as **Exhibit B**, which includes a provision for Landlord to provide Tenant an allowance of \$50.00 per rentable square foot within the Expansion Area for the purpose of construction of the Tenant Improvements in accordance with the terms of the Expansion Space Work Letter. As set out above, upon Substantial Completion of the Expansion Area, it shall be deemed to be a part of the Premises and the Building for the purpose of this Lease.

**Permitted Use:**

The Premises will be used by Tenant for only educational purposes including classrooms and office support space for personnel engaged in Tenant sponsored citywide educational programs and/or other office or administration uses deemed appropriate by Tenant in connection therewith, or other uses expressly approved in writing by Landlord.

**No. of Parking Spaces:**

200 exclusive parking spaces situated on the Premises or such lesser number as Tenant may otherwise approve or as

may otherwise be available on the Premises after construction of the Expansion Area or other modifications to the Premises carried out by Landlord under the terms of this Lease.

**Commencement Date:** Upon the earlier of (i) the date of Substantial Completion of Landlord's Work and Tenant Improvements (as such terms are defined in the attached **Exhibit D**), (ii) that date which is the date of Substantial Completion less the number of days attributable to Tenant Delays or (iii) upon Tenant's occupancy of the Premises. The actual Commencement Date will be confirmed in the Commencement Date Memorandum to be prepared by Landlord in the form attached hereto as **Exhibit C**, to be executed by Tenant within 10 days following Landlord's delivery to Tenant of the Commencement Date Memorandum executed by Landlord.

**Binding Date** This Lease is binding on the parties on the later of (A) the effective date of the Authorizing Ordinance or (B) the later of the signatures of the two parties. In the event the Binding Date has not occurred by December 16, 2012, Landlord or Tenant may terminate this Lease by delivering written notice to the other within ten days thereafter, in which event neither party shall have any further rights or obligations hereunder. If the Binding Date has not occurred on or before December 16, 2012, the parties may agree to waive their respective termination rights through written notice and this Lease will then continue in full force and effect.

**Binding Date Adjustment Period:** In the event the Binding Date is a date later than December 16, 2012 and the proposal set forth in this Lease is not withdrawn in the manner set out above, there shall be a Binding Date Adjustment Period which shall be 1.5 days for each day the Binding Date is beyond December 16, 2012.

**Initial Term:** 8 years from the Commencement Date

**Base Rent:** Years 1-8: \$16.75 per rentable square feet of the Building per annum, paid in monthly installments of \$41,875.00 per month during the Initial Term, and thereafter as adjusted as set out in this Lease for each period beyond the Initial Term and for any increase in square footage to the Building for the Expansion Area.

**Address for Payment  
of Rent:**

Children's Cay L.P.  
c/o Valcor Property Management  
1100 NE Loop 410  
Suite 636 San Antonio Texas 78209

**Asbestos Survey  
Deadline:**

Within 30 days after Commencement Date.

**Building Standard Hours:**

Upon the Commencement Date and during the Term of this Lease, Tenant shall have the right to use the Premises at anytime and without restriction by Landlord, except as otherwise provided in the Lease.

**Essential Services:**

(a) Repair and maintenance of the Parking Facilities; (b) maintenance of landscape installed by Landlord located outside the Building but within the Premises, including the replacement of any landscaping that requires replacement during the Term; and (c) maintenance and provision of all exterior lighting on the Premises, including but not limited to the Building.

**Operating Expenses:**

All expenses that Landlord incurs in connection with the ownership, operation, and maintenance of the Premises after the Commencement Date, which expenses shall be limited to Landlord's actual costs for Tenant's Property Taxes levied and assessed against the Premises (as set out below), Landlord's Insurance Premiums relating to the Building or the Premises, and Landlord's actual costs to maintain, repair, replace, manage and/or operate the following: (i) the Essential Services; (ii) lawn sprinkler systems; (iii) sweeping, resurfacing, restriping and sealing of the sidewalks and the Parking Facilities; (iv) replacement and maintenance of exterior lighting on signage, including but not limited to Tenant's Monument Sign; (v) painting; (vi) repair of electrical or utility lines; (vii) utility charges; (viii) graffiti removal from the exterior of the Building or Tenant's Monument Sign; (ix) management of the Premises, not to exceed two and one-half percent (2.5%) of the total Operating Expenses hereunder; and (x) if Landlord makes a capital improvement to all or any portion of the Premises, an annual amortization of the cost of the capital improvement (and 8% annual interest factor on the unamortized balance). For the purpose of determining the Operating Costs attributable to such capital improvement, the cost of the capital improvement item, as increased by the interest factor described above, shall be amortized over the

useful life of the item (as determined in the Internal Revenue Code of 1986, as amended from time to time). Such amortization shall cease upon Landlord having fully recouped the capital improvement costs as increased by the annual interest factor.

**Property Taxes:**

All taxes, assessments and governmental charges of any kind and nature whatsoever levied or assessed against the Premises, any other charges, taxes and/or impositions now in existence or hereafter imposed by any governmental authority based upon the privilege of renting the Premises or upon the amount of rent collected therefor, and any tax, fee, levy, assessment or charge which is imposed as the result of a transfer, either partial or total, of Landlord's interest in the Premises or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer. Property Taxes shall also be deemed to include ad valorem taxes, general and special assessments, parking surcharges, any tax or excise on rents any tax or charge for governmental services (such as street maintenance or fire protection) payable with respect to the Premises, any special taxing district assessment which is imposed in order to fund public facilities for the area in which the Premises is located and any other tax or charges that is in lieu of or a substitute for any such real estate or other taxes. If any rent tax becomes payable on the Rent required by this Lease, Tenant shall pay such rent tax. Notwithstanding anything to the contrary set forth herein, Taxes shall include the so called "margin franchise tax" payable under Chapter 171 of the Texas Tax Code, as amended by Tex. H.B. 3, 79th Leg., 3d C.S. (2006).

**Insurance Premium**

The Insurance Premiums shall have the meaning set forth in Section 11.02.01 herein.

**Estimated Substantial Completion Date** August 1, 2013

**Substantial Completion Date** The date of Substantial Completion.

**Substantial Completion** The performance of the relevant work in substantial accordance with the plans therefor, exclusive of minor details of unfinished work that do not preclude beneficial use of the Premises for Tenant's Permitted

Use, as evidenced by the issuance of a certificate of occupancy for the Building or upon Tenant's occupancy of the Premises.

**Outside Delivery Date** Estimated Substantial Completion Date as extended by any Binding Date Adjustment Period, Construction Delays, Force Majeure Delays and Tenant Delays.

**Lease** This lease entered into between Landlord and Tenant along with all exhibits attached hereto.

The exhibits to this Lease are as follows and all exhibits are incorporated herein for all purposes as if fully set forth:

- Exhibit A: Description of Premises**
- Exhibit B: Expansion Space Work Letter**
- Exhibit C Commencement Date Memorandum**
- Exhibit D: Work Letter**

## **2. Grant.**

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease. As a part of this Lease, Landlord must provide to Tenant the exclusive right to use the Parking Facilities based on the number of parking spaces indicated above.

2.02. Subject to Tenant not then being in default under the terms of this Lease, Tenant shall have the right to occupy the Premises upon the Substantial Completion Date.

2.03 In the event that Substantial Completion Date does not occur on or before that date which is the Outside Delivery Date Landlord will pay to Tenant a payment of \$1,500.00 for each day that Substantial Completion occurs beyond the Outside Delivery Date.

2.04. This Lease is binding on the parties on the Binding Date.

## **3. Rent.**

3.01. Base Rent for the Initial Term is set forth above in Section 1 of this Lease. The Base Rent for the Option to Renew Term(s) is set forth below in Section

3.02. "Rent", as used in this Lease, shall mean Base Rent, together with Additional Rent (as defined in Section 3.04 below) and any other charges payable by Tenant hereunder.

3.03. Tenant must pay Rent in advance on the first day of each month. The first such monthly installment of Rent shall be due and payable on the Commencement Date and subsequent installments shall be due and payable on the 1<sup>st</sup> day of each succeeding calendar month during the Initial Term of this Lease; provided that in the event the Commencement Date is not the 1st day of a particular month, then Rent shall be prorated based on the number of days remaining in the month at the per diem rate equal to the number of days in that particular month, but the initial partial month does not count as a month on the table above. Tenant further may be more than 10 days late twice in a calendar year without penalty. On the third and each later occasion in a calendar year on which Tenant is more than 10 days late, Landlord may deliver to Tenant written notice of delinquency. If Tenant does not pay the full amount due within 15 days from delivery of Landlord's notice, then Tenant owes a late charge of 5% of the delinquent amount as additional rent. The late charge represents a fair and reasonable estimate of costs Landlord will incur because of the late payment. Interest and late charges are in addition to all Landlord's other rights and remedies.

3.04. Commencing upon the Commencement Date and throughout the Term of this Lease, Tenant must pay to Landlord the Operating Expenses (as defined in Section 1 above) as additional rental hereunder in monthly installments, which are subject to adjustment as set forth in Section 3.05 below (collectively, the "Additional Rent"), and which initial Operating Expenses are estimated below:

Initial Estimated

Operating Expenses: \$4.90 psf of the Building per annum, for monthly installments of \$12,250.00 per month, which is subject to increase based upon the delivery of the Expansion Area.

3.05. *Estimate of Additional Rent.* During each calendar year commencing on the Commencement Date, and during each calendar year thereafter, Tenant must pay Landlord, in advance concurrently with each monthly installment of Base Rent, an amount equal to the estimated Additional Rent for such calendar year or part thereof divided by the number of months therein. The estimate must be calculated as stated herein. The initial estimated Additional Rent is set forth in Section 3.04 above. From year to year, Landlord may re-estimate the Additional Rent to be due by Tenant, based on Landlord's projected expenses for such calendar year, and deliver a copy of the estimate or re-estimate to Tenant. Thereafter, the monthly installments of Additional Rent payable by Tenant will be appropriately adjusted

retroactive to January 1<sup>st</sup> and in accordance with the estimations so that, by the end of the calendar year in question, Tenant will have paid all the Additional Rent as estimated by Landlord. Any amounts paid based on such an estimate are subject to adjustment when actual Operating Expenses are available for each calendar year, pursuant to Section 3.06 below.

For the purpose of calculating Property Taxes the payment to be made by Tenant for the real estate tax year in which this Lease begins or terminates shall bear the same ratio to the payment which would be required to be made for the full real estate tax year as the number of days of such tax year which elapsed during the term of this Lease bears to the total number of days in the full tax year.

**3.06. *Recapture of Unrecovered Expenses.*** By April 1 of each calendar year, or as soon thereafter as practicable, Landlord must furnish Tenant a statement of Landlord's actual Operating Expenses ("Actual Operating Expenses"). If Tenant's estimated payments of Additional Rent exceed the Actual Operating Expenses for the year, then Landlord must promptly, at Landlord's option, either credit Tenant's account for subsequent payments of Additional Rent or reimburse Tenant for the excess. Likewise, if Tenant's estimated payments of Additional Rent for such year are less than the Actual Operating Expenses, then Tenant shall pay Landlord the deficiency in a single lump sum payment promptly following written notice by Landlord.

**3.07. *Audit of Actual Operating Expenses.*** On fifteen (15) days prior written notice to Landlord, at Tenant's sole cost and expense, Tenant and its agents and representatives may inspect and copy Landlord's business records relating to calculation of Additional Rent attributable to the immediately preceding calendar year only. Such audit right shall be limited to one (1) time per calendar year. Unless otherwise mutually agreed, the inspection will be conducted during Landlord's normal working hours. Landlord must make the records available at a location in San Antonio, Texas, and shall allow Tenant to make copies of such records at Tenant's sole cost and expense. Tenant will pay Landlord 20 cents a copy for any copies made on Landlord's machine.

**3.08.** Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as expressly provided herein, Tenant shall not abate Rent under any circumstances.

**3.09.** At Tenant's sole option and effective every January 1<sup>st</sup> of the Term of this Lease, Tenant may elect to assume responsibility for all or any portion of those maintenance and repair services identified as Operating Expenses in subsections (i) through (ix) in Section 1 above, including but not limited to the Essential Services ("Assumed Services"), by providing Landlord with at least ninety (90) days prior

written notice of such election, together with a detailed description of such Assumed Services to be provided by Tenant. In such event and upon Tenant's assumption of the Assumed Services, the Operating Expenses shall exclude such Assumed Services, so long as Tenant remains responsible for and actually performs the Assumed Services in the manner hereafter set forth. In such event, Tenant agrees to be responsible for the Assumed Services for a period of no less than 12 months, and Tenant shall provide the Assumed Services in keeping with the standards of other comparable buildings in the San Antonio, Texas area.

#### **4. Term, Option to Renew Term and Purchase Option.**

4.01. The "Term" of this Lease shall mean the Initial Term and any Option to Renew Term(s) timely exercised by Tenant pursuant to Section 4.02 below, unless sooner terminated.

4.02 Provided that Tenant is not then in default under the terms of this Lease, Tenant shall have the option to renew this Lease for two consecutive eight-year terms (each, an "Option to Renew Term") upon 120 days prior written notice to Landlord upon the same terms and conditions of this Lease, except that Base Rent shall be at the following rates:

Years 9-16: \$18.76 per rentable square feet of the Building per annum, paid in monthly installments of \$46,900.00 per month.

Years 17-24: \$21.01 per rentable square feet of the Building per annum, paid in monthly installments of \$52,525.00 per month.

Tenant shall continue to pay Additional Rent during the Option to Renew Term(s) as provided in Section 3 above.

The above notwithstanding, in the event the Tenant elects to have the Expansion Space constructed, the monthly installments, as set out above shall be increased on a per square foot basis to include the square footage contained within the Expansion Space.

In the event that Tenant does not elect to renew this Lease after the expiration of the Initial Term only, then Tenant shall timely pay to Landlord a fee of four times the monthly Base Rent (\$167,500.00, as may be increased if the Expansion Area is constructed) plus an amount equal to four months of Additional Rent at the rate being charged for such expenses in the month prior to the expiration of the Initial Term (the "Non-Renewal Fee"). Tenant's right to extend the Lease for the Option to Renew Term(s) is personal to Tenant and shall not apply to any of Tenant's assigns

or subtenants other than assignees which are formed by the City to carry out the purpose of the educational initiative.

4.03 So long as Tenant is not in default under the terms of this Lease, Landlord grants Tenant an option to purchase the Premises, exercisable by providing prior written notice to Landlord, for a closing on any of the following dates (each, an "Option Closing Date"): (1) at the end of the 97<sup>th</sup> full calendar month following the Commencement Date ("First Purchase Option"), (2) at the end of the 193<sup>rd</sup> full calendar month following the Commencement Date ("Second Purchase Option"), or (3) at the end of the second Option to Renew Term ("Third Purchase Option"). If Tenant timely exercises its option to purchase the Premises, Tenant's option to purchase the Premises is expressly conditioned on Tenant continuing to honor all provisions of this Lease, including payment of Rent, until the closing of the purchase of the Premises. The purchase price for the Premises shall be determined as follows, as adjusted for the pro-ration of revenue and operating expenses as of the applicable Option Closing Date:

4.03.1 If the First Purchase Option is timely exercised, the base purchase price shall be \$8,040,000.00 payable in cash.

4.03.2 If the Second Purchase Option is timely exercised, the base purchase price shall be \$8,404,480.00 payable in cash.

4.03.3 If the Third Purchase Option is timely exercised, the base purchase price shall be \$7,879,200.00 payable in cash.

The above notwithstanding, in the event the Tenant elects to have the Expansion Space constructed, the First Purchase Option, Second Purchase Option and Third Purchase Option will be increased by multiplying the number set out above by a factor which is 1 plus the number of square feet within added to the Building by the Expansion Space divided by the total number of square feet in the Building after the addition of the Expansion Space. By way of example, if the original square footage contained in the Building before the Expansion Space is 30,000 square feet, and the Expansion Space increases the area in the Building by 20,000 square feet to a total of 50,000 square feet, each of the amounts set out above will be increased by the following factor  $1 + (20,000/50,000) = 1.40$  x the base purchase price as set out above.

The Premises will be conveyed by Seller free and clear of all encumbrances, other than those of public record and free and clear of all liens other than the inchoate lien for ad valorem taxes. All taxes and other expenses relating to the Premises will be pro rated to the date of the closing of such sale.

4.04 If Tenant intends to exercise an option to purchase the Premises

pursuant to the First Purchase Option, the Second Purchase Option or the Third Purchase Option (the "Exercised Option"), Tenant shall provide Landlord with written notice of such intention no later than 180 days prior to the applicable Option Closing Date for such Exercised Option. Within 30 days of the date Tenant provides notice to Landlord of its intent to purchase the Premises, Landlord shall open escrow with a mutually acceptable escrow company located in the City of San Antonio. As a matter of course, Tenant will complete an environmental assessment of the Premises, and in the event that contaminants are found on the Premises, the soil or the groundwater under the Premises and such contamination was not specifically caused by Tenant, then Tenant shall have to either (i) rescind its notice to exercise the Exercised Option by delivering written notice to Landlord prior to the applicable Option Closing Date, in which event the Exercised Option shall automatically terminate, and neither party shall have any further rights or obligations with respect to such option, (ii) require Landlord to remediate the contamination, in which case the closing shall occur on the later of the scheduled closing date or 20 days after the contamination has been remediated, provided however if the cost of remediation is greater than 5% of the sales price the Landlord can elect to cancel this sale and Tenant will be deemed to waive its option rights hereunder, or (iii) waive such conditions and proceed to close on the Option Closing Date. For purposes of this Section 4.03 and 4.04, time is of the essence, and Tenant's right to purchase the Premises is personal to Tenant and shall not apply to any of Tenant's assigns.

## **5. Tenant's Affirmative Promises.**

Tenant promises that it will:

5.01. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Building; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; (c) any rules and regulations for the Building or Premises adopted by Landlord; and (d) any restrictions, covenants and requirements affecting the Premises that are of record in Bexar County, Texas.

5.02. Obtain and pay for all utility services, including but not limited to water, sewer, electrical, gas, CATV, trash disposal used by Tenant at the Premises, including separately metered charges for water service to the landscape sprinkler system (including any annual fees for back flow prevention fees), and separately metered electric service for the exterior and parking lot lighting systems.

5.03. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

5.04. Promptly submit in writing to Landlord any request for repairs, replacement, and maintenance that are obligations of Landlord.

5.05. Vacate the Premises and return all keys to the Premises promptly upon expiration of the Term in the condition required herein, subject to any holdover rights.

5.06. On request, execute an estoppel certificate that states the Commencement Date and the duration of this Lease, identifies any amendments to this Lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. Tenant need not sign any certificate that purports to modify Tenant's obligations in any respect, except for a change in the address for notice or payment of Rent.

5.07 Maintain, repair, but not replace, the HVAC systems serving the Building and be responsible for regularly scheduled preventive maintenance on the HVAC serving the Building and shall maintain a contract therefore with a contractor reasonably acceptable to Landlord. Without limiting the generality of the immediately preceding sentence: Tenant shall have the entire HVAC inspected by a qualified and licensed HVAC contractor at least once a year. Tenant shall provide Landlord with a copy of the invoice or report from the inspecting company, giving evidence that the system has been inspected.

5.08 Maintain and keep in good order, repair and condition the Building.

5.09 Repair any broken glass in the exterior or interior of the Building.

5.10 Tenant will cooperate with Landlord in its efforts to obtain the Certificate of Occupancy for the Premises and will not take any actions to interfere with the Landlord's efforts to obtain this certificate.

## **6. Tenant's Negative Promises.**

Tenant promises that it will not:

6.01. Use the Premises for any purpose other than the Permitted Use.

6.02. Create a nuisance.

6.03. Interfere with any other tenant's normal business operations or Landlord's management of the Building or Premises.

6.04. Permit waste.

6.05. Use the Premises in any way that would increase insurance premiums or void insurance on the Building.

6.06. Alter the Premises.

6.07. Allow a lien to be placed on the Premises.

6.08. Assign this Lease or sublease any portion of the Premises without Landlord's written consent to anyone other than a municipal corporation created by Tenant to run educational programs in Landlord's sole discretion.

## **7. Landlord's Affirmative Promises.**

Landlord promises that it will:

7.01. Lease to Tenant the Premises for the entire Term, beginning on the Commencement Date on the terms set out in this Lease.

7.02. Obey all applicable laws with respect to Landlord's operation of the Building and Premises unless such failure does not materially and adversely affect Tenant's use and enjoyment of the Premises.

7.03. Provide the Essential Services (unless assumed by Tenant pursuant to Section 3.09 of this Lease).

7.04. Unless caused by any act or omission of Tenant (in which case Landlord shall still be responsible for the repair but the actual cost of which shall be promptly reimbursed by Tenant to Landlord, subject to any insurance proceeds paid to Landlord or its lenders), repair and maintain the (a) roof, (b) foundation, (c) structural soundness of the exterior walls and exterior doors, and (d) slab floor (but not carpeting or similar floor covering)..

7.05. Tenant is in receipt of an Asbestos Survey for the Premises that Tenant deems to satisfy the provisions of § 6-293 of the City Code of the City of San Antonio, Texas

7.06. Pay all Property Taxes assessed against the real property of which the Premises are a part (the "Property") on or before the assessment of interest or penalties for late payment, which shall be reimbursed (excluding any assessment of penalties or interest arising from Landlord's failure to pay Property Taxes when due) by Tenant pursuant to Section 3.04 of this Lease.

7.07. Timely complete at its own cost all of Landlord's Work at Landlord's own cost and Tenant Improvements allocated to Landlord by the work letter attached as **Exhibit D**, subject to Construction Delays, Force Majeure Delays and Tenant Delays.

7.08. Allow Tenant to erect monument signs at each building entrance.

7.09. All other provisions of this Lease notwithstanding, in no event will the Landlord be required to provide any repairs, maintenance, improvements or services to the Premises or Tenant, other than those set out in Section 7.04 or as otherwise required under the terms of this Lease for casualty loss or condemnation matters, to the extent the Landlord is not being reimbursed for its expenditures in connection with providing such repairs, maintenance, improvements or services to the Premises.

7.10. Comply with all laws, rules, and regulations regarding procurement of finish-out work funded by Tenant that Tenant would otherwise have to comply with were it doing the work itself, provided if, compliance with any such rules and regulations causes a delay in the process of contracting with contractors or sub-contractors, beyond the time periods Landlord would ordinarily undertake, without regard to such procedures, each day of such delay will be deemed a Tenant Delay.

### **8. Landlord's Negative Promises.**

Landlord promises that it will not materially interfere with Tenant's possession of the Premises as long as Tenant is not in Default.

### **9. Repair, Maintenance and Replacement Responsibilities.**

Landlord and Tenant each must repair, maintain, and replace, if necessary, any building component or services allocated to it in the table below, unless otherwise provided in this Lease:

<i>Item</i>	<i>Tenant Responsibility</i>	<i>Landlord Responsibility</i>
Janitorial Services to Building	Yes	No
Trash Disposal	Yes	No
Utility Services	Yes	No
Parking Lot Maintenance	No	Yes

Landscaping	No	Yes
Exposed Electrical Systems	Yes	No
Light bulbs and tubes, except exterior lights which are exclusively Landlord's responsibility	Yes	No
Concealed Electrical Systems	Yes	No
(i) All Exposed Plumbing Systems or (ii) failures of concealed plumbing, including under slab drain lines, specifically caused by Tenants use, operations or maintenance	Yes	No
Concealed Plumbing Systems including under slab drain lines, but not systems behind vertical walls or in attic areas which are exclusively Tenant's responsibility	No	Yes
HVAC Systems Maintenance Only	Yes	No

**10. Alterations.**

Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

**11. Insurance.**

11.01. Tenant and its employees are protected under the City of San Antonio Defined Self-Insurance and Risk Management Program. Said program provides liability coverage pursuant to City Ordinance 83926. This Ordinance authorizes the City of San Antonio to pay claims which are brought against it or its employees under the Texas Tort Claims Act, § 101.001 et seq., Section 150 of the City Charter, the Federal Civil Rights Act, § 42 U.S.C., 1983, and other applicable statutes. As a political subdivision of the State of Texas, Tenant is subject to the Texas Tort Claims

Act, and the obligations of Tenant and the rights of persons claiming against Tenant are subject to that Act.

With respect to the Property Insurance, Tenant purchases a blanket commercial property insurance policy. The broad form coverage protects Tenant's business personal property and leasehold improvements in accordance with the requirements of this Lease.

11.02.01 Landlord must maintain Commercial General Liability insurance of not less than \$1,000,000 that includes coverage for among other things claims that may be made by Landlord's invitees for injuries suffered while on the Premises ("Landlord's CGL Insurance") and a policy of fire and extended coverage insurance (or, at Landlord's option, an "all-risk" policy) on the Building, in the amount of its full replacement value with a deductible that does not exceed \$5,000.00 ("Landlord's Casualty Insurance"). Tenant shall pay to Landlord as a part of Additional Rent, the premiums for all fire and extended coverage or all-risk insurance, boiler insurance, rent insurance and property damage insurance which Landlord may elect to carry, from time to time, with respect to the Premises, (collectively, the "Insurance Premiums"). For purposes hereof, premiums paid for insurance policies having policy years which do not coincide with calendar years shall be prorated on a per diem basis for each calendar year affected, and total premiums for policies issued for more than one year will be prorated equally over the number of years for the term of such policies, regardless of differences in premium amounts actually paid during any particular year or years of such term. The payment to be made by Tenant for the respective years in which this Lease commenced and terminates shall bear the same ratio to the payment which would be required to be paid for the full year as the number of days of such year which elapsed after commencement or prior to termination of this Lease, as the case may be, bears to the full year. Landlord shall have the right to carry its insurance with respect to the Premises under a "blanket policy" that includes property in addition to the Premises, but the Insurance Premiums shall not exceed an amount which would have been applicable in the event Landlord had not carried such insurance under a "blanket policy". The Insurance Premiums shall be reimbursed by Tenant pursuant to this Lease.

11.02.02 Each insurance policy of Landlord required by this Lease must contain the following clauses:

"This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 30-days' prior written notice has been given to:

City Clerk, City of San Antonio  
City Hall/2nd Floor  
P. O. Box 839966  
San Antonio, Texas 78283-3966  
Attention: Risk Manager

and

Department of Capital Improvements  
Management Services  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
Attention: Director"

Each insurance policy required by this Lease must contain the following clause to the extent available to Landlord:

"The Tenant is added as an additional insured as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio. This policy cannot be invalidated as to Tenant because of Landlord's breach of representation, warranty, declaration, or condition of this policy without 30 days prior written notice to Tenant."

11.02.04. Within 30 days after the Commencement Date and promptly after Tenant's later request, Landlord must, at its own expense, deliver certificates to Tenant's Risk Manager and to the City Clerk, reflecting all required insurance coverage, together with copies of policies and endorsements. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Tenant, Landlord must send Tenant documentation acceptable to Tenant that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company. Tenant may request, but Landlord is not obligated to implement, changes in policy terms, conditions, limitations, or exclusions (except where established by law). Any increase in premiums as a result of any changes approved by Landlord and Tenant to such insurance coverages shall become a part of the Insurance Premiums charge and shall be reimbursed by Tenant pursuant to this Lease.

## **12. Release of Claims/Subrogation.**

**The insurance requirements of this Lease are a bargained-for allocation of risk of loss. Landlord and Tenant each release the other from claims arising from injury or loss to either of them if the injury or loss is covered by insurance the waiving party is required by this Lease to maintain, whether or not the party actually has the insurance ("Covered Claims"). This release is additional to and does not limit any other release contained in this Lease. Landlord and Tenant, to the maximum extent allowable without causing cancellation of a required policy, will require their insurers to waive subrogation against each other for**

**Covered Claims.** This release shall not apply to the amount of any deductible under any insurance policy, and **THIS RELEASE DOES NOT APPLY TO CLAIMS CAUSED BY A PARTY'S WILLFUL MISCONDUCT.** Nothing in this Section 12 shall be construed to impose any other or greater liability upon either Landlord or Tenant than would have existed in the absence of this Section 12.

### **13. Indemnity.**

**LANDLORD** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS,** Tenant and the elected officials, employees, officers, directors, volunteers and representatives of Tenant, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon Tenant directly or indirectly arising out of, resulting from or related to **LANDLORD's** activities under this Lease, including any acts or omissions of **LANDLORD,** any agent, officer, director, representative, or employee of **LANDLORD,** and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Lease. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **TENANT,** its officers, directors, volunteers, representatives, invitees, or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT LANDLORD AND TENANT (OR TENANT'S OFFICERS OR EMPLOYEES, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OR INVITEES) ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO TENANT UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LANDLORD** shall advise Tenant in writing within 24 hours of any claim or demand against Tenant or **LANDLORD** known to **LANDLORD** related to or arising out of **LANDLORD's** activities under this Lease and shall see to the investigation and defense of such claim or demand at **LANDLORD's** cost. Tenant shall have the right, at its option and at its own expense, to participate in such defense without relieving **LANDLORD** of any of its obligations under this

paragraph. **14. Casualty/Total or Partial Destruction.**

14.01. If the Premises are damaged by casualty, Tenant shall give immediate written notice to Landlord. If Landlord determines that the Premises can be restored within 270 days from the date that repairs are commenced, Landlord will, at its expense, restore the roof, foundation, and structural soundness of the exterior walls of the Premises to the extent same were included in the Landlord's Work, and all leasehold improvements within the Premises, including interior partitions, ceilings, wiring, light fixtures, and plumbing, to the extent same were included in the Tenant Improvements, all to substantially the same condition in which the same existed prior to the casualty, as the case may be; provided, however, that Landlord shall have no obligation to restore the Premises if there is less than three (3) years remaining in the current Term of the Lease. Landlord will use reasonable business effort to begin to restore the Premises as quickly as reasonably possible. If Landlord fails to complete the portion of the restoration for which Landlord is responsible hereunder within 270 days from the date that repairs are commenced by Landlord despite using Landlord's reasonable diligence, and Tenant is prevented from using the Premises for its Permitted Use, then Landlord or Tenant may terminate this Lease by written notice delivered to the other before Landlord completes Landlord's restoration obligations; provided, however, that Tenant shall have no right to terminate this Lease if Tenant, or its employees or agents, were the cause of such damage.

14.02. If Landlord determines that the Premises cannot be restored within 270 days from the date that repairs are commenced, Landlord at its option may either terminate this Lease (and choose not to restore) or restore the Premises and notify Tenant of the estimated time to restore. Tenant shall have the right to terminate this Lease within 15 days following Landlord's delivery to Tenant of such notice of the estimated time to restore.

14.03. During the period before Landlord completes restoration, Base Rent will be adjusted as may be fair and reasonable; however there shall be no abatement of Additional Rent or other charges provided herein.

14.04 No damage or destruction to the Premises shall allow Tenant to surrender possession of the Premises or affect Tenant's liability for the payment of Rent or any other covenant herein contained, except as may be specifically provided in this Lease. Landlord shall not be obligated to commence any repair, restoration or rebuilding until insurance proceeds are received by Landlord, and Landlord's obligations hereunder shall be limited to the proceeds received by Landlord under its insurance policy or Tenant's insurance policy, as the case may be.

14.05 As with the insurance requirements, the rebuilding obligations of this paragraph are a bargained-for allocation of risk.

14.06 In the event the Premises is not reconstructed the insurance proceeds will be paid to the Landlord and Tenant in the following manner:

(i) all proceeds relating to rebuilding the Base Building Improvements will be payable to Landlord.

(ii) the insurance proceeds relating to the unamortized portion of the Tenant Improvements will be payable to Tenant and the remainder payable to Landlord.

## **15. Condemnation/Substantial or Partial Taking.**

15.01. If the Premises or any portion of them are taken by eminent domain, or sale in lieu of eminent domain, by any entity other than Tenant or any entity controlled by Tenant, the Lease automatically terminates as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first.

15.02. If entire Premises are not taken, the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

15.03. Tenant has no claim to the condemnation award or proceeds in lieu of condemnation.

## **16. Holdover.**

16.01. If the Lease has not been earlier terminated according to its terms and Tenant is current on rent, both after the Initial Term and after any renewals provided for in this Lease, Tenant may holdover for up to six additional months on a month-to-month basis on the same terms and conditions herein, except that Base Rent shall be one hundred twelve and one-half percent (112.5%) of the Base Rent for the immediately preceding calendar month. Tenant need not give advance notice of intent to exercise this holdover right, and it need not hold over all of the allowable six months. Council's authorization of this instrument is authority for the City as Tenant to enter into the holdover period without further council action if the Director of the department then administering this Lease on behalf of Tenant deems the holdover beneficial.

16.02. Whenever this Lease refers to the Term, events to occur during the Term, or rights and obligations of Landlord and Tenant during the Term, a holdover period is considered a part of the Term.

## 17. Default.

17.01. *Default by Landlord/Events.* Defaults by Landlord are (i) failing to comply with any provision of this Lease within 30 days after written notice thereof specifying such failure (or if the failure specified by Tenant is not capable of cure within such 30 day period, if Landlord fails promptly after notice from Tenant to commence to cure such failure and diligently to pursue completion of such cure during and within a reasonable time after such 30 day period); (ii) other than as a result of Construction Delays, Tenant Delays and Force Majeure Delays, unless the Essential Services have been assumed by Tenant as portion of the Assumed Services, failing to provide Essential Services to Tenant within 15 days after written notice thereof specifying such failure (or if the failure specified by Tenant is not capable of cure within such 15 day period, if Landlord fails promptly after notice from Tenant to commence to cure such failure and diligently to pursue completion of such cure during and within a reasonable time after such 15 day period); (iii) failure to pay before delinquency and termination of such services the cost of utility services, to the extent the obligation to pay for such services is expressly allocated to Landlord under this Lease; and (iv) failure to pay Property Taxes before assessment of interest or penalty.

17.02. *Default by Landlord/Tenant's Remedies.* Tenant's exclusive remedy for any default by Landlord shall be an action for actual damages. Except as expressly provided herein, in no event shall Tenant be entitled to terminate this Lease or will Landlord be liable to Tenant for consequential, punitive or special damages or any similar types of damages by reason of a failure to perform (or a default) by Landlord hereunder or otherwise. Tenant hereby expressly waives and disclaims any lien or claim which Tenant has or may have in and to any property belonging to the Landlord or on the Rent due to the Landlord under this Lease. Notwithstanding the foregoing, if Landlord is in default under subsection (ii) under Section 17.01 above (beyond any applicable notice and cure periods), then Tenant may have the additional right to assume the Assumed Services, as if Tenant had elected to assume the Assumed Services pursuant to Section 3.08 above, so long as Tenant is not otherwise in default hereunder.

17.03. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning or vacating a substantial portion of the Premises, and (c) failing to comply within 30 days after written notice with any provision of this Lease other than the defaults set forth in (a) and (b) above.

17.04. *Default by Tenant/Landlord's Remedies.* In addition to any and all other remedies available to Landlord in this Lease, at law or in equity, Landlord's

remedies for Tenant's default are to (a) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the rent directly by reason of the reletting, and Tenant shall reimburse Landlord for reasonable reletting expenditures; (b) enter the Premises and perform Tenant's obligations; and/or (c) terminate this Lease by written notice and sue for damages.

17.05. *Waiver of Liens.* Only to the extent required in Article XI, § 9 of the Texas Constitution, Landlord waives all common law and statutory liens in the property of Tenant, including the lien that might otherwise arise under § 54.021 of the Texas Property Code.

## **18. Warranty Disclaimer.**

**EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, TENANT HEREBY AGREES AND ACKNOWLEDGES THAT IT IS LEASING THE PREMISES IN ITS EXISTING CONDITION, "AS-IS, WHERE-IS", AND WITH ALL FAULTS WITH RESPECT TO ANY FACTS, CIRCUMSTANCES, CONDITIONS AND DEFECTS. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, LANDLORD HAS NO OBLIGATION TO REPAIR OR CORRECT ANY SUCH FACTS, CIRCUMSTANCES, CONDITIONS OR DEFECTS IN THE CONDITION OF THE PREMISES, NOR DOES LANDLORD HAVE ANY OBLIGATION TO COMPENSATE TENANT FOR SAME. NO OTHER PROMISE OF LANDLORD TO ALTER, REMODEL, REPAIR OR IMPROVE THE PREMISES OR THE BUILDING AND PREMISES AND NO REPRESENTATION RESPECTING THE CONDITION OF THE PREMISES OF THE BUILDING HAVE BEEN MADE BY LANDLORD TO TENANT. TENANT EXPRESSLY ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE SPECIFIED HEREIN, LANDLORD HAS MADE NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, TITLE, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PREMISES, ALL SUCH REPRESENTATIONS AND WARRANTIES, AS WELL AS ANY IMPLIED WARRANTIES BEING HEREBY EXPRESSLY DISCLAIMED.**

**THE PREMISES IS A REMODELED BUILDING WITH SOME NEW COMPONENTS AND AS SUCH ANY WARRANTIES FOR SUCH NEW EQUIPMENT INCLUDING, BUT NOT LIMITED TO HVAC EQUIPMENT, ROOF, AND OTHER BUILDING COMPONENTS, TO THE EXTENT THAT**

**TENANT IS RESPONSIBLE FOR MAINTENANCE OF SUCH EQUIPMENT, SHALL TRANSFER TO TENANT WITH THE OBLIGATION OF TENANT TO ENFORCE SUCH WARRANTY COVERAGE.**

**TENANT HEREBY AGREES AND ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE SPECIFICALLY STATED IN THIS LEASE, LANDLORD HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OR, AS TO, OR CONCERNING THE NATURE AND CONDITION OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, THE SUITABILITY THEREOF AND OF THE PREMISES OR OTHER ITEMS CONVEYED HEREUNDER FOR ANY AND ALL ACTIVITIES AND USES WHICH TENANT MAY ELECT TO CONDUCT THEREON, THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR CONDITIONS THEREON (INCLUDING BUT NOT LIMITED TO THE PRESENCE OF ASBESTOS OR OTHER HAZARDOUS MATERIALS) OR COMPLIANCE WITH APPLICABLE ENVIRONMENTAL LAWS, RULES OR REGULATIONS.**

## **19. Environmental.**

19.01. "Environmental Laws" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances, those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

19.02. "Hazardous Material" means "hazardous substance," "pollution or contaminant," "petroleum," and "natural gas liquids," as those terms are defined by or used in Environmental Laws, or that are regulated because of their effect or potential effect on human health and the environment.

19.03. "Release" means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

19.04. Landlord represents, to Landlord's actual knowledge without the duty to investigate, that the Premises and the property of which the Premises are a part, if applicable, comply with all applicable Environmental Laws, except as otherwise disclosed to Tenant by Landlord prior to the date hereof.

19.05. Landlord represents and warrants, to Landlord's actual knowledge without the duty to investigate, that there has been no Release on, onto, or from the Premises and that the Premises has not contained and does not contain any asbestos, underground or aboveground storage tanks, or "PCBs" or "PCB items," as defined in 40 CFR § 761.3.

19.06. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Premises. Tenant further must not handle, use, or otherwise manage any Hazardous Material on the Premises in violation of any Environmental Laws or in any but a reasonable and prudent manner.

19.07. Landlord represents and warrants that (i) with regard to activities and conditions on the Premises, Landlord has not received, any notice that: (a) the Premises violates any Environmental Law; (b) there has been a Release, or threat of Release, of Hazardous Materials from the Premises; (c) the Landlord may be or is liable, in whole or in part, for costs of cleaning up, remediating, removing, or responding to a Hazardous Materials release on the Premises; or (d) the Premises is subject to a lien under any Environmental Laws. In case of receipt of such notice, Landlord must immediately provide Tenant a copy.

19.08. Before the Commencement Date, Landlord must permit Tenant and its representatives and contractors to enter upon the Premises at reasonable times and in a reasonable manner to investigate environmental matters. Tenant may perform such tests, including without limitation, subsurface testing, soils, and groundwater testing, and any other tests, as the Tenant, in its sole discretion, determines are necessary to identify environmental concerns, except that Tenant may not cause to be conducted on or with respect to the Premises, any Phase II or other environmental site assessment, or test borings or other air, water, or soil samples or other testing which could result in a notice or reporting requirement to any regulatory or governmental authority, without the prior written consent of Landlord. The investigation is at Tenant's sole cost. Tenant must minimize the intrusion upon and inconvenience to Landlord and the ongoing operations at the Premises. If Tenant performs any tests that disturb the PREMISES, Tenant must restore the PREMISES. Tenant is responsible for damages arising from its testing on the PREMISES and for the proper disposal of any wastes generated by its testing.

## **20. Appropriations.**

All obligations of the City of San Antonio or any agency of the City to which this Lease is properly assigned under this Lease are funded subject to the discretion of City Council or such assignee whether to appropriate funding. If the City Council or

such agency fails to appropriate money for any obligation under this Lease, the City or such assignee may terminate this Lease and have no further liability.

## **21. Intentionally Deleted.**

## **22. Prohibited Interests in Contracts.**

22.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his or her parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his or her parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

22.02. Landlord warrants and certifies as follows:

- (i) Landlord and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Landlord has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

22.03. Landlord and Tenant acknowledges that their respective reliance on the above warranties and certifications is reasonable.

## **23. Miscellaneous.**

23.01. *Applicable Law.* This Lease is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.** But the Texas conflicts of law rules must not be used to apply the laws of a

jurisdiction other than Texas. Both parties' obligations under this Lease are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this Lease is only in Bexar County, Texas.

23.02. *Severability.* If any part of this Lease is found invalid or unenforceable, the finding does not affect the remainder.

23.03. *Successors.* This Lease inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

**23.04. *Integration.* This Lease Represents The Final Lease Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Leases Of The Parties. There Are No Oral Leases Between The Parties.**

23.05. *Modification.* This Lease may be changed only by a written Lease, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Lease's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion. Any modification of this Lease must be authorized by an ordinance adopted by City Council that specifically addresses the modification.

23.06. *Third Party Beneficiaries.* This Lease benefits the parties and their successors and permitted assigns only. It has no third party beneficiaries.

23.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, or by independent delivery service addressed to the parties at their respective addresses set forth at the beginning. If sent by certified mail, notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. If sent other than by certified mail, notice is complete on the date shown on the receipt. Address for notice may be changed by giving notice.

23.08. *Captions.* Paragraph captions are for ease of reference only and do not affect the interpretation.

23.09. *Counterparts.* This Lease may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts constitute only one Lease. In making proof

of this Lease, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

23.10. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this Lease.

23.11. *Administrative Leases.* The Assistant City Manager, or their designee may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, attornments, and modifications of nonmaterial rights and obligations arising under this Lease and may declare defaults and pursue remedies for such defaults. This paragraph does not authorize lease amendments or renewals without council consent.

23.12. *Conflicts Between Numbers Stated Two Ways.* Whenever this Lease states a number more than one way, either by using both words and numerals or by stating a fixed amount and a calculation for arriving at an amount, and there is a conflict, the highest number controls.

23.13. *Quiet Enjoyment.* As long as Tenant pays the rent and other charges under this Lease and observes the covenants and terms of this Lease, Tenant will lawfully and quietly hold, occupy, and enjoy the Premises during the Term without being disturbed by Landlord or any person claiming under Landlord, except for any portion of the Premises that is taken under the power of eminent domain.

23.14. *Incorporation of Exhibits.* All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.

23.15 *Limitation of Landlord's Liability.* This Lease is executed by certain authorized representatives of Landlord, not individually, but solely on behalf of, Landlord. TENANT WAIVES ANY RIGHTS TO BRING A CAUSE OF ACTION AGAINST THE INDIVIDUALS EXECUTING THIS LEASE ON BEHALF OF LANDLORD. The provisions of this Section 23.15 are not intended to relieve Landlord from the performance of any of Landlord's obligations under this Lease, but only to limit the personal liability of Landlord in the case of recovery of a judgment against Landlord. Tenant's rights to obtain injunctive relief or avail itself of any other right or remedy which may be awarded to Tenant by law or under this Lease shall in no way be limited by the foregoing provisions of this Section 23.15. The provisions of this Section 23.15 shall survive the termination of this Lease.

23.16 *No Joint Venture.* Nothing contained herein shall be deemed or construed by the parties hereto, nor any third party, as creating the relationship of

principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of Rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

23.17 *Additional Rent.* Landlord and Tenant are knowledgeable and experienced in commercial transactions and agree that the terms in this Lease for determining Additional Rent payable by Tenant are commercially reasonable and valid even though the methods contained herein may not state a precise mathematical formula for determining all such changes. ACCORDINGLY TO THE EXTENT ALLOWED BY LAW, TENANT VOLUNTARILY AND KNOWINGLY WAIVES ALL RIGHTS AND BENEFITS OF TENANT UNDER SECTION 93.012 OF THE TEXAS PROPERTY CODE, AS AMENDED FROM TIME TO TIME.

#### **24. Public Information.**

Landlord acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this Lease waives an otherwise applicable exception to disclosure.

In Witness Whereof, the parties have caused their representatives to set their hands.

**Tenant**

**Landlord**

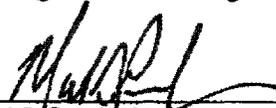
City of San Antonio, a Texas municipal corporation

Children's Cay, LLC, a Texas limited liability company, by and through its sole manager

\_\_\_\_\_  
Signature

GFR Development Services, LLC a Texas limited liability company, by and through its sole manager

\_\_\_\_\_  
Name

  
\_\_\_\_\_  
Mark D. Granados, Manager

\_\_\_\_\_  
Title

11/27/2012  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Approved as to Form:**

\_\_\_\_\_  
For the City Attorney

**Attest:**

\_\_\_\_\_  
City Clerk

**Exhibit A: Description of Premises**

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**Lot 7, NCB 14445, Bexar County, Texas**

## **Exhibit B: Expansionary Work Letter**

Upon delivery of the Notice to proceed described below, Tenant shall have the one time right to have Landlord expand the Building by approximately 20,000 SF; subject to the following terms:

Request for Expansion — Tenant shall have until September 1, 2013 to request expansion.

Expansion Space Delivery date — July 15 2014 as extended for Tenant Delays, or force majeure or additional time needed to obtain Tenant approval of plans and budget.

Design Development — Landlord will have 45 days from election to prepare bid set/permitting set of plans using the design team of their choosing Tenant shall have 10 days to review and approve or disapprove the plans .

Tenant Allowances to be provided by Landlord

Site Improvements	\$ 400,000
Shell - cold dark shell state	\$1,300,000
Select Fill Building Pad	\$ 120,000
Tenant interior finish out improvement Allowance	\$1,000,000

Tenant may apply any costs saving under an allowance line item to any other line item where there are overage

Budget Proposal — Landlord, will deliver to Tenant a Budget Proposal estimating Tenant's additional contribution due, if any, based on the approved plans within 10 days of Tenant approving plans.

Notice to Proceed - Tenant shall have 5 days after receipt of the Budget Proposal to issue the Notice to Proceed or a notice to not proceed

Reimbursable costs if Tenant does not issue Notice to Proceed - I Landlord shall have 15 days to deliver to tenant an itemized billing for Landlord's costs expended in preparation of the plans and Budget Proposal, including a reasonable amount for Landlord's time and overhead and Tenant shall have 30 days to reimburse Landlord for such cost.

The Rent due for the Expansion Space and the term of its use will be as set out in the Lease.

## Exhibit C: Commencement Date Memorandum

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### Commencement Date Memorandum

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**Landlord:**

**Tenant:**

**Lease:**

**Authorizing Ordinance:**

*Predicate Facts:*

Landlord and Tenant are parties to the Lease, which was authorized by the Authorizing Ordinance.

The Lease Term is to begin upon the Substantial Completion of the Landlord's Work and the Tenant Improvements.

For their mutual benefit, the parties now wish to memorialize the actual Commencement Date of the Lease's Term.

*Rights and Obligations:*

Now Therefore, in consideration of the premises, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

**1. Defined Terms.**

All terms used in this memorandum and not otherwise defined herein but defined in the Lease have the meanings ascribed to them in that instrument.

**2. Commencement Date.**

The Commencement Date is \_\_\_\_\_, and the Initial Term shall expire on \_\_\_\_\_.

**3. No Default.**

As a part of the inducement to Landlord to execute and deliver this Commencement Date Memorandum, Tenant represents to Landlord that:

- a. The Lease is in full force and effect according to its terms.

b. Neither party is in default under the Lease.

c. Neither party has any offset or claim against the other that would reduce or impair its obligations under the Lease.

**4. Conflict of Terms.**

This instrument controls over anything to the contrary in the Lease.

**In Witness Whereof**, the parties have caused their representatives to set their hands.

**City of San Antonio**, a Texas  
municipal corporation

**Children's Cay, LLC**, a Texas  
limited liability company, by and  
through its sole manager

\_\_\_\_\_  
Signature

GFR Development Services, LLC a  
Texas limited liability company, by  
and through its sole manager

\_\_\_\_\_  
Name

\_\_\_\_\_  
Mark D. Granados, Manager

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Approved as to Form:**

\_\_\_\_\_  
For the City Attorney

## Exhibit D: Work Letter

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### Work Letter

This Work Letter is between Landlord and Tenant in connection with the Lease.

**Landlord:** Children's Cay, LLC

**Tenant:** City of San Antonio

**Lease:** Lease of a tract of land constituting approximately 5 acres, as more particularly described on **Exhibit A** attached to the Lease, to be improved in accordance with the terms and conditions contained herein with (i) a single store building containing approximately 30,000 rentable square feet ("Building"), (ii) a parking lot containing 200 parking spaces ("Parking Facilities") and (iii) multiple playground areas.

1. **Definitions.** Capitalized words have the meanings ascribed to them in the Lease. If not defined in the Lease, they have the following meanings:

Landlord's Work	Construction of certain site improvements, shell demolition and shell modifications, as well as construction of one or more Playgrounds, Tenant signage and LEED adaptations to the Premises, to the extent set out on the Base Building Improvements attachment to this Work Letter.
Tenant Improvements	As described in Section 3, below.
Tenant Allowance	Landlord will provide to Tenant \$1,500,000.00 toward the cost of Tenant Improvements as a Tenant finish out allowance for Tenant's permanent improvements to the Premises
Tenant Playground/LEED/Signage Allowance	Landlord will provide to Tenant \$150,000.00 toward the cost of Playgrounds to be constructed on the Premises as a part of the Final Plans as a Tenant Playground Allowance, \$200,000.00 toward the cost of LEED upgrades to the Building and \$15,000.00 toward the cost of exterior signage for the Building.

Tenant Reimbursement	<p>100% of the cost incurred by Landlord to construct the Tenant Improvements to the extent they exceed the Tenant Allowance and:</p> <p>(i) as to the Playgrounds only, \$150,000.00 of the Tenant Playground/LEED /Signage Allowance,</p> <p>(ii) as to LEED upgrades to the Building only, \$150,000.00 of the Tenant Playground/LEED /Signage Allowance, and</p> <p>(iii) as to Tenants exterior signage only, \$15,000.00 of the Tenant Playground/LEED/Signage Allowance, but in no event in excess of \$</p>
Landlord Reimbursement Payment Date	<p>Within 30 days of Tenant's receipt of a detailed invoice, including copies of executed contracts for the work, Tenant will pay Landlord all sums advanced by Landlord which are Tenant Reimbursement as set out above. These request for payment from Landlord can be made incrementally, though in no event shall a request be made more than 1 time in any 30 day period.</p>
City's Construction Representative	<p>Razi Hussein, P.E.  Capital Improvements Management  Department  114 West Commerce Street, fifth floor  San Antonio, TX 78205  (210)207-8076</p>
Landlord's Construction Representative	<p>Mark Granados or his designee</p>
City's Address for Work Letter Notice	<p>See Section 1 of the Lease</p>
Landlord's Address for Work Letter Notice	<p>See Section 1 of the Lease</p>
Attachments to Work Letter	<p>Attachment A: Base Building Improvements  Attachment B: Tenant Improvements</p>
Substantial Completion	<p>As defined in the Lease</p>

Estimated Substantial Completion Date	As defined in the Lease
Outside Delivery Date	As defined in the Lease

**2. Building Improvements and Other Work to be Completed at Landlord's Expense.**

2.1. Landlord represents that all of Landlord's Work and Tenant Improvements (as defined below) shall be constructed to Substantial Completion on or before the Estimated Substantial Completion Date as may be extended under the terms of the Lease to the. "Landlord's Work" shall include the base building improvements described on Attachment A hereto (the "Base Building Improvements"). "Tenant Improvements" shall have the meaning set forth in Section 3 below. Landlord shall cause all portions of Base Building Improvements and Tenant Improvements to comply with the access requirements of ADA at Landlord's sole cost and expense.

2.2. Tenant shall be solely responsible for obtaining "as built" plans for Landlord's Work and Tenant Improvements at its sole cost and expense. In the event the Architect charges additional fees for development or verification of the "as built" plans, such fees shall be borne solely by the Tenant and shall not be charged to the Landlord.

**3. Improvements to be Completed by Landlord and Considered Tenant Improvements**

The term "Tenant Improvements" shall mean all improvements identified in Attachment B attached hereto. Landlord and Tenant will carry out construction of the Tenant Improvements in the manner set out in this Work Letter.

**4. Project Tasks to be Completed as Detailed Below**

4.1. Landlord and Tenant agree that Deborah Dockery AIA is the designated architect for the Tenant Improvements ("Architect") and that the Contractor (as referenced in Section 6 below) shall be responsible for retaining a qualified licensed engineer ("Engineer") to complete the Tenant Improvements. Tenant, at its option may direct Landlord to hire an alternative architect or engineer ("Alternate A/E"). The services of the Alternate A/E can be used to review the drawings prepared by Architect and/or Engineer. The costs associated with services provided by the Alternate A/E shall be paid by Landlord but will be reimbursed to Landlord as a part of Landlord's Reimbursement.

4.2. Tenant shall use commercially reasonable efforts to submit to Landlord a space plan and specifications for the Premises, on or before December 1, 2012, showing all Tenant requested demising walls, corridors, entrances, exits,

doors, interior partitions, and the locations of all offices, conference rooms, computer rooms, mini-service kitchens, reception area and library room (collectively the "Space Plan"). In the event the Tenant submits its Space Plan to Landlord after December 1, 2012, each day the Space Plan is delivered beyond December 1, 2012 will be deemed a Tenant Delay day.

4.3. On or before the later of December 15, 2012 or 15 days after Landlord has received Tenants Space Plan, Landlord shall submit to Tenant a preliminary budget of the costs to complete the Tenant Improvements (the "Preliminary Budget"). The Preliminary Budget will outline the estimated costs to be paid by Tenant to Landlord for the Tenant Improvements, including permit fees, Architectural and Engineering fees, a construction supervision fee equal to 2% of the hard cost of the Tenant Improvements, excluding any costs associated with Architectural and Engineering fees, permit fees, and any other cost not attributable to the actual amount required to build the Tenant Improvements (the "Construction Supervision Fee"), a contingency line item equal to 10% of the hard costs to construct the Tenant Improvements, and any other costs that Landlord expects will be incurred as a part of carrying out the Tenant Improvements. The Preliminary Budget will also indicate any costs attributable to Landlord's Work so that Tenant has an understanding of the costs Landlord estimates it will incur to complete the Landlords Work and Tenant Improvements. In the event that the Preliminary Budget indicates a cost for completion that exceeds 100% of the Tenant Reimbursement and Tenant Allowance after the application of any Tenant Playground/LEED/Signage Allowance that is available to fund Tenant Improvements, the Landlord and Tenant shall work cooperatively to reduce the project scope to meet a target completion cost that is not more than 100% of such sums. Such budget shall be revised into final form as provided in Section 7, below.

## **5. Preparation of Plans and Specifications and Construction Schedule.**

5.1. Within 10 days of the Binding Date, Tenant shall instruct the Architect to commence preparation of Working Drawings (the "Working Drawings"), which must be compatible with the design, construction and equipment of the Building, comply with all applicable laws, be capable of physical measurement and construction, contain all such information as may be required for the construction of the Tenant Improvements and the preparation of the Engineering Drawings (as defined below), and contain all partition locations, plumbing locations, air conditioning system and duct work, special air conditioning requirements, reflected ceiling plans, office equipment locations, and special security systems. The Working Drawings may be submitted in one or more stages and at one or more times. Tenant shall provide Landlord the Working Drawings, or such portion as has from time to time been submitted, for review. Landlord agrees to respond with any comments thereto (with specified reason if it does not approve) within 5 business days following any submittal by Tenant to Landlord of such portion(s) of the Working Drawings. Landlord may object to the Working Drawing if (i) the accommodation

will cause the cost of the Tenant Improvements to go over the authorized expenditures in the Preliminary Budget and Tenant does not agree in its objection to increase the Final Budget to accommodate the cost, or (ii) the accommodation will cause the time frame to carry out the Tenant Improvements to be extended and the Tenant does not agree in its objection to extend the Estimated Completion Date by the amount of the extra time required to provide for the accommodation. If Tenant does not provide for the increased time frame or budget, as set out above, the objections will be incorporated into the Working Drawings and the Landlord will use reasonable efforts to construct the Tenant Improvements in a manner that addresses the Landlord's objections to the Working Drawings in a manner that will not increase the Final Budget or increase the time to construct the Tenant Improvements. Landlord and Tenant hereby instruct the Architect to cause the Working Drawings to comply with all applicable building codes and be drawn free from errors or omissions on the part of the Architect to the extent same affect the Tenant's rights to use and occupy the Premises for its Permitted Use.

5.2. Tenant shall cause the Architect to coordinate all engineering drawings prepared by the Engineer, showing complete mechanical, electrical, plumbing, and HVAC plans ("Engineering Drawings") for the Tenant Improvements to be integrated into the Working Drawings. The Engineering Drawings may be submitted in one or more stages and at one or more times for Landlord's review. Landlord agrees to respond with any comments thereto (with specified reason if it does not approve) within 5 business days following any submittal by Tenant to Landlord of such portion(s) of the Engineering Drawings. Landlord may object to the Engineering Drawings if (i) the accommodation will cause the cost of the Tenant Improvements to go over the authorized expenditures in the Final Budget and Tenant does not agree in its objection to increase the Final Budget to accommodate the cost, or (ii) the accommodation will cause the time frame to carry out the Tenant Improvements to be extended and the Tenant does not agree in its objection to extend the Outside Delivery Date by the amount of the extra time required to provide for the accommodation. If Tenant does not provide for the increased time frame or budget, as set out above, the objections will be incorporated into the Engineering Drawings and the Landlord will use reasonable efforts to construct the Tenant Improvements in a manner that addresses the Landlord's objections to the Engineering Drawings in a manner that will not increase the Final Budget or increase the time to construct the Tenant Improvements.

5.3. After Tenant has approved the Engineering Drawings, Tenant shall cause the Architect to integrate the approved Working Drawings with the approved Engineering Drawings and deliver five sets of the Final Plans for the Tenant Improvements to Landlord. At such time as the Working Drawings are approved by Landlord and Tenant, with the Engineering Drawings incorporated therein, as set forth below, they shall be referred to as the "Final Plans."

5.4. The Final Plans shall be suitable for a) plan check review and permitting by local agencies having jurisdiction and, b) for the layout, improvement

and finish of the Premises consistent with the design of the Space Plan and construction of the Landlord's Work, including electrical and mechanical drawings, capacity reports, dimensioned partition plans, floor plans, power, telephone communications safety devices, construction detail sheets including millwork detail plans showing the location of partitions, light fixtures, electrical outlets, telephone sprinklers, doors, (including voltage, amps, phase, and special plugs and connections), wall finishes, floor coverings, millwork and other Tenant Improvements.

5.5. Approval by Tenant of the Working Drawings and Engineering Drawings shall be deemed approval of the Final Plans and shall act as a confirmation by Tenant as to the adequacy or correctness of the design of the Tenant Improvements and Landlord's Work.

5.6. Within 10 days after approval by Landlord and Tenant of the Working Drawings and the Final Budget, as set forth below), or as soon as practicable thereafter, Landlord shall submit to Tenant a detailed construction schedule, subject to approval by Tenant, which approval shall not be unreasonably withheld, setting forth the estimated dates for specific completion of the Tenant Improvements, including, but not limited to, submission of plans to local jurisdiction for review, issuance of building permit, submission of plans to contractors for bidding, award of construction contract, construction commencement, construction completion, projected Commencement Date and other similar dates ("Construction Schedule"). Landlord's failure to include any days attributable to Tenant Delay occurring prior to the preparation of the Construction Schedule shall be deemed to indicate that up until the date the Construction Schedule was prepared, no instances of Tenant Delay occurred and Landlord shall be barred from adjusting the Outside Delivery Date for Tenant Delay's occurring prior to the delivery of the Construction Schedule. Tenant agrees to issue its approval or disapproval (with specified reason therefore) within 5 business days following any submittal by the Landlord of the detailed Construction Schedule. In the event the Tenant provides objections to the Construction Schedule as proposed by Landlord, Landlord will accommodate the changes set out as the specific reasons for the objections unless (i) the accommodation will cause the cost of the Tenant Improvements to go over the authorized expenditures in the Final Budget and Tenant does not agree in its objection to increase the Final Budget to accommodate the cost, or (ii) the accommodation will cause the time frame to carry out the Tenant Improvements to be extended and the Tenant does not agree in its objection to extend the Outside Delivery Date by the amount of the extra time required to provide for the accommodation. If Tenant does not provide for the increased time frame or budget, as set out above, the objections will be waived and the Landlord will use reasonable efforts to construct the Tenant Improvements in a manner that addresses the Tenant's objections to the Construction Schedule in a manner that will not increase the Final Budget or increase the time to construct the Tenant Improvements. At such time as the Construction Schedule is approved by Landlord and Tenant, it shall be as the Construction Schedule.

**6. Selection of Contractor for Tenant Improvements**

Tenant has approved and agrees that Landlord may select the general contractor for the purpose of carrying out the Landlord's Work and the Tenant Improvements, provided any construction contract for the Tenant Improvements will require the general contractor to retain subcontractors and materials consistent with the SEBDA rules for the City of San Antonio, Texas.

**7. Final Budget and Payment of Tenant Construction Costs.**

7.1. Landlord shall submit a construction budget outlining all costs to complete the Tenant Improvements including a contingency line item equal to 10% of the hard costs to construct the Tenant Improvements, the Construction Supervision Fee and in a format similar to the Preliminary Budget referred to herein as the "Final Budget". Tenant shall have 5 business days from the date of receipt of the Final Budget to approve or disapprove (giving specific reasons therefore) the Final Budget. In the event the Tenant provides objections to the proposed Final Budget, as proposed by Landlord, Landlord will accommodate the changes set out as the specific reasons for the objections unless (i) the accommodation will cause the cost of the Tenant Improvements to go over the authorized expenditures in the Final Budget and Tenant does not agree in its objection to increase the Final Budget to accommodate the cost, or (ii) the accommodation will cause the time frame to carry out the Tenant Improvements to be extended and the Tenant does not agree in its objection to extend the Estimated Completion Date by the amount of the extra time required to provide for the accommodation. If Tenant does not provide for the increased time frame or budget, as set out above, then the objections will be waived and the Landlord will use reasonable efforts to construct the Tenant Improvements in a manner that addresses the Tenant's objections to the proposed Final Budget, in a manner that will not increase the Final Budget or increase the time to construct the Tenant Improvements.

7.2. In the event a change in conditions or circumstances should arise after the approval of the Final Budget attributable specifically to a change requested by Tenant, or a cost should arise which Tenant has not approved as a part of the Final Budget or Final Plans, Landlord will bring any such expense to the attention of Tenant and Tenant will agree to modify the Final Budget to accommodate such cost (i) to the extent the sums are required to cause the Tenant Improvements to be constructed in accordance with the Final Plans; and (iii) the expense, when combined with all other expenses added to the Final Budget under this paragraph do not exceed the Final Budget computed without these modifications. If the cost due to change in condition should exceed the Final Budget, and Tenant does not agree to amend the Final Budget, the Tenant Improvements will be completed by Landlord without such modification and the Tenant Improvements will be completed by Landlord as originally contracted.

7.3. Tenant may, after approval of the Final Plans, request changes to the Final Plans. Any changes are subject to Landlord's reasonable approval. In the event a Change Order is made and, where required the Landlord approves any of Tenant's requested revisions to the Final Plans (the "Change Order"), which approval shall not be unreasonably withheld or delayed, Tenant shall pay to Landlord within thirty (30) days following request for the Change Order, in addition to any other amounts which are payable by Tenant to Landlord hereunder, all of Landlord's extra costs associated with such Change Order as set out in the Change Order Invoice to be delivered to Tenant, as set out below, including, but not limited to a construction management fee and associated architectural and engineering fees, if any. Landlord shall not be required to approve a Change Order if the requested changes does not materially change the improvement set out in the Final Plans. Prior to implementing any requested Change Order to the Final Plans, Landlord will prepare and deliver to Tenant for Tenant's approval a "Change Order Invoice" setting forth the cost of such requested Change Order and the number of days of Construction Delays and Tenant Delay arising in connection therewith. If Tenant fails to approve, execute and deliver to Landlord such Change Order Invoice within five (5) business days following the delivery of the Change Order Invoice by Landlord, Tenant will be deemed to have withdrawn the proposed request for the Change Order and Tenant will not be charged any costs associated with the Change Order.

7.4. Landlord shall cause to be constructed the Tenant Improvements in the manner set out in this Work Letter; however Landlord's obligations to carry out these obligations are subject to the Landlord being paid the Tenant Reimbursement and Tenant's compliance with its payment obligation set out in this Work Letter. Tenant agrees to pay to Landlord all the Approved Costs incurred by Landlord to construct the Tenant Improvements, over and above Tenant Allowance and those items Landlord will pay as a part of the Tenant Playground/LEED/Signage Allowance, which cost shall be paid by Tenant in increments on or before each Landlord Reimbursement Payment Date, and only after the Landlord has paid out toward the cost of the Tenant Improvements the Tenant Allowance, as set out above and for any reimbursement of any Approved Costs for playground construction, LEED upgrades to the Building or signage, after Landlord has advanced that portion the Playground/LEED/Signage Allowance applicable to such work. For the purpose of this Work Letter, "Approved Costs" are any costs set out in the Final Budget, any Change Order as approved by Tenant and Landlord or any other cost approved by Tenant.

7.5. Notwithstanding Landlord's right to move forward with the Tenant Improvements in the event Tenant fails to take action as provided in Sections 7.1 and 7.2 above, in no event shall the Tenant Improvement cost exceed the sum of (i) the Tenant Allowance (ii) the Tenant Reimbursement, after application by the Landlord of Tenant Playground/LEED/Signage Allowance, plus any other increase in sums available for such work pursuant to a Change Order as approved by Tenant and

Landlord or any other cost approved by Tenant, unless Tenant expressly authorizes Landlord to exceed the such sums.

8. **Construction of Tenant Improvements.**

8.1. Tenant Improvements to be constructed by Landlord are described more particularly on Addendum B attached hereto.

8.2. Landlord shall secure the approval of governmental authorities, and all permits required by governmental authorities having jurisdiction over such approvals and permits for the Tenant Improvements, promptly after approval of the Final Plans.

8.3. Landlord shall use reasonable business efforts to obtain all necessary permits for contraction of the Tenant Improvements and commence construction of the Tenant Improvements within 15 days after approval of the Final Budget or as soon thereafter as reasonably possible, subject to any applicable Force Majeure Delays, Construction Delays and Tenant Delays. Landlord shall commence and, once commenced, shall thereafter diligently proceed to construct and complete all Tenant Improvements, subject to any cessation that may be caused by Force Majeure Delays, Construction Delays and Tenant Delays.

8.4. Landlord will include the following functions in the construction of the Tenant Improvements as a part of the cost for the construction of the Tenant Improvements:

8.4.1. All design and programming, space planning and interior decorating services, such as selection of wall paint colors and/all wall coverings, furniture, fixtures, carpeting and any or all other decorator selection efforts as set out in the Final Plans, shall be provided as a part of the Tenant Improvements. Landlord shall consult with the Tenant with respect to all such decorating services and decisions, but in no event shall Landlord be obligated to provide such design and programming, space planning and interior decorating services to the extent the costs thereof would cause the cost of the Tenant Improvements to exceed the Final Budget.

8.4.2. Require the contractor to clean up its work in the Premises promptly following the completion of the Tenant Improvements.

8.4.3. Require the contractor to construct the Tenant Improvements in compliance with all applicable laws and regulations, and all applicable city, county, state, and federal building codes, regulations and ordinances required for the Tenant's intended use, including, but not limited to, all provisions of the Labor Code of the State of Texas.

8.4.4. Within 60 days after Substantial Completion of the Tenant Improvements and receipt from the Contractor of all field changes, Landlord shall submit to Tenant a set of conformed plans ("as built") incorporating, in accordance with standard industry custom and practice, field changes made

and changes and/or revisions that have been made subsequent to the submission of Such "as-or "record three and one-half 3W") 1.4Mb magnetic media diskettes in Auto CAD R 12.dwg (or later version) format or .DXF format, along with one complete set of mylar transparencies of drawings and one complete set of specifications.

9. **Tenant Improvement Costs Adjustment and Right to Audit.** Within 30 days of the issuance of a Certificate of Occupancy, or a final sign-off by the City of San Antonio, whichever occurs first, Landlord shall provide to Tenant a statement showing in reasonable detail all Tenant Improvement costs and the total amount payable hereunder by Tenant to Landlord. Upon approval of the statement by Tenant, payments by either party pursuant to the Lease and this Work Letter shall be adjusted as appropriate, based upon such statement. Tenant shall have the right to audit these costs for a period of 24 months from the date of acceptance by Tenant of the Premises. In the event the audit shows that Tenant is entitled to a reduction in payments to the Landlord under this Work Letter, Tenant shall provide Landlord with a copy of the audit summary and Landlord, within 30 days, shall refund to Tenant the amount of any overpayment made by Tenant and all future payments shall be adjusted as appropriate based upon the audit results. In the event the audit shows that Tenant owes additional payments to the Landlord under this Work Letter, Tenant shall provide Landlord with a copy of the audit summary and Tenant, within 30 days, shall pay to Landlord the additional amount of any underpayment made by Tenant.

10. **Telephone/Computer Room and Equipment.** Landlord will require its contractor to use reasonable business efforts to have constructed to Substantial Completion the telephone equipment room(s) including permanent power and HVAC, in compliance with the Space Plan and specifications provided by Tenant at least 30 days prior to the estimated Commencement Date as determined by Landlord, taking into consideration the impact of any change orders requested by Tenant.

11. **Delay.** Each date for Landlord's performance of its obligations to construct the Landlord's Work and Tenant Improvements, as set out in the Lease or this Work Letter, including but not limited to the Estimated Substantial Completion Date, shall be extended 1.5 days for each day of the Binding Date Adjustment Period and for each day of Construction Delay, Force Majeure Delay, or Tenant Delay. As used herein:

11.1.1. "Construction Delays" shall mean any delay at any time in progress of the Landlord's Work or the construction of the Tenant Improvements, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Landlord's control or by other causes which the Landlord determines may justify delay, but only to the extent such Construction Delays delay the commencement or completion of construction of the Landlord's

Work or the construction of the Tenant Improvements.

11.1.2. "Tenant Delays" shall mean any delay at any time in progress of the Landlord's Work or the construction of the Tenant Improvements caused by (i) Tenant's failure or refusal to give authorizations or approvals within the time periods required herein, (ii) Tenant's failure or refusal to furnish any information, document, authorizations or approvals required to be furnished by Tenant to Landlord hereunder at the time and in the manner set forth herein, (iii) Tenant's delay in providing Working Drawings on or before December 15, 2012, Engineering Drawings on or before December 15, 2012, or approving Working Drawings, proposed Engineering Drawings, Preliminary Construction Budget or proposed Construction Schedule for a period of greater than 5 business days following Landlord's proposal to address any comments provided by Tenant as a disapproval to such items, (iv) Tenant's failure to timely pay sums due to Landlord under the terms of this Agreement or to take any action or perform any obligation required hereby within an allotted time period, (v) Tenant's failure to take any action in connection with obtaining a certificate of occupancy for the Premises which is intended to delay the Substantial Completion Date, or (vi) Tenant's request for Change Orders which results in a delay in Substantially Completion of the construction of the Landlord's Work or the construction of the Tenant Improvements.

11.1.3. "Force Majeure Delays" shall mean any delay at any time in the progress of the Landlord's Work or the construction of the Tenant Improvements by lightning, fire, storm, tornado, flood, washout, explosion, strike, lockout, labor disturbance, civil disturbance, riot, war, act of a public enemy, sabotage or other similar causes beyond the reasonable control of Landlord.

11.1.4. Binding Date Adjustment Period has the meaning set out in the Lease.

11.2. Except for Tenant Delays that occur due to failure of Tenant to make its payments to Landlord under the terms of the Lease or this Work Letter, no Construction Delay, Force Majeure Delay or Tenant Delay shall be deemed to have occurred unless Landlord has provided written notice, of the event giving rise to such claim, in compliance with the Lease, to Tenant specifying that a delay is claimed to have occurred because of actions, inaction or circumstances specified in the notice in reasonable detail which notice will be provided as soon as practicable but not to exceed 30 days from the date Landlord's Construction Representative has actual knowledge of the delay. If such actions, inaction or circumstances qualify as a Construction Delay, Force Majeure Delay, or Tenant Delay, then a Construction Delay, Force Majeure Delay or Tenant Delay, as applicable, shall be deemed to have occurred only if such notice is timely given.

11.3. Except for Tenant Delays that occur due to failure of Tenant to make its payments to Landlord under the terms of the Lease or this Work Letter

Construction Delays and Force Majeure Delays shall delay the Commencement Date only in the event that Substantial Completion of the Landlord's Work or Tenant Improvements is delayed, despite Landlord's reasonable efforts to adapt and compensate for such delays, which efforts Landlord shall be obligated to make (provided Tenant agrees to pay such additional cost incurred by Landlord.).

11.4. Construction Delays and Force Majeure Delays which occur at the same time shall be recognized hereunder only to the extent the same not concurrent with any other Construction Delay or Force Majeure Delay which is effective hereunder. For example, if there are ten days of Construction Delays and four days of Force Majeure Delays which occur during the same ten day period of such Construction Delays, then the Commencement Date would be extended by only ten days; on the other hand, if such Construction Delays and Force Majeure Delays did not occur during the same period, the Commencement Date will be extended by 14 days.

11.5. Upon 30 days written notice to Landlord if Tenant fails or elects not to cure the default as provided in Paragraph 14 of the Lease (Landlord Default), Tenant may assume the responsibility for providing the Tenant Improvements itself. If Tenant elects to provide Tenant Improvements itself, then Tenant, its officers, employees, agents, contractors and assignees, shall have free access to the Premises and the Building at all reasonable times for the purpose constructing the Tenant Improvements and for any other purposes reasonably related thereto; and

11.6. Except as expressly set out in this Work Letter, any uncured default by Landlord under the terms of this Landlord's Work Letter shall constitute a default under the Lease and shall entitle Tenant to exercise all remedies set forth in the Lease.

## **12. Representatives.**

12.1. Tenant has designated Tenant's Construction Representative as its sole representative with respect to the matters set forth in this Landlord's Work Letter who, until further notice to Landlord, shall have the full authority and responsibility to act on behalf of Tenant as required in this Work Letter and whose address, for purposes of any notices to be given regarding matters pertaining to this Work Letter only, is Tenant's Address for Work Letter Notice as set forth in Section 1.

12.2. Landlord has designated Landlord's Construction Representative as its sole representative with respect to the matters set forth in this Work Letter who, until further notice to Tenant, shall have the full authority and responsibility to act on behalf of Landlord as required in this Landlord's Work Letter and whose address, for purposes of any notices to be given regarding matters pertaining to this Landlord's Work Letter only, is Landlord's Address for Work Letter Notice as set forth in Section 1.

13. **Construction Meetings.** During the course of construction, meetings shall be held between the Contractor, Landlord and Tenant at least once per week, unless Tenant directs otherwise, at a time and place which is mutually convenient. An initial construction meeting shall be held within five days of the date the Contractor is selected.

14. **Delivery.** Delivery of all plans and drawings referred to in this Work Letter shall be by commercial messenger service or personal hand delivery, unless otherwise agreed by Landlord and Tenant. All written notices shall be as provided in the Lease with a copy to the parties designated construction representative.

15. **Exemption Certificates.** Tenant agrees to provide confirmation of its tax exempt status to Contractor related to any exemption certificates that Contractor will

file with the State of Texas claiming an exemption under Section 151.009 of the Texas Tax Code to Landlord and/or to the Contractor or its subcontractors related to any portion of the Landlord's Work or Tenant Improvements that qualifies for an exemption under the Texas Tax Code, including but not limited to any items of tangible personal property, fixtures and services therefor.

16. **Entire Agreement.** Tenant acknowledges that this Work Letter, together with the Lease, constitutes the entire agreement of Landlord and Tenant with respect to the construction of the Landlord's Work and the Tenant Improvements and that, except for Landlord's obligations to complete the Landlord's Work and the Tenant Improvements, Landlord has no obligations to make any modifications, alterations or improvements to the Building or the Premises as a condition to the occurrence of the Commencement Date or Tenant's obligations under the Lease.

In Witness Whereof, the parties have caused their representatives to set their hands.

**Landlord**

**Tenant**

**Children's Cay, LLC, a Texas limited liability company, by and through its sole manager**

**City of San Antonio, a Texas municipal corporation**

**GFR Development Services, LLC a Texas limited liability company, by and through its sole manager**

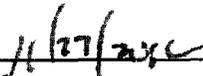
Signature: \_\_\_\_\_

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

  
\_\_\_\_\_  
Mark D. Granados, Manager

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

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Date  
Date

Approved:

\_\_\_\_\_  
City Attorney

Attachment A to Work Letter  
BASE BUILDING IMPROVEMENTS

Landlord will construct at Landlord's sole cost and expenses the following components or features, which shall not be a part of Tenant Improvements unless otherwise indicated in the Lease, this Attachment A or Attachment B:

1. new roof as required
2. structural upgrades for new roof top hvac unit (but not the costs of hvac units installation or curbs )
3. Parking lot modifications

Attachment B to Work Letter  
TENANT IMPROVEMENTS

The improvements to be constructed by Landlord as Tenant Improvements under the terms of the Work Letter include the following, as well as all items set forth in the Final Construction Budget as approved:

1. all interior work and modification requested by tenant including cost of new entry and windows with LL contribution to these items capped at \$1,500,000.00, which is the Tenant Allowance as set out in this Work Letter

2. all items requested by Tenant for the construction of exterior playgrounds, LEED upgrades to the Building and exterior signage for the Building, with the Landlord contribution to these items capped at \$150,000.00, for playground work, \$200,000 for LEED upgrades to the Building and \$15,000.00 for exterior signage for the Building, which is the Tenant Playground/LEED/Signage Allowance as set out in this Work Letter.