


Mayor Timothy M. Keller

EC-21-453
CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

INTER-OFFICE MEMORANDUM

September 27, 2021

TO: Cynthia Borrego, President, City Council

FROM: Timothy M. Keller, Mayor 

SUBJECT: Lease Agreement between CLNKids and the City of Albuquerque at John Marshall Health and Social Service Center at 1500 Walter SE.

The City owns property known as the John Marshall Health and Social Service Center located at 1500 Walter SE. CLNKids currently leases the property owned by the City for purpose of providing high-quality child development and education for children and support programs for parents of homeless families. CLNKids wishes to continue its tenancy and is willing to enter into a new lease.

The proposed Lease Agreement is for a five (5) year term with five (5) one (1) year renewal periods, if lessee is in compliance with the lease and if property exercised. The proposed annual rent is \$49,284.00 with a 2.5% escalation each year thereafter. The initial five (5) year term will generate \$259,987.42 in revenue for the City.

This Lease Agreement is forwarded to City Council for approval.

TITLE/SUBJECT OF LITIGATION: Lease Agreement between CLNKids and the City of Albuquerque at John Marshall Health and Social Service Center at 1500 Walter SE

Approved:

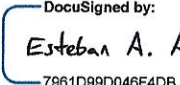


Sarita Nair
Chief Administrative Officer

10/13/21

Date

Approved as to Legal Form:



Esteban A. Aguilar, Jr.
City Attorney

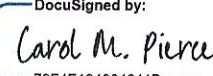
9/27/2021 | 5:09 PM MDT

7961D99D046F4DB...

Date

Recommended:

DS

Carol M. Pierce, Director
Family and Community Services

9/27/2021 | 5:09 PM MDT

72F4E134004641B...

Date

LEASE AGREEMENT CITY OF ALBUQUERQUE AND CLNKIDS

THIS LEASE AGREEMENT ("Lease") is made and entered into by and between the City of Albuquerque, a New Mexico municipal corporation, (the "City") and CLNKids, a New Mexico domestic nonprofit organization, (the "Tenant") on the date set forth below.

RECITALS

WHEREAS, the City owns the real estate and building known as the John Marshall Health and Social Service Center ("Center") located at 1500 Walter SE, Albuquerque, NM 87102, Albuquerque, New Mexico ("Property"); and

WHEREAS, Tenant desires to lease from City, and City desires to lease to Tenant, a portion of the Property designated as the Premises, as more specifically defined and described herein;

WHEREAS, the Tenant is able and wishes to provide the following services: high-quality child development and education for children and support programs for parents of families experiencing homelessness (the "Services"); and

WHEREAS, the parties wish to enter into a lease.

NOW THEREFORE, for mutual consideration, and on the terms and subject to the conditions set forth herein, The City and Tenant hereby agree as follows:

I. BASIC LEASE PROVISIONS.

A. The Premises. The "Premises" shall be a portion of the Property, which portion is more specifically shown on **Exhibit "A"** attached hereto and made a part hereof and contains approximately 8,214 square feet. The lease of the Premises hereunder shall be exclusive to Tenant, but Common Areas (defined below) that Tenant may share in the use of with other parties, subject to the rules imposed by the City, include the conference rooms in the Center and parking areas.

B. Terms.

1. Effective Date: This Lease will not be binding upon the parties until it is approved by the Albuquerque City Council, signed by Tenant and signed by the Chief Administrative Officer or authorized designee ("Effective Date").
2. Lease Commencement Date: Upon full execution of Lease by the City following Council approval and by Tenant.
3. Rent Commencement Date: November 1, 2021
4. Term Commencement Date: November 1, 2021

5. Expiration Date: October 31, 2026

6. Rent:

- a. Rental payments shall commence on the Rent Commencement Date and shall be due at a total monthly rental amount of \$6.00/square foot at 8,214 square feet for the initial year of this lease. Monthly base rent ("Base Rent") shall be paid in advance, without notice, due on or before the first day of the month.
- b. The Base Rent shall be increased annually, effective on the first day of November of each year, by an amount equal to two and a half percent (2.5%) over the Base Rent paid during the previous lease year.
- c. Annual Base Rent Schedule.

Period	Annual Base Rent per square foot	Annual Base Rent	Monthly Payments
Lease Year 1	\$6.00	\$49,284.00	\$4,107.00
Lease Year 2	\$6.15	\$50,516.10	\$4,209.68
Lease Year 3	\$6.30	\$51,748.20	\$4,312.35
Lease Year 4	\$6.46	\$53,062.44	\$4,421.87
Lease Year 5	\$6.62	\$54,376.68	\$4,531.39
FOR RENEWAL PERIODS (if properly exercised)			
Lease Year 6	\$6.79	\$55,773.06	\$4,647.76
Lease Year 7	\$6.96	\$57,169.44	\$4,764.12
Lease Year 8	\$7.13	\$58,565.82	\$4,880.49
Lease Year 9	\$7.31	\$60,044.34	\$5,003.70
Lease Year 10	\$7.50	\$61,605.00	\$5,133.75
Lease Year 11	\$7.68	\$63,083.52	\$5,256.96

d. Time, Place and Manner of Payments.

- i. All Rent (as defined below) shall be paid to the City of Albuquerque, Central Accounts Receivable and Billing Division, PO Box 27780, Albuquerque, NM 87125, or at such other place as the City may designate from time to time for this purpose.
 - ii. Rent shall be paid by check.
- e. In the event Tenant fails to pay any Rent within fifteen (15) days of the due date, Tenant shall pay City a late payment amount equal to five percent (5%) of the Base Rent.

- f. Base Rent together with all other consideration to be paid or provided by Tenant to City (referred to as Additional Rent as further described herein) shall collectively constitute “Rent” and shall be paid or provided without offset.
 - g. Funding Authority. Tenant’s obligations under this Lease shall be subject to availability of funding for any relevant contracts with the City. In the event that funding is terminated, Tenant must provide documentation acceptable to the City and may cancel this Lease with ninety (90) days written notice to City.
 - h. In-Kind Services. City and Tenant acknowledge that the Base Rent charged to Tenant is below the market rental value and that this reduced rate is being offered to Tenant by City in exchange for Tenant providing the Services including but not limited to high-quality child development and education for children and support programs for parents of families experiencing homelessness. Should Tenant cease to provide these Services and the associated support programs or if Tenant in any way otherwise modifies the use of the Premises without prior written approval of the City, Tenant will be in default under this Lease and will, at the discretion of the City, either surrender the property to City or pay the then fair market rental value for the Premises as determined by an appraisal, prepared by an appraiser approved by the City and commissioned at Tenant’s sole cost and expense. Payments of Base Rent calculated based on the fair market rental value shall commence from the earlier of the date of the change of use, the date the new use is approved by the City pursuant to this subsection or the date of the appraisal.
 - i. Tenant is obligated to pay to the City all monetary obligations (other than Base Rent) owed by Tenant to City under this Lease, including but not limited to taxes, insurance premiums incurred by the City on behalf of Tenant, and the interest upon unpaid obligations, which shall collectively all be deemed to be “Additional Rent,” and in the event of nonpayment by Tenant, City shall have all the rights and remedies set forth in this Lease.
7. Extension Option: So long as the Tenant is not in default (beyond the applicable period of notice and cure) at the time of any extension, and upon written notice at least ninety (90) days prior to the expiration of the current Term, Tenant shall have the right (“Option to Extend”) to extend the term for two (2) terms of three (3) years each (each a “Extended Term”) upon the same terms and conditions as are in effect under this Lease immediately preceding the commencement of such Extended Term, except that the Base Rent due from Tenant shall be increased as provided in Section 1.6.c of this Lease. If Tenant fails to deliver to City written notice of exercise of an Option to Extend within the prescribed time period, such Option to Extend, and if applicable, the succeeding Option to Extend shall lapse, and there shall be no further right to extend the Lease Term.
8. Holding Over: Holding over by the Tenant after the expiration of this Lease, whether with or without the consent of the City, shall not operate to extend or renew

this Lease. Any such holding over shall be construed as a tenancy from month to month and Tenant shall be bound by all terms and conditions of this Lease but only as they are applicable to a month-to-month tenancy, provided however, that if the Holding Over is without consent of the City, all Rent and charges shall be in an amount equal to one hundred fifty percent (150%) of the rates and charges required in this Lease. Nothing in this Lease shall be construed to grant Tenant the right to hold over at any time, and City shall be entitled to exercise any and all remedies at law or in equity to recover possession of the Premises, as well as any damages incurred by City, including attorneys' fees.

9. Termination: Notwithstanding any provision in this Lease to the contrary and without limitation, the City or the Tenant may terminate this Lease at any time without cause by giving the other party ninety (90) day's written notice. If either party terminates the Lease pursuant to this Section, rent shall abate at the end of the ninety (90) day notice period.
10. Tenant will cooperate with any City, State, or Federal program data collection and evaluation efforts by timely providing requested information for the Services delivered no later than the 3rd of the month following the date of request, or in the case of requests for monthly client numbers, by the next business day. If Tenant fails or refuses to comply with the obligations in this Section Tenant will be in default under this Lease, and City shall have the right to send a notice of default to Tenant, which notice shall, at City's discretion, (i) specify that City is terminating the Lease upon a specified date, in which case Tenant shall promptly surrender the Premises to City on or before the date of termination, or (ii) specify that due to the default Tenant shall begin paying Rent at the then fair market rental value for the Premises, prorated to the date of the notice of default from City and at the rate as determined by an appraisal, prepared by an appraiser approved by the City and commissioned at Tenant's sole cost and expense. Tenant will provide copies of all licensing, permitting, facility audits, and inspections to the individual from the City designated to be the manager of the Center (the "Center Manager") within three (3) business days of receipt of such items.

II. USE OF THE PREMISES.

A. Tenant shall:

1. Use and operate the Premises only for the purposes set forth herein which shall include the Services including but not limited to high-quality child development and education for children and support programs for parents of families experiencing homelessness and for no other purpose whatsoever without the City's prior written consent.
2. Operate and maintain the Premises in a safe, sanitary, and operable condition.

3. At Tenant's sole cost, comply with all federal, state, county, municipal and other governmental statutes, ordinances, laws, rules and regulations, now or hereafter enacted or amended, affecting the Premises, or occasioned by or affecting the use thereof by Tenant, including, but not limited to, the Americans with Disabilities Act.
4. Properly handle and dispose of all Hazardous Substances pursuant to Environmental Laws (both as defined herein). Tenant shall take all appropriate measures necessary to prevent the release on or from the Premises of any Hazardous Substances. Neither party shall create or bring on the Premises any Hazardous Substances or permit any third party to do so in violation of Environmental Laws. Should Tenant become aware of the existence of any Hazardous Substance on the Premises, Tenant shall immediately notify the City of such Hazardous Substance.
5. Tenant shall and shall cause its agents, employees, and contractors to comply with any rules and regulations for the Property promulgated by the Center. The City from time to time by notice to Tenant may amend such Rules in any manner not inconsistent with the express provisions of this Lease.

B. Tenant shall not:

1. Use, occupy or permit the Premises to be used or occupied for any unlawful purposes or for purposes not specified in this Lease.
2. Use, occupy or permit the Premises or any part of the Premises to be used or occupied, or do or permit anything to be done in or on the Premises in any manner which will:
 - a. Cause or be likely to cause structural damage to the Premises or any part thereof, or adversely affect the mechanical, electrical, plumbing or other base building systems.
 - b. Constitute waste or a public or private nuisance; or
 - c. Violate City ordinances, rules, regulations, or policies promulgated for or applicable to the use and operation of City-owned property.
 - d. Cause, permit, or suffer any waste or damage, disfigurement, or injury to the Premises or the fixtures or equipment thereof or the Common Areas, other than due to normal wear and tear.
 - e. Cause the cancellation of any insurance policies related to the Property. Tenant shall reimburse the City for any increases in

insurance premiums payable by the City as a result of Tenant's use of the Premises or the nature of Tenant's business. All property kept, stored or maintained by Tenant within the Premises or on any adjacent Common Areas shall be there at Tenant's sole risk, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes, steam pipes, or other pipes, by theft or from any other cause, no part of said loss or damage is to be charged to or borne by the City, unless due to the negligence or willful misconduct of the City, its employees, agents or contractors.

- f. Place or install any signs, racks, stands, trade fixtures, pedestal signs or other displays of products or services, advertisement, notice, lettering or decoration on any part of the outside of the Premises or anywhere in the interior of the Premises that is visible from the outside of the Premises, on the outside of the building, the grounds of the Property, the right-of-way or adjacent properties, without the express prior written approval of the City. Tenant, at its expense, may install its standard signs and logos so long as they are in compliance with applicable signage codes and are approved in advance of fabrication and installation by the City. Tenant shall pay for all fees and costs associated with obtaining the approval of its sign package by the City of Albuquerque, including any necessary application for a variance or an appeal thereof. All signs shall be kept in good condition and in proper operating order at all times. The City reserves the right to designate a uniform type of sign for the Property to be installed and paid for by Tenant. Tenant, upon vacation of the Premises, or the removal or alteration of its sign for any reason, shall be responsible for the repair, painting, and/or replacement of the building fascia surface where signs are attached, as may be applicable, and this obligation shall survive the expiration or earlier termination of this Lease.

C. Tenant acknowledges and represents that it has examined the Premises and has determined by its own independent evaluation that the Premises are suitable and usable for the purposes, uses and activities intended by Tenant and contemplated by this Lease. Tenant acknowledges that the City has made no representation, warranty, or guarantee, expressed or implied that the Premises are now, or during the Term or any Extended Term of this Lease, suitable or usable for purposes or uses which Tenant intends to make of the Premises or which are contemplated by this Lease.

III. LEASE OF PREMISES. In consideration of the mutual covenants and agreements set forth herein, the City hereby leases to Tenant the Premises in the County of Bernalillo, State of New Mexico. The leasehold includes the right of ingress and egress to and from the Premises

through and across property owned by the City that is adjacent to the Premises in a manner to be directed by the City.

A. The leasehold interest granted by this Lease shall be subject and subordinate to the right of the City and other owners of public utilities to operate, maintain, repair, modify, realign, replace and reconstruct all public utilities in, under, across and upon the Premises.

B. The City shall allow Tenant reasonable scheduled access to the building electric lines, feeders, wiring, telephone rooms, electrical closets and other conduits, pipes and facilities to accommodate Tenant's telecommunication systems. Tenant's right to the use of and access to the City's facilities shall be without charge other than the rent provided for herein. However, no installation of telephone, computer or other telecommunication systems shall be made until the installation plan has been approved in writing by the City in advance of installation.

C. The Premises are located within a Property designed for the occupancy of more than one tenant; Tenant acknowledges that the Property in which the Premises is located contains areas intended for the use in common by all occupants of the Property as described in further detail in paragraph "G" below ("Common Areas"). As long as Tenant occupies the Premises, Tenant and its employees, agents, and invitees shall have the right to use, in common with the City, its successors, assigns and other tenants, all of the Common Areas, except for areas reserved for the exclusive use of the City or other tenants or occupants of the Property.

D. The Center Manager shall provide all keys and/or access cards for the Premises and gate. Keys and/or access cards lost by Tenant shall be duplicated by the City at Tenant's cost. At no time shall the Tenant duplicate keys. Locks shall not be altered unless approved by the Center Manager in advance in writing. Lock changes, if approved, shall be at the sole expense of Tenant. The Tenant is responsible for maintaining a Key Log and informing the Center Manager of key assignments. If at any time, a key is un-accounted for, the Premises, gates and any other locks necessary will be rekeyed at the Tenant's sole expense.

E. The City will administer the Center. The Center shall be open to the public between 7:00 am to 6:00 p.m., Monday through Friday. Tenant shall have access to the Premises during normal business hours plus during limited periods of time both prior to and after the end of business hours for opening and closing of the facility with such routine access being Monday through Friday 6:00 a.m. to 7:00 p.m. City employees will leave the Premises by 6:00 p.m. each day, and therefore, the foregoing permitted access is specifically conditioned upon Tenant being responsible for daily, final securing of the Center and parking areas, including locking all gates and buildings and confirming all parking areas are clear. Tenant, Tenant's staff, and clients must leave no later than 7:00 p.m. In the event that Tenant launches additional programming necessitating a change in the regular business hours as stated herein, Tenant shall provide the City with a written request at least ten (10) business days prior to the intended start date for such change in hours, and City shall respond within forty-eight (48) hours of its receipt thereof. Such a schedule change request shall not be unreasonably withheld, and once approved, shall become the new regular "business hours" for the Center unless or until any subsequent schedule change is requested and approved as per the process above. Should the Tenant or anyone under the Tenant's control (including invitees)

intend to be in the Premises or on site at the Center outside of normal business hours (either as originally established hereunder or as may be later proposed and approved by City), Tenant must obtain prior written approval from the Center Manager at least five (5) business days in advance, except in the case of emergencies, in which case Tenant shall contact Center Manager to obtain the required prior written approval as soon as reasonably possible prior to the intended special use. Should Tenant fail to obtain such prior approval, the Center Manager and the City shall have the right to lock and secure the Center and to, in its discretion, either evacuate the Premises or invoice Tenant for all actual City out-of-pocket additional costs and expenses associated with such extra use of the Premises, which invoice Tenant shall promptly pay. Failure to reimburse the City within thirty (30) days of presentation of invoice shall be deemed a material default. Such unpaid obligations to the City are deemed Additional Rent.

F. **Tenant Contact.** The Tenant shall provide the Center Manager written notice of the name and telephone number of the representative of the Tenant who shall be responsible for the use and security of the Premises and shall update this information promptly should there be a change in the designation of such representative. Center will be closed on all City holidays. City holidays are those days designated pursuant to City ordinance. The Tenant may request access to the Premises on City holidays, provided that the Tenant shall obtain advanced written approval from the City. Such requests shall be submitted in writing to the Center Manager at least five(5) business days prior to the scheduled Holiday. The Center shall not be open to the public outside of normal business hours or on Saturdays and Sundays unless approved in writing in advance by the Center Manager and Family and Community Services Department Division Manager. Should Tenant fail to obtain such prior approval, the Center Manager and the City shall have the right to lock and secure the Center and to, in its discretion, either evacuate the Premises or invoice Tenant for all actual City out-of-pocket additional costs and expenses associated with such extra use of the Premises, which invoice Tenant shall promptly pay. Failure to reimburse the City within thirty (30) days of presentation of invoice shall be deemed a material default. Such unpaid obligations to the City are deemed Additional Rent.

G. **Alarms.** The Tenant shall provide at least three (3) contacts for after-hours security alarm calls at the Premises. Should the alarm company be unable to make contact with such individuals or if the City must respond to an alarm due to the Tenant's negligence, the Tenant will be charged a fifty dollar (\$50.00) response fee.

H. **Common Areas.** All of the portions of the Property that are made available by the City for use in common by tenants and their employees and invitees shall remain subject to the City's exclusive control at all times. Common Areas include main building restroom, computer lab, community rooms and parking lots. For purposes of clarity, Common Areas do not include any area within the leased Premises; Tenant understands and confirms that Tenant is solely responsible for all rooms and areas within the Premises. Tenant shall not directly or indirectly conduct business in the Common Areas or make any use of the Common Areas that interferes in any way with the use of the Common Areas by other parties. Tenant's use of the Common Areas shall be subject to the other provisions of this Lease. Tenant's right to use the Common Areas shall terminate upon the expiration or earlier termination of this Lease or Tenant's right to possession of the Premises. The City shall be entitled to make such changes in the Common Areas

as it deems appropriate and shall be entitled to determine the nature, extent and boundaries for and of all Common Areas. The City reserves the right to use, or to permit or deny the use of the Common Areas by any party and for any purpose that in the City's sole reasonable opinion may be in the best interests of the Property, including without limitation promotions, events, exhibits, displays, shows, and other activities. The Common Area, at the City's election, may include areas in adjoining properties that are or become available to tenants of the Property. Common Area usage must be scheduled through the Center office. All Common Area usage is at the discretion of and subordinate to the use by the City, thus, City may cancel and/or relocated scheduled use of the Common Areas to meet the needs of the City. Should the Tenant need to cancel any scheduling of Common Areas, Tenant shall notify the Center office as soon as possible. Should the Tenant have consistent "no shows" for scheduled Common Area use Tenant's privileges for future scheduling may be jeopardized and/or subject to additional restrictions as deemed appropriate and reasonable by the City in its sole discretion. If Tenant desires to operate Common Area conference rooms during additional hours beyond the hours set forth in this Lease, Tenant shall first obtain the City's written approval at least thirty (30) days prior to such requested use, and Tenant shall pay all actual City out-of-pocket additional costs and expenses. Failure to reimburse the City within thirty (30) days of presentation of invoice shall be deemed a material default. Such unpaid obligations to the City are deemed Additional Rent.

IV. REPAIRS AND MAINTENANCE, TENANT'S NEGLIGENCE AND SUBSTANTIAL DAMAGE.

A. **Tenant Build-Out and Improvements.** Subject to the requirements of Article XI (Alterations), Tenant may pay for any additional finishing and upgrades to the Premises, but such items, once affixed, shall become the sole property of the City, and no reimbursement will be provided to Tenant at any time for such fixtures.

B. **City Repairs and Maintenance.** City shall, at its sole cost and expense, perform and kitchen range hood inspections /deficiency corrections and shall make necessary repairs and replacements to the Premises, including relating to the roof, heating system, air conditioning system, water heater, and any other major fixtures owned by the City, except that City shall not be required to make any repairs occasioned by the act or negligence of Tenant, its agents, employees, subtenants, licensees, invitees, and concessionaires, which repairs shall be made and paid for by Tenant. City is responsible for landscaping maintenance, extermination, fire extinguisher service, emergency lighting, backflow testing, annual fire alarm testing, locks malfunction, and main line plumbing issues. City shall further be responsible for carpet cleaning and floor waxing once a year to be scheduled at City's discretion. City shall maintain all Common Areas of the Center. In the event that the Premises should become in need of repairs required to be made by City hereunder, Tenant shall give immediate written notice thereof to Center Manager, and City shall not be responsible in any way for failure to make any such repairs until a reasonable time shall have elapsed after delivery of such written notice. City shall have no liability for any damages or injury arising out of any condition or occurrence causing a need for such repairs unless the damage results from the City's negligence or willful misconduct. City shall not be liable or responsible for breakdowns or temporary interruptions in access or utilities nor for interference with Tenant's business or Tenant's access to the Premises during the course of such service interruptions or

during the course of repairs or remedial work, unless and only to the extent resulting from the negligence or willful misconduct of City. Notwithstanding anything herein to the contrary, City shall not be liable for consequential, punitive or speculative damages.

C. Tenant Repairs and Maintenance.

1. Tenant shall, at its sole cost and expense, be responsible for day-to-day repairs and maintenance necessary for their daily operations and which are not specified herein as being the responsibility of the City. Tenant is responsible for tasks including but not limited to the following: painting, smoke/carbon monoxide detector operation, kitchen cleaning, playground/shade, ground cover /flooring, equipment, and other exterior fixtures, kitchen appliances, and all other routine maintenance needs due to daily operations, and shall ensure that all such equipment and fixtures meet applicable local, state and federal standards and requirements. Tenant shall promptly and as necessary, with the prior written approval of the Center Manager, repair or replace any damages caused by Tenant or its employees, agents, volunteers, or invitees to the Premises. Any repairs or replacements shall be made in good condition and repair consistent with the quality of materials and workmanship of the original work, shall meet all applicable standards, and shall be performed by individuals with proper skills, knowledge, and to the extent applicable, licenses. Upon completion of all maintenance repairs and/or inspections/testing, a copy of such report shall be provided to the Center Manager within three (3) business days.
2. Tenant shall be responsible for ensuring that the operation and condition of the Premises are maintained in accordance with any federal, state, or local public health orders, as may be applicable including but not limited to compliance with all licensing requirements including janitorial service. Notwithstanding the foregoing, any such public order mandate requiring substantive maintenance of the sort falling within the purview of the City's obligations as landlord hereunder shall be performed by the City.
3. At the City's discretion and as reasonably scheduled with the Tenant, a City representative will conduct periodic walk-throughs to identify repairs and maintenances needs of the Premises. The Center Manager will thereafter provide Tenant with a written itemization of the identified responsibilities, and such responsibilities must be remedied within thirty (30) days, unless deemed (in the opinion of City) to be of an emergency nature, in which case Tenant shall remedy the emergency designated items immediately.

D. Tenant's Failure. If Tenant refuses or neglects to commence or complete any repairs, replacements, or maintenance as required by this Lease, the City may, at its option, make or complete the repairs, replacements or maintenance, and Tenant shall reimburse the City for such costs and expenses promptly upon receipt of an invoice. Failure to reimburse the City within thirty (30) days of presentation of invoice shall be deemed a material default. Such unpaid obligations to the City are deemed Additional Rent.

E. **Supplies.** The City shall provide supplies only to the Common Area(s) of the Center and only those supplies that are normally found in said Common Areas such as bathroom paper and soap. Tenant shall be solely responsible for providing and paying for supplies to meet their needs for the Premises, including but not limited to all paper products, cleaning products, janitorial supplies, kitchen supplies, and office supplies.

F. **Janitorial Services and Trash Removal.** The City shall provide certain, limited janitorial services to the Premises which services shall at a minimum include routine cleaning of the restrooms once per business day. The City will sweep, mop, vacuum, and discard of trash once each business day, except the kitchen area which shall be the sole responsibility of Tenant and which Tenant shall clean and maintain daily and as this area is utilized by the Tenant. In order to maintain sanitary conditions, Tenant shall discard trash several times a day as necessary. At no time shall diapers or other unsanitary items (i.e. food) be left in trashcans, on the floor, or in or on any part of the Premises overnight. Tenant shall provide and pay for all additional janitorial services related to the cleaning of the Premises that are not the responsibility of the Landlord as otherwise set forth herein, including the provision of cleaning supplies and equipment. There shall be no reduction of Rent based on janitorial services or related supplies provided or paid for by Tenant. The City shall provide and pay for shared trash and recycle dumpsters for use by all tenants at the Center. Tenant shall cause its employees to place all refuse and recyclables in appropriate containers. Tenant shall ensure that all such trash is contained and bagged so as to avoid unsightly or unsanitary conditions in the area of the refuse containers or anywhere around the Premises, and with the fitted lids of such containers kept closed and secured. Liquids should be disposed of in sinks and never in refuse containers. Boxes shall be broken down, loose paper bagged, and lids of City-provided, shared recycle containers shall be kept closed. At no time shall boxes be piled anywhere on the Premises or Property. Tenant shall transport its refuse using a container with wheels so as to not drag bags of refuse along the hallways, sidewalks, or parking lots. Tenant shall not permit offensive or strong odors of any kind to emanate from the Premises. If such odors are emanating from the Premises, then upon notice from City, Tenant shall, within ten (10) days, install devices or put in place procedures to eliminate or contain such odors within the Premises. Tenant shall not store any items, including, but not limited to, furniture, boxes, or cleaning supplies outside of its Premises without City's prior approval. Large items shall not be thrown into or placed near the dumpsters. Large items shall be disposed of as necessary. If the City determines that Tenant is responsible for inappropriately disposing of items, City will cure and charge the Tenant a fee of one hundred dollars (\$100.00) per item. Failure to reimburse the City within thirty (30) days of presentation of invoice for such fees shall be deemed a material default. Such unpaid obligations to the City are deemed Additional Rent.

G. **Substantial Damage: Tenant's Negligence.** In the event the Premises are destroyed or so damaged and rendered un-tenantable so that they cannot reasonably be repaired within thirty (30) days, and such damage is a result of the negligent act or omission of Tenant, its officers, agents, servants, employees, contractors, subcontractors, volunteers, licensees or invitees, the Rent and other fees payable hereunder shall not abate and the City may, at its discretion require Tenant to complete repair and reconstruction of the Premises promptly and pay the costs, or the City may repair and reconstruct the Premises and Tenant shall be responsible for reimbursing City for the costs and expenses incurred in such repair and reconstruction, subject in all cases to the restrictions and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 to -30, NMSA

1978 and any amendments thereto. Failure to reimburse the City within thirty (30) days of presentation of invoice shall be deemed a material default. Such unpaid obligations to the City are deemed Additional Rent.

H. **Substantial Damage: City's Responsibility.** If the damage to the Premises is not due to the negligent act or omission of the Tenant, its officers, agents, servants, volunteers, employees, contractors, subcontractors, licensees or invitees, and if such repairs or rebuilding can, in the judgment of the City, be completed within ninety (90) consecutive calendar days from the date the damage occurred, the City, at its option may proceed promptly with such repairs, in which event abatement of the rental fees shall be allowed or the City may terminate this Lease. If such damages cannot be completed within ninety (90) consecutive calendar days from the date the damage occurred, as determined by the City, either the City or the Tenant may terminate the Lease. Neither Tenant nor City shall be deemed in default under this Lease in the event it elects to terminate, as described in this Section, the leasing of the damaged or destroyed Premises for reasons described in this Section H.

I. **Requests.** All requests or complaints relating to the Center's operation shall be addressed to the Center Manager. If the Center Manager is not available or not able to address complaints or questions regarding the Center operations, Tenant may contact the City's Department of Family and Community Services administration by calling 311.

J. **Adverse Conditions.** In the event of dangerous or adverse weather or other conditions, Tenant must adhere to the City's decision regarding the closure of the Center for safety reasons. Snow and ice removal shall be provided by the City depending on staff availability. The City of Albuquerque's determination that excessive snow and/or ice exist shall be a reason for closure of the Center in City's sole discretion.

V. **PARKING.** This Lease includes parking privileges on the Center's property for clients and staff as designated by the City. All cars must be removed from the east gated area by 6:00 p.m., or Tenant, employees and invitees risk gates being locked and unopened until the next business day. Tenant is responsible for unlocking and locking the north gate upon arrival and departure each day. Under no circumstances shall vehicles be left on the Property by Tenant or its employees, volunteers, representatives, or invitees overnight. City shall have the right in its discretion to impound any vehicles left overnight or after hours and Tenant shall be responsible for all out-of-pocket costs and expenses associated therewith. Failure to reimburse the City within thirty (30) days of presentation of invoice for such fees shall be deemed a material default. Such unpaid obligations to the City are deemed Additional Rent.

VI. SECURITY DEPOSIT AND GUARANTY.

A. **Security Deposit.** Tenant is not required to provide a "Security Deposit" to the City. Notwithstanding the foregoing, upon any default in any twelve (12) month period, or upon the assignment or sub-letting of the Premises to a party that is not an affiliate of Tenant, the City may require a Security Deposit. In the event a Security Deposit is required, the deposit shall not bear interest, shall not be required to be maintained in a separate account, and shall be returned, less any unpaid claims against Tenant, upon the expiration of this Lease and the surrender of possession of the Premises, to Tenant or the last assignee of Tenant's interest. If Tenant or its

subtenant fail to perform with respect to any provision of this Lease, the City may apply the Security Deposit for the payment of any sum in default, or for the payment of any other amount that the City may spend or become obligated to spend by reason of Tenant's default, or to compensate the City for any loss or damage that the City suffers from Tenant's default. Application of the Security Deposit is not a cure of the default by Tenant to which the application relates. If any portion of the Security Deposit is applied, Tenant shall, within five (5) days after written demand therefor, deposit cash with the City in an amount sufficient to restore the Security Deposit to its original amount. In the event of the assignment or conveyance of the City's interest in this Lease, the City shall transfer said deposit to the City's successor in interest and thereafter shall have no further liability for the return of such Security Deposit.

B. **Guaranty.** Tenant is not required to provide a "Guaranty" to the City. Notwithstanding the foregoing, upon any default in any twelve (12) month period, or upon the assignment or subletting of the Premises to a party that is not an affiliate of Tenant, the City may require a Guaranty from all persons identified by the City, and their spouses, if married, or from a firm or corporation other than Tenant, in the form as required by and acceptable to the City. In the event of a default by the guarantors of this Lease, either under this Lease or the Guaranty, or upon an assignment or subletting of the Premises, the City may, at its option, require an additional or a replacement Guaranty of the obligations of the Tenant hereunder by a person, and his or her spouse, if any, or a firm or corporation other than Tenant, in the form as required by and acceptable to the City.

VII. OPERATING COSTS (INCLUDING REAL PROPERTY TAXES AND INSURANCE).

A. **Tenant's Proportionate Share.** Commencing on the Term Commencement Date, Tenant's proportionate share of all Operating Costs (defined below) for the Property on which the Premises is located (the "Tenant's Proportionate Share") during the Term of the Lease shall be included in Tenant's Base Rent. Tenant is not obligated to pay any additional amount for Operating Costs, real property taxes or property insurance. Tenant however will purchase insurance as indicated in Article XXIV.

B. **Operating Costs.** "Operating Costs" are all costs of City for operating, maintaining, and repairing the Property and/or Premises (which includes any associated Common Areas), including, without limitation, the following:

1. Premiums for property, casualty, liability, rent interruption, or other insurance and amounts deductible from claims thereunder.
2. Salaries, wages and other amounts paid or payable for personnel including the Center Manager, superintendent, operation and maintenance staff, and other employees of the City involved in the maintenance and operation of the Property and/or Premises, including contributions and premiums towards fringe benefits, unemployment and worker's compensation insurance, pension plan contributions and similar premiums and

contributions and the total charges of any independent contractors or managers engaged in the repair, care, maintenance, and cleaning of any portion of the Property or Premises for which City is responsible hereunder, provided any third party management fee will be included in the fee described in subsection (13) below.

3. The cost of Common Area cleaning, including sweeping of parking areas and removal of trash or debris.
4. The cost of landscaping, including irrigating, trimming, mowing, fertilizing, seeding, and replacing plants.
5. The cost of seasonal decorations, if provided.
6. The cost of Common Area utilities, including fuel, gas, electricity, water, sewer, telephone, and other services.
7. The cost of maintaining, operating, repairing, and replacing lighting standards, pumps, amenities, signage, and sign structures (other than those of separate tenants or occupants of the Property), common utility wires and laterals and other fixtures and equipment.
8. The cost of maintaining, repairing, and replacing driveways, parking areas, sidewalks, curbs, and other improvements within the Common Areas, excluding the building roofs and foundations.
9. The cost of policing and security, if provided.
10. The cost of any equipment rented or used, and the cost of supplies consumed in the maintenance and operation of the Property and/or the Premises.
11. Capital expenditures incurred for the purpose of reducing Operating Costs, and/or to improve the safety or function/operation of the Property for the benefit of all tenants of the Property, which expenditures shall be amortized over their useful lives, as determined by the City in accordance with generally accepted accounting principles, and only the annual amortization thereof shall be included in Operating Costs.
12. Costs of alterations or modifications to the Property necessary to comply with requirements of applicable law enacted subsequent to this Lease.
13. General and special real and personal property taxes and assessments for the Property or Premises, should the City ever be liable or responsible for such taxes, and expenses incurred in efforts to reduce taxes or assessments.

C. **Exclusions.** Notwithstanding anything to the contrary, items not included in "Operating Costs" and which Tenant shall pay are as follows:

1. Net amounts recovered from other sources, such as insurance proceeds, equipment warranties, judgments, or settlements.
2. Utilities or other expenses to the extent required hereunder to be paid directly by Tenant to the suppliers or service providers thereof, or which are paid by Tenant to the City for separately metered or special services, if applicable.
3. Payments on any mortgage or other encumbrance or ground lease.
4. Construction of buildings or other improvements for the exclusive use of Tenant.
5. Construction of new improvements in the Common Area (but not the repair of existing improvements or the replacement of existing improvements) needed to reduce Operating Costs and/or to improve the safety or function/operation of the Property for the benefit of all tenants of the Property.
6. Leasing commissions.
7. Correction of defects in the initial construction of the improvements on the Property and/or the Premises that are covered by construction warranties.
8. General overhead and administrative expenses of the City not directly related to the operation of the Property.
9. Costs of negotiating or enforcing leases of other tenants.
10. Expenditures which are normally capitalized under generally accepted accounting principles consistently applied, except as otherwise expressly allowed herein.

D. **Taxes.** In addition to any other amounts for which Tenant is responsible, Tenant shall pay to the applicable taxing authority, before delinquency, all taxes levied or assessed upon, measured by or arising from: (a) the conduct of Tenant's business; (b) Tenant's leasehold estate; or (c) Tenant's personal property.

VIII. QUIET ENJOYMENT. Upon the performance of all terms, conditions, and covenants of this Lease, which the Tenant is required to perform, the Tenant shall, at all times during the Term or any Extended Period peaceably and quietly enjoy the Premises without any disturbance from the City.

IX. PERMITS AND LICENSES. Tenant shall procure and maintain, at its sole expense, any permits and licenses required for the transaction of business in the Premises and otherwise comply with all applicable laws, ordinances, and governmental regulations. Tenant shall immediately notify the City in the event any permit, license, or approval necessary for the operation of Tenant's business from the Premises is revoked or suspended. If such revocation or suspension is not corrected within twenty (20) days after notice to the City (or such longer period as is reasonable so long as Tenant initiates such correction within the twenty (20) day period and thereafter diligently and continuously works towards correcting the revocation or suspension) then it shall be an automatic event of default under this Lease.

X. SURRENDER UPON TERMINATION. At the expiration of the Term of this Lease, Tenant shall surrender the Premises to the City in as good condition as it was in at the beginning of the Term; reasonable use, wear and tear accepted, clean and free of debris. Tenant shall remove Tenant's personal property from the Premises. Any and all improvements made to the Premises during the term hereof shall, unless the City requests their removal, belong to the City without compensation, allowance or credit to Tenant, except movable trade fixtures, furnishings and equipment of the Tenant, which can be removed without defacing the Premises or the Property. Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's trade fixtures, furnishings, and equipment. Any of Tenant's personal property left by Tenant at the expiration of the Term or Extended Period, if applicable shall, at the option of the City, become the property of the City, and the City shall be entitled to use, sell or otherwise dispose of such personal property.

XI. ALTERATIONS AND LIENS.

A. Alterations. Tenant shall not make any alterations, improvements, additions, or changes to the Premises without the prior written consent of the City. Tenant shall not be permitted to make any such changes if Tenant is in default with regard to either Rent payments or any other obligations of Tenant hereunder. All alterations will be made by a contractor licensed and insured in the State of New Mexico and performed in a good and workmanlike manner consistent with all applicable laws, regulations, and industry standards. All materials used shall be of a quality comparable to or better than those in the Premises and shall be in accordance with plans and specifications approved in writing by the City prior to commencing the work. Prior to the commencement of any repair, improvement, or alteration, and provided that Tenant has already obtained City's approval thereof, Tenant shall give the City at least five (5) business days written notice so that the City may post appropriate notices to avoid any liability for liens.

B. Liens: Tenant will pay all costs of construction done by it or caused to be done by it on the Premises as permitted by this Lease. Tenant will keep the Property free and clear of all construction, mechanic's, materialman's, laborer's, and supplier's liens, resulting from construction done by or for Tenant. The interest of the City in the Premises and the Property shall not be subject to liens for improvements made by Tenant. Any lien filed by any contractor, materialman, laborer, or supplier performing work for Tenant shall attach only to Tenant's interest in the Premises. If any construction, mechanic's, materialman's, laborer's, or supplier's lien is

ever claimed, fixed, or asserted against the Premises or any other portion of the Property in connection with any such Tenant work, Tenant shall, within thirty (30) days after receipt by Tenant of notice of such lien, discharge such lien either by payment or by posting of any bond as permitted by law. If Tenant shall fail to discharge any such lien, whether valid or not, within thirty (30) days after receipt of notice from the City, the City shall have the right, but not the obligation, to discharge such lien on behalf of Tenant, and all reasonable and actual costs and expenses incurred by the City associated with the discharge of the lien, including, without limitation, reasonable attorneys' fees, which costs and fees shall constitute Additional Rent hereunder and shall be immediately due and payable by Tenant.

XII. UTILITIES. Normal and customary charges for water, gas, and electric utilities shall be arranged and paid for by the City. Tenant shall not install any equipment or fixtures, or use the same, in any manner that exceeds the safe and lawful capacity of any utility equipment or lines serving the Premises. The City shall not be liable in damages or otherwise for any failure, variation, shortage, or interruption of these utilities or services, and Tenant shall not be entitled to terminate this Lease or abate any portion of the Rent as a result of such failure, variation, shortage, or interruption. All other utilities for the Premises, including but not limited to telephone, internet, and cable, shall be arranged directly by Tenant with the utility supplier, including the posting of any required deposits, and paid directly by Tenant to the utility supplier when due.

XIII. DEFAULT AND REMEDIES.

A. Default. The occurrence of any one or more of the following events shall constitute a default by Tenant:

1. Failure to make payment when due.
2. The abandonment of the Premises by Tenant for a period of thirty (30) consecutive calendar days.
3. The failure by Tenant to observe or perform any of the express covenants or provisions of this Lease, where such failure shall continue for a period of ten (10) consecutive calendar days after the date of written notice thereof from the City to Tenant, provided that if the nature of Tenant's default is such that more than ten (10) consecutive calendar days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences to cure within the ten (10) day period, and thereafter diligently and continuously prosecutes such cure to completion all to the reasonable satisfaction of City.
4. Tenant (a) files, or consents by answer or otherwise to the filing against it, of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction; (b) makes an assignment for the benefit of its creditors; (c) consents to the appointment of a custodian, receiver,

trustee, or other officer with similar powers of itself or of any substantial part of its property; or (d) takes action for the purpose of any of the foregoing; or

5. A court or governmental authority of competent jurisdiction, without consent by Tenant, enters an order appointing a custodian, receiver, trustee, or other officer with similar powers with respect to it or with respect to any substantial power of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding down or liquidation of Tenant, or if any such petition is filed against Tenant and such petition is not dismissed within one hundred eighty (180) days; or
6. This Lease or any estate of Tenant hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within one hundred eighty (180) days; or
7. Tenant assigns this Lease or subleases all or any portion of the Premises or any portion of its rights and/or obligations hereof without the City's prior written consent.

B. City's Remedies. In the event of Default by Tenant, as defined above, the City, in addition to any other remedies set forth in this Lease and available at law or in equity, may without further notice or demand, exercise any one or more of the following remedies concurrently or in succession:

1. Terminate this Lease, in which event this Lease and the leasehold estate hereby created hereunder shall automatically terminate upon the effective date of such notice with the same force and effect and to the same extent as if the effective date of such notice was the day originally fixed in this Lease for the expiration of the Lease Term (or Extended Period, if applicable). The City shall thereupon be entitled to take possession of the Premises, and Tenant shall immediately surrender the Premises to the City and agrees to pay to the City, on demand, the following damages:
 - a. any unpaid Rent and other amounts due at the time of termination plus interest thereon at the maximum, lawful rate per annum from the due date until paid;
 - b. the present value of the balance of the Base Rent for the remainder of the term;
 - c. any other amount arising out of Tenant's failure to perform its obligations under the Lease, or which in the ordinary course of events

would be likely to result therefrom, including the cost of recovering the Premises, which costs shall not include the costs of demolition or remodeling the Premises for a new tenant or brokerage commissions.

2. Continue this Lease in effect, and as long as the City does not terminate Tenant's right to possession, and the City may enforce all its rights and remedies under the Lease, including the right to recover the Rent. Actions to collect amounts due by Tenant to the City as provided in this Section may be brought from time to time, on one or more occasions, without the necessity of waiting until expiration of the Lease Term (or applicable Extended Period).
3. Terminate Tenant's right of possession (but not this Lease) and repossess the Premises pursuant to the laws of the state of New Mexico without demand or notice of any kind to Tenant, in which event the City may, but shall be under no obligation to (except to the extent required by the laws of the State in which the Property is located), relet the Premises for the account of Tenant for such rent and upon such terms as shall be satisfactory to the City. Tenant shall be responsible for Rent for the period that the Premises are vacant as well as for all direct and reasonable costs of City arising out of its recovery of possession, re-letting the Premises, and the collection of amounts owed by Tenant, as provided below. Tenant shall be liable for the difference between the rent received by virtue of such reletting and the fair market rental value amount for the duration of the remaining, unexpired then-current Term (or applicable Extended Period) of this Lease. The City may, at its discretion, elect to accelerate all future payments due in this paragraph and such future payments shall be discounted to present value in accordance with accepted financial practices using a discount rate of 4% per annum. If said breach of the Lease continues, the City may, at any time thereafter, elect to terminate the Lease as provided above;
4. From time to time recover accrued and unpaid Rent and damages arising from Tenant's breach of the Lease, regardless of whether the Lease has been terminated, together with applicable late charges and interest at the rate of 18% per annum or the highest lawful rate, whichever is less.
5. Subject to any subordination of lien expressly granted by the City in writing, enforce the statutory the City's lien on Tenant's property.
6. With or without having terminated the Lease, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying or using said Premises or any part thereof, by force if necessary, without incurring liability to Tenant or to any person occupying or using the Premises for any damage caused or sustained by reason of such entry or such removal.

7. In case of any event of default or breach by Tenant, Tenant shall also be liable for and shall pay to the City, at the address specified for notice to the City herein, in addition to any sum provided to be paid above, brokers' fees incurred by the City in connection with re-letting the whole or any part of the Premises; the costs of removing and storing Tenant's or other occupants' property; the costs of repairing, altering, remodeling or otherwise putting the Premises into condition acceptable to a new tenant or tenants; and all reasonable expenses incurred by the City in enforcing or defending the City's rights and/or remedies, recovering possession, re-letting the Premises, or collecting amounts owed, including reasonable attorneys' fees (including, but not limited to, the reasonable fees and disbursements of the City's legal counsel and the reasonable charges of the City's internal legal counsel, litigation expenses, expert witness fees, and service of process fees).
8. Enter upon and/or take possession of the Premises and perform any obligation on Tenant's behalf and recover from Tenant, upon demand, the entire amount paid or incurred by the City for such purpose, plus 15% for special handling, supervision, and overhead, which Tenant hereby acknowledges constitutes reasonable liquidated damages and not a penalty.
9. Alter all locks and other security devices at the Premises without terminating this Lease. The City shall not be obligated to provide a key or other means of ingress to the Tenant or Tenant's agents, or to pay for any damage to any security system, or to provide re-entry for any reason or under any circumstances whatsoever.
10. In the event that the City shall have taken possession of the Premises pursuant to the authority herein granted, then the City shall have the right to keep in place and use all of the furniture, fixtures and equipment at the Premises, including that which is owned by or Leased to Tenant at all times prior to any foreclosure thereon by the City or repossession thereof by a lessor thereof or third party having a lien thereon. The City shall also have the right to remove from the Premises (without the necessity of obtaining a distress warrant, writ of sequestration or other legal process) all or any portion of such furniture, fixtures, equipment and other property located thereon and place same in storage at any premises within Bernalillo County, and in such event, Tenant shall be liable to the City for costs incurred by the City in connection with such removal and storage and shall indemnify, defend, and hold the City harmless from all loss, damage, cost, expense and liability in connection with such removal and storage. The City shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("Claimant") claiming to be entitled to possession thereof who presents to the City a copy of any instrument represented to the City by Claimant to have been executed by

Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of such furniture, fixtures, equipment, or other property, without the necessity on the part of the City to inquire into the authenticity of said instrument's copy of Tenant's or Tenant's predecessor's signature thereon and without the necessity of the City's making any nature of investigation or inquiry as to the validity of the factual or legal basis upon which Claimant purports to act; Tenant agrees to indemnify, defend, and hold the City harmless from all cost, expense, loss, damage, and liability incident to the City's relinquishment of possession of all or any portion of such furniture, fixtures, equipment or other property to Claimant. The rights of the City herein stated shall be in addition to any and all other rights which the City has or may hereafter have at law or in equity, and Tenant stipulates and agrees that the rights herein granted the City are commercially reasonable.

11. Landlord's Lien. To secure the payment of all Rent and other sums of money due and to become due hereunder and the faithful performance of this Lease by Tenant, Tenant hereby gives to the City in addition to the rights created by this Lease and the laws of the State of New Mexico, an express first and prior contract lien and security interest on all property of Tenant (including fixtures, equipment, chattels and merchandise) which now exist or may be hereafter placed in the Premises, and also upon all proceeds of any insurance which may accrue to Tenant by reason of destruction of or damage to any such property. Such property shall not be removed therefrom without the written consent of the City until all arrearages in rental and other sums of money then due to the City hereunder shall first have been paid. All exemption laws are hereby waived in favor of said lien and security interest. This lien and security interest is given in lieu of the landlord's statutory lien and shall be cumulative thereto, and nothing herein shall be deemed a waiver of the City's statutory or common law landlord's lien. Upon the occurrence of an event of default, this lien may be foreclosed with or without court proceedings by public or private sale, provided the City gives Tenant at least fifteen (15) days' notice of the time and place of said sale, and the City shall have the right to become the purchaser, upon being the highest bidder at such sale. Contemporaneous with the execution of this Lease (and if requested hereafter by the City), Tenant shall execute and deliver to the City uniform commercial code financing statements in sufficient form so that when properly filed, the security interest hereby given shall thereupon be perfected. If requested hereafter by the City, Tenant shall also execute and deliver to the City uniform commercial code financing statement change instruments in sufficient form to reflect any property amendment or modification in or extension of the aforesaid contract lien and security interest hereby granted. The City shall, in addition to all of its rights hereunder also have all of the rights and remedies of a secured party under the uniform commercial code

as adopted in the state in which the demised premises is located. Upon receipt of a commercially reasonable subordination agreement, the City shall subordinate its lien priority and security interest to Tenant's furniture, fixture, and equipment institutional lender.

12. Seek injunctive relief, including, if applicable, a mandatory injunction.
13. Pursue any other remedies provided in specific provisions of this Lease, available at law, or provided in equity.
14. If Tenant fails more than twice within a twelve (12) month period to observe or perform any covenant, condition, or agreement of the Lease (including, without limitation, the payment of Rent), regardless of whether such failures have been cured by Tenant, the third (3rd) failure will at the election of the City, in its sole and absolute discretion and without the requirement for City to provide notice to Tenant or an opportunity to cure, be deemed an automatic event of default.
15. Once a failure to make a payment of Rent or a failure to perform or observe any other term or condition contained in this Lease has occurred, the City, in its sole discretion, may at any time require that all future payments from Tenant pursuant to this Lease be in cash or certified funds, or be made by automatic electronic bank transfers.
16. All of the remedies provided in this Section shall survive the termination of this Lease.

XIV. HAZARDOUS SUBSTANCES.

A. **Definitions.** For the purposes of this Lease, the following terms have the following meanings:

1. "Environmental Law" means any federal, state or local law, statute, ordinance or regulation, rules, or guidelines, now or hereafter in effect and as may be amended from time to time, pertaining to or governing Hazardous Substances (defined below) or which relate to the protection of human health, safety, or that of the environment, including, without limitation, CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980), RCRA (Resources Conservation and Recovery Act of 1976) and SARA (Superfund Amendments and Reauthorization Act of 1986).
2. "Hazardous Substance" means any substance, material, waste, pollutant, or oil, which is, or becomes designated, classified or regulated as being "toxic," "hazardous," "radioactive," "dangerous," or a "pollutant," or any

similar term, which is or becomes similarly designated, classified or regulated, under any Environmental Law, including asbestos, petroleum and petroleum products.

B. Tenant's Responsibilities. At its own expense, Tenant will procure, maintain in effect, and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals required for Tenant's use of the Premises. Tenant will not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Property by Tenant, its agents, employees, contractors, volunteers, or invitees without the prior written consent of the City. Tenant will cause any and all Hazardous Substances brought upon the Premises by Tenant to be removed from the Premises and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Tenant will, in all respects, handle, treat, deal with, and manage any and all Hazardous Substances in, on, under, or about the Premises in total conformity with all applicable Environmental Laws and prudent industry practices regarding management of such Hazardous Substances. Upon expiration or earlier termination of the Lease, Tenant will cause all Hazardous Substances placed on, under, or about the Premises by Tenant or at Tenant's direction to be removed and transported for use, storage, or disposal in accordance and compliance with all applicable Environmental Laws. Tenant will not take any remedial action in response to the presence of any Hazardous Substances in or about the Premises or the Property, nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Substances in any way connected with the Premises without first notifying the City of Tenant's intention to do so and affording the City ample opportunity to appear, intervene, or otherwise appropriately assert and protect the City's interests with respect thereto.

C. Environmental Audit. At any time and from time to time, the City may retain an environmental consultant or engineer to conduct an environmental audit or environmental assessment of the Premises and Tenant's compliance with applicable laws, rules, and regulations. Tenant shall extend its full cooperation with such audit or investigation. If Tenant is found not to be substantially in compliance with applicable law, then Tenant shall pay all reasonable costs associated with such audit or assessment to the City upon demand; otherwise all costs shall be borne by the City. In addition, Tenant, at the City's request from time to time, shall complete such questionnaires and provide such information with respect to Tenant's activities and operations on the Premises as the City shall reasonably require.

D. Indemnification. If the Premises or the Property become contaminated in any manner for which Tenant is legally liable or otherwise become affected by any release or discharge of a Hazardous Substance, Tenant shall immediately notify the City of the release or discharge of the Hazardous Substance. Tenant shall defend, indemnify, and hold the City harmless from and against any and all costs, claims, demands, and damages, including attorneys' fees (including without limitation the reasonable fees and disbursements of the City's legal counsel and the reasonable charges of the City's internal legal counsel, litigation expenses, expert witness fees, and service of process fees) and court costs and investigatory and laboratory fees, related to any breach of this paragraph by Tenant, its agents, contractors, volunteers, or employees, including, without limitation, any adverse health or environmental condition (including without limitation

any violation of Environmental Laws) occurring during the term of this Lease. This indemnification obligation shall survive the expiration or earlier termination of this Lease.

XV. RIGHT OF ENTRY. The City, its agents, and other representatives shall have the right to enter into and upon the Premises or any part thereof at reasonable times for the purpose of inspecting the Premises, making repairs, showing the Premises to prospective lenders or purchasers of the Property and to prospective tenants during the six (6) months preceding the expiration of the Lease. In the event of an emergency as determined by the City, the City, agents, and other representatives may enter at any time, without notice and without the presence of Tenant. Tenant will permit the City at any time within one hundred eighty (180) days prior to the expiration of this Lease, to place upon the Premises any usual "For Lease" signs, and permit potential tenants to inspect the Premises, provided that such inspections do not unreasonably interfere with the operations of Tenants business activities.

XVI. FIRE OR OTHER CASUALTY LOSS TO PERSONAL PROPERTY. The City shall not be liable for any damage or loss of the Tenant's personal property on the Premises from any cause, including but not limited to bursting or leaking of water pipes, leaking roof, fire, theft, and negligence of co-tenants. Tenant shall be solely responsible for obtaining and paying for insurance covering Tenant's personal property in the Premises, operations losses, and liability insurance. Tenant shall not be insured for such losses by the City and shall not be entitled to make loss claims under the insurance coverage of the City.

XVII. INDEMNIFICATION. To the extent, if at all, the provisions of 56-7-1 NMSA 1978 as amended apply, Tenant agrees to defend, indemnify, and hold harmless the City, its officers and employees against liability, claims, damages, losses, or expenses arising out of bodily injury to person, including death or damage to property caused by or resulting from Tenant's and/or its employees and agents negligent act(s) or omission(s) while Tenant and/or its employees or agents perform(s) or fails to perform its obligations and duties under the terms and conditions of this Lease, provided, however, Tenant is not required to indemnify the City to the extent of the negligence or intentional acts, errors, or omissions of the City or of its employees or agents.

XVIII. DAMAGES. Tenant agrees to pay for all damages to third parties from personal injury or property damage that occurs in the Premises caused by the negligence or willful misconduct of Tenant or Tenant's employees, volunteers, agents, and invitees. The provisions of this paragraph shall survive the expiration or termination of this Lease.

XIX. ASSIGNMENT AND SUBLETTING. Tenant shall not assign this Lease or sublet the whole or any part of the Premises at any time for any reason without the City's prior written approval which may be withheld in the City's sole discretion. Tenant acknowledges that the terms of this Lease are unique to Tenant and Tenant's situation and that the City may not grant such terms to a potential assignee or sublessee, it being further understood that it shall be reasonable for the City, among other things, to withhold consent if the City is not satisfied with the financial responsibility, identity, reputation, or business character of the proposed assignee or subtenant. Notwithstanding any consent by the City, Tenant and its guarantor(s), if any, shall remain jointly and severally liable (along with each approved assignee and sublessee, which shall automatically

become liable for all obligations of Tenant hereunder with respect to that portion of the Premises so transferred), and the City shall be permitted to enforce the provisions of this Lease directly against Tenant or any assignee or sublessee without proceeding in any way against any other party. In the event of an assignment or sublease, contemporaneously with the granting of the City's consent, Tenant shall cause the assignee or sublessee to expressly assume in writing and agree to perform all of the covenants, duties, and obligations of Tenant hereunder, and such assignee or sublessee shall be jointly and severally liable therefor along with Tenant. Unless approved by the City, no usage of the Premises different from the usage provided herein shall be permitted, and all other terms and provisions of the Lease shall continue to apply after such assignment or sublease. Tenant shall not enter into, execute, or deliver any financing or security agreement that can be given priority over any mortgage given by the City or its successors. The City shall have the right to assign or transfer, in whole or in part, the City's rights and obligations hereunder and in the Property and the Premises.

XX. TAXES AND ASSESSMENTS. Tenant shall promptly pay all taxes and other exactions assessed or assessable, shall pay all license and permit fees applicable to the Tenant's operation, and shall acquire and keep current all licenses, whether municipal, state, or federal, that are required as a result of the Tenants' operation on the Premises, and Tenant shall not allow any of said taxes, excises, or fees to become delinquent.

XXI. INSURANCE.

A. At its expense, the Tenant shall procure and maintain insurance in the kinds and amounts set forth below:

1. Special Form Property Insurance. Tenant shall obtain and maintain special form property insurance, including without limitation sprinkler leakage, in an amount equal to one hundred percent (100%) of the then full replacement cost of all property owned by Tenant or within the Premises, including, but not limited to, Tenant's improvements, contents, inventory, trade fixtures, and all personal property within the Premises. This coverage shall be updated in the event of changes in the amount or value of such covered improvements, inventory, contents and other personal property within the Premises.
2. Comprehensive General Liability Insurance. Tenant shall obtain and maintain commercial general liability insurance applying to third party claims for bodily injury (including death) or property damage, including coverage for "premises/operations," "products and completed operations," and "blanket contractual" liabilities," which insurance policy shall be written on an occurrence basis with limits not less than one million dollars (\$1,000,000) per occurrence, one million dollars (\$1,000,000) personal or advertising injury, two million dollars (\$2,000,000) products and completed operations aggregate, and two million dollars (\$2,000,000) general

aggregate, or such higher amounts and additional coverages as the City may reasonably require from time to time.

3. The policies of insurance must include coverage for all operations performed by the Tenant on, in or relating to the Premises and Common Areas and contractual liability coverage, which shall specifically insure the hold harmless provisions of the Lease.
4. Business Interruption Insurance. Tenant shall procure and maintain business interruption insurance with a limit sufficient to cover not less than a six (6) month loss of income.
5. Workmen's Compensation Insurance. Tenant shall procure and maintain workmen's compensation insurance for its employees in accordance with the provisions of the Workmen's Compensation Act of the State of New Mexico, and shall include employer's liability insurance with a limit not less than one million dollars (\$1,000,000) bodily injury each accident, one million dollars (\$1,000,000) bodily injury by disease - each person, and one million dollars (\$1,000,000) bodily injury by disease - policy limit, or such higher amounts and additional coverages as the City may reasonably require from time to time.
6. Automobile Liability Insurance. Tenant shall procure and maintain a comprehensive automobile liability insurance policy with liability limits in amounts not less than one million dollars (\$1,000,000) combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. The policy shall include coverage for the use of all owned, non-owned, or hired automobiles, vehicles, and other equipment both on and off-road. The City shall be named an additional insured.
7. Sexual Abuse/Molestation Coverage. Tenant agrees to carry sexual abuse/molestation liability coverage in an amount not less than one million dollars (\$1,000,000) for the duration of this lease.

B. Policy Requirements. Tenant's insurance policies shall:

1. Be issued by insurers reasonably acceptable to the City and rated A- VII or better by A.M. Best;
2. Cover all operations of Tenant on, in or relating to the Premises under or permitted pursuant to this Lease, whether performed by Tenant, its agents, volunteers, contractors, or sublessee(s);
3. As to liability policies, name the City, its property managers, and any mortgagee(s), and their respective directors, officers, partners, agents,

employees, members, trustees, and shareholders as additional insureds, by endorsement approved by the City;

4. Contain a mortgage clause satisfactory to the City and a waiver of any subrogation rights that Tenant's insurers may have against the City and those for whom the City is legally responsible;
5. Be non-contributing and apply as primary, and not as excess to, any other insurance available to the City;
6. Not be invalidated with respect to the interests of the City and the holder of any encumbrance on the Property or Premises by reason of any breach or violation by Tenant of any warranties, representations, declarations, or conditions contained in the policies;
7. Contain a requirement by the insurer to notify in writing the City and the holder of any encumbrance on the Property or Premises as designated by the City not less than thirty (30) days prior to any cancellation, termination, or non-renewal of the policy; and
8. Be reasonably satisfactory in form, substance, limits, deductibles, and retentions to the City.

C. **Evidence of Coverage.** Tenant shall deliver to the City certificates of insurance, or if required by the City, certified copies of each such insurance policy as soon as practicable after the placing of the required insurance and periodically thereafter upon renewal or replacement of the policies then in force, which shall occur at least thirty (30) days prior to the expiration or cancellation thereof. A certificate of insurance that states that the failure to give the City notice imposes no liability or obligation on the insurer shall not be in compliance with this Section. For example, certificates or policies stating that the insurance company shall "endeavor to notify" and that the "failure to give such notice imposes no obligation" on the insurance company are not in compliance with the insurance requirement of this Lease. All certificates of insurance shall provide that thirty (30) days written notice be given to the Director, Risk Management Department, City of Albuquerque, P.O. Box 470, Albuquerque, NM 87103 and the Real Property Manager, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed or not renewed. Various types of required insurance may be written in one or more policies. The City shall have the right to request current confirmation of insurance coverage from time to time. No review or approval of any such insurance certificate by the City shall derogate or diminish the City's rights or Tenant's obligations. Tenant shall not take possession of the Premises without having complied with the requirements of this Section. If at any time Tenant fails to provide satisfactory evidence of all required coverages, the City may, but shall have no obligation to, purchase such insurance for Tenant which shall be at Tenant's sole cost and expense, and which shall be immediately due and payable by Tenant upon demand by City.

XXII. CONDEMNATION.

A. **Automatic Termination.** If during the Term all or any material part of the Premises is permanently taken for any public or quasi-public use under any statute or by right of eminent domain, or purchased under threat of such taking, this Lease shall automatically terminate on the date on which the condemning authority takes possession of the Premises.

B. **Optional Termination.** If during the Term any part of the Property in which the Premises is located is taken or purchased by right of eminent domain or in lieu of condemnation, whether or not any portion of the Premises is taken, and if in the reasonable opinion of the City substantial alteration or reconstruction of the portion of the Property is necessary or desirable as a result thereof, or the amount of parking available to the portion of the Property is materially and adversely affected, the City shall have the right to terminate this Lease by giving Tenant at least thirty (30) days' written notice of such termination.

C. **Award.** The City shall be entitled to receive and retain the entire condemnation award or consideration for the affected lands and improvements and Tenant shall not have, or advance, any claims against the City for (i) the value of its property or its leasehold estate, (ii) the unexpired term of this Lease, (iii) costs of removal or relocation, or (iv) business interruption expense or any other damages arising out of the taking or purchase. Nothing herein shall give the City any interest in or preclude Tenant from seeking and recovering on its own account from the condemning authority any separate condemnation award of compensation attributable to the taking or purchase of Tenant's chattels or trade fixtures or attributable to Tenant's relocation expenses provided that any such separate claim by Tenant shall not reduce or adversely affect the amount of the City's condemnation award. If any such separate award made or compensation paid to Tenant specifically includes a condemnation award or amount for the City, Tenant shall promptly account therefor to the City.

XXIII. ETHICS AND CAMPAIGN PRACTICES BOARD, FAIR DEALING AND CONFLICT OF INTEREST.

A. Tenant agrees to provide the Board of Ethics and Campaign Practices of the City of Albuquerque or its investigator (the "Board") with any records or information pertaining in any manner to this Lease whenever such records or information are within Tenant's custody, are germane to an investigation authorized by the Board and are requested by the Board. Tenant further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. Tenant agrees to require that all contractors, subcontractors, or sub-consultants employed by Tenant for any of the services performed under the terms of this Lease will agree in writing to comply with the provisions of this paragraph. Tenant, will not be compensated for its time or any costs it incurs in complying with the requirements of this paragraph.

B. Upon execution of this Lease, or within five (5) days after the acquisition of any interest described in this Section during the Term of this Lease, the Tenant shall disclose in writing to the City whether any City Councilor or other officer or employee of the City has or hereafter

acquires any direct, indirect, legal or beneficial interest in the Tenant or in any contract, Lease or agreement between the City and Tenant or in any franchise, concession, right, or privilege of any nature granted by the City to the Tenant in this Lease.

C. Tenant covenants and warrants that the only person or firm interested in this Lease as principal or principals is named in this Lease, and that this Lease is entered into by the Tenant without collusion on the part of the Tenant with any person or firm, without fraud and in good faith. The Tenant also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Lease, will be offered or given by the Tenant or any agent or representative of the Tenant to any officer or employee of the City with a view towards securing this Lease or for securing more favorable treatment with respect to making any determinations with respect to performing this Lease.

XXIV. DISCRIMINATION PROHIBITED. In the operation and use of the Premises, the Tenant shall not on the grounds of race, color, religion, sexual orientation, sex, gender identity, national origin, ancestry, age discriminate or permit the discrimination against any person or group of persons or otherwise discriminate or permit discrimination against any person or group of persons in any manner that prohibited by Title 49 CFR Parts 21 and 23, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, gender identity, sexual orientation, national origin or ancestry, age, or physical or mental handicap. Such action will include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. The Tenant agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

XXV. AMERICANS WITH DISABILITIES. Tenant agrees to meet all applicable requirements of the American with Disabilities Act of 1990, as amended, and all applicable rules and regulations, as amended, (the “ADA”), that are imposed directly on Tenant or that would be imposed on the City as a public entity. Tenant agrees to be responsible for knowing all applicable requirements of the ADA to defend, indemnify, and hold harmless the City, its officials, agents, and employees from and against any and all claims, actions, suits, or proceedings of any kind brought against said parties as a result of any acts or omissions of Tenant or its agents, contractors, volunteers, or employees in violation of the ADA.

XXVI. COUNCIL APPROVAL. Notwithstanding any other provisions in the Lease, the terms, conditions and covenants of this Lease are contingent upon the City Council of the City of Albuquerque approving the Lease and all provisions contained therein to allow the City to perform all its obligations and responsibilities under this Lease. If the City Council of the City of Albuquerque does not approve this Lease then the City and Tenant shall have no further rights, obligations, or liabilities between them. Such event shall not constitute an event of default by the City. Furthermore, if, in any fiscal year during the term of this Lease, sufficient appropriations are not made by the City to fulfill the City’s obligations and responsibilities under this Lease, this

Lease may be terminated by the City with thirty (30) day written notice to Tenant, and the City shall have no further rights, obligations and liabilities thereto.

XXVIII. BROKER. Tenant warrants and represents that it has not consulted or negotiated with any broker or finder with regard to the Premises or this Lease. If Tenant shall be in breach of the foregoing warranty, Tenant shall indemnify, defend, and hold harmless the City against any loss, liability, and expense (including attorneys' fees and court costs) arising out of claims for fees or commissions from anyone having dealt with the Tenant.

XXVIII. RIGHTS RESERVED BY CITY. Except as expressly provided in this Lease, the City reserves all rights of ownership and control over all portions of the Premises and Property including without limitation the following:

A. **Use.** The City reserves the right to use (or grant others the right to use) any portion of the Property other than the Premises, including without limitation the Common Area(s), the exterior of all buildings and improvements, and air rights, surface rights, and subsurface rights, as well as water rights appurtenant to the Property.

B. **Restriction of Access.** The City reserves the right to: (i) prevent or restrict access to any portion of the Property including but not limited to the Premises by such security procedures or devices as the City may consider necessary or appropriate; (ii) control or prevent access by and remove, any person who is loitering or whose presence in the judgment of the City's security or management personnel is prejudicial to or compromises the safety, character, reputation, and interests of the Property or who in the judgment of such personnel is intoxicated or under the influence of liquor or drugs; and (iii) limit or prevent access to all or any portion of the Property, activate emergency controls or procedures or otherwise take such action or preventive measures deemed necessary by the City for the safety of Tenant and/or other occupants of the Property, or for the protection of the Property or other personal property, fixtures and improvements located thereon or therein, in case of fire or other casualty, riot, or other civil disorder, strike or labor unrest, public excitement, or other dangerous condition or threat thereof.

C. **Other Tenants.** The City reserves the right to lease or sell any portion of the Property to other tenants, occupants, or other third parties and for such uses as the City, in the City's sole discretion, deems appropriate. Tenant acknowledges that the City has made no representations as to the City's continued ownership of all or any portion of the Property including but not limited to the Premises, or regarding the presence of any specific tenant or number or types of tenants at the Property as of or after the Rent Commencement Date, the hours or days that such other tenants shall or may be open for business, or the gross sales that may be achieved by Tenant or any other tenants at the Property. Without limiting the foregoing, Tenant acknowledges that portions of the Property will not be used for retail purposes and that that City may in the future enlarge or diminish such non-retail areas.

D. **Changes.** The City reserves the right to: (i) change the name of the Property and the address or designation of the Premises; (ii) install, maintain, alter, and remove signs on or about the Property; (iii) add land or other real property interests to or eliminate the same from the

Property and grant interests and rights in the Property to other parties; (iv) add, alter, expand, reduce, eliminate, relocate or change the shape, size, location, character, design, appearance, use, number, or height of any permanent or temporary buildings, structures, improvements, parking areas, and structures, kiosks, planters, driveways, landscaped areas, and other Common Areas; to change the striping of parking areas and direction and flow of traffic; and to convert Common Areas to leasable areas and leasable areas to Common Areas at its sole discretion; (v) enclose any area, remove any such enclosure, or add one or more additional levels or stories to the Property or any portion thereof other than the Premises, and add structural supports that may be required within the Premises or Common Areas; and (vi) in connection with the foregoing matters or with any other inspections, repairs, maintenance, improvements, or alterations in or about the Property or as a result of any casualty, incident, strike, condemnation, act of God, law or governmental requirement or request or other cause, erect scaffolding, barricades, and other structures.

E. **Limitations.** In connection with exercising any rights reserved under this Section, the City shall: (a) take reasonable steps to minimize interference with access to the Premises except when necessary on a temporary basis; (b) take reasonable steps to avoid materially changing the configuration or reducing the square footage of the Premises unless required by law or other causes beyond the City's reasonable control (and in the event of any permanent material reduction in the area of the Premises the Base Rent and Tenant's Proportionate Share shall be proportionately reduced); and (c) if the City enters the Premises in connection with any of the foregoing matters, take reasonable steps to minimize any interference with Tenant's business, and following completion of the work, return Tenant's leasehold improvements, fixtures, property, and equipment to the original locations and conditions to the fullest extent reasonably possible.

XXIX. MISCELLANEOUS.

A. **Waiver of Default.** No failure by the City to insist upon the strict performance of any term, condition, or covenant of this Lease or to exercise any right or remedy available on the breach thereof, and no acceptance of full or partial Rent during the continuance of any breach will constitute a waiver of any breach or of any term, condition, or covenant. No obligation of this Lease that Tenant is required to perform and no breach thereof, will be waived, altered, or modified, except by written instrument executed by the City.

B. **Relation to Other Leases.** This Lease is separate and distinct from and shall be construed separately from any other agreement between the City and Tenant or the City and any other Tenant.

C. **Time Is Of The Essence.** Time is of the Essence in the performance of this Lease.

D. **Governmental Right and Powers.** Nothing in this Lease shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by the City in the Premises, or waiving or limiting the City's control over the management, operations or maintenance of the Premises except as specifically provided in this Lease, or impairing exercising or defining governmental rights and the police powers of the City.

E. **Exhibits.** All certificates, documents, exhibits, attachments, riders, and addenda, if any, referred to in this Lease, including but not limited to the exhibits referred to in this Lease, are hereby incorporated into this Lease by reference and are made a part hereof as though set forth in full in this Lease to the extent they are consistent with the terms and conditions of this Lease.

F. **No Partnership or Agency.** Nothing contained in this Lease is intended or shall be construed in any respect to create or establish any relationship other than that of City and Tenant, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Tenant the general representative or agent of the City for any purpose whatsoever.

G. **Non-Liability of City.** The City shall not in any event be liable for any acts or omissions of Tenant or its agents, servants, employees or independent contractors or for any condition resulting from the operations or activities of Tenant, its agents, servants, employees or independent contractors either as to Tenant or to any other person. The City shall not be liable for Tenant's failure to perform any of its obligations under this Lease, or for any delay in the performance thereof, nor shall any such delay, or failure, be deemed a default by the City. Notwithstanding anything to the contrary in this Lease, neither the City, nor City's administration, councilors, directors, employees, agents, representatives, successors or assigns (collectively, "City's Affiliates") shall be personally responsible or liable for any representation, warranty, covenant, undertaking or agreement contained in the Lease, and the sole right and remedy of Tenant or any subsequent sublessee or assignee shall be against the City's interest in the Premises. Neither Tenant nor any subsequent sublessee or assignee shall seek to obtain any judgment imposing personal liability against the City, City's Affiliates, or either of their successors or assigns, nor execute upon any judgment or place any lien against any property other than the City's interest in the Premises.

H. **Force Majeure.** In the event the City or Tenant is delayed, hindered, or prevented from performing any act or thing required hereunder by reason of strikes, lockouts, labor troubles, casualties, failure or lack of utilities, governmental laws or regulations, riots, insurrection, war, acts of God, or other causes beyond the reasonable control of the City or Tenant, neither party shall be liable for the delay, and the period for the performance by either party shall be extended for a period equivalent to the period of such delay. The foregoing shall be inapplicable to the payment of Rent by Tenant. In the event that such period of delay exceeds six (6) months, either party may terminate this Lease without penalty or default by sending the other party written notice of termination.

I. **Contract Review.** The City and Tenant acknowledge that they have thoroughly read this Lease including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. The City and Tenant further acknowledge that this Lease is the result of negotiations between them and that this Lease shall not be construed against either party hereto by reason of that party's preparation of all or part of this Lease.

J. **Notices.** Any notice from one party to the other must be in writing and shall be deemed duly given three days after deposit in the United States Mail if mailed by registered or certified mail, return receipt requested, or upon receipt or refusal to accept if personally delivered or deposited with a national overnight deliver courier who obtains written confirmation of delivery, addressed to the other party at the address set below, or such other address as either party may designate in writing. The parties shall be responsible for notifying each other of any change of address. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent.

If and when included within the term "Tenant" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange amongst themselves and specify some individual at some specific address for the receipt of notices and payments to Tenant. All parties included with terms "City" and "Tenant" respectively, shall be bound by notices and payments given in accordance with the provisions of this Section to the same effects as if each had received such notice or payment.

Notice to Tenant: CLNKids
Attn: Executive Director
1500 Walter SE
Albuquerque, NM 87102
Telephone: (505) 843-6899

Notice to City: City of Albuquerque
One Civic Plaza, 11th Floor
Attn: Chief Administrative Officer
P.O. Box 1293
Albuquerque, New Mexico 87103

And

Real Property Division Manager
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87103

M. **Estoppel Certificates.** Tenant shall at any time within ten (10) days after written request from the City execute, acknowledge and deliver to the City a statement in writing: (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any; (b) confirming the commencement and expiration dates of the term; (c) confirming the amount of the Security Deposit held by the City; (d) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of the City hereunder, or specifying such defaults if any are claimed; and (e)

confirming such other matters as the City may reasonably request. A prospective purchaser or encumbrancer of the Premises or the Property may conclusively rely upon any such statement. If Tenant fails to respond within the required period, Tenant shall conclusively be deemed to have certified, confirmed, and acknowledged all matters requested by the City. If the City desires to finance or refinance the Property, Tenant hereby agrees to deliver to any lender designated by the City such financial statements of Tenant and any guarantors named in this Lease as may be reasonably required by such lender. Such statements shall include the past three (3) years' financial statements of Tenant and any guarantors. All such financial statements shall be received by the City in confidence and shall be used only for the purposes herein set forth.

N. **Binding Effect.** Once this Lease is executed, the covenants, terms and conditions of this Lease will be binding upon and inure to the benefit of the parties, their successors, assigns, subtenants and subleases. This lease is not final or binding until approved by City Council and signed by the City's Chief Administrative Officer or her designee.

O. Entire Agreement and Modification.

1. Entire Agreement. This Lease, including the attached Exhibits, constitutes the full and final agreement of the parties and incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this written Lease. All prior negotiations and agreements are merged into this Lease. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Lease.
2. Modification. No subsequent agreement may modify this Lease unless it is in writing and signed by the parties or their authorized agents. This Lease represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto.

P. **Further Actions.** At any time and from time to time, each party agrees, without further consideration, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the purposes of this Lease.

Q. **Severability.** In the event any covenant, condition or provision herein is held to be void, voidable, invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition, or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable, or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions, and provision of this Lease shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City or Tenant in its respective rights and obligations contain in the valid covenants, conditions or provisions of this Lease.

R. **Authorization.** If Tenant executes this Lease as a corporation or partnership, then Tenant and the person(s) executing this Lease on behalf of Tenant, represent and warrant that such entity is duly qualified to do business in the State of New Mexico and that the individuals executing this Lease on Tenant's behalf are duly authorized to so execute and deliver this Lease on Tenant's behalf. The City represents and warrants that it is the fee simple owner of the Premises, and that it has all requisite authority and approval to enter into this Lease.

S. **Joint and Several Liability.** In the event that more than one person or entity executes the Lease as Tenant, all such persons and entities shall be jointly and severally liable for all of Tenant's obligations hereunder.

T. **Headings and Captions.** Captions of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

U. **Attorney's Fees.** If either party to this Lease institutes any action or proceeding in court to enforce any provision hereof, for damage by reason of an alleged breach of any provision of this Lease, for a declaration of such party's rights or obligations hereunder, or for any other judicial remedy, each party shall be responsible for its own attorney's fees (including the reasonable fees and disbursements and charges of internal legal counsel) and litigation expenses, including, but not limited to expert witness fees, and service of process fees.

V. **Governing Law.** This Lease shall be governed by, construed, and enforced in accordance with the laws of the United States of America, the State of New Mexico, and the ordinances, rules, and regulations of the City of Albuquerque, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New Mexico or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Mexico or the United States of America.

W. **Forum Selection.** Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Lease shall only be brought in the Second Judicial District Court located in Bernalillo County, New Mexico Albuquerque, New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of said court. The provisions of this Section shall survive the termination of this Lease.

X. **Final Dates.** If the final date of any deadline falls upon a Saturday, Sunday, or holiday recognized by the U.S. Postal Service, then in such event the time of such deadline shall be extended to the next day that is not a Saturday, Sunday, or holiday recognized by the U. S. Postal Service. Whenever the word "days" is used herein, it shall be considered to mean "calendar days" and not "business days" unless an express statement to the contrary is made.

Y. **Multiple Counterparts.** The Lease may be signed in multiple counterparts or with detachable signature pages, but in either, or both, circumstances shall constitute one instrument, binding upon all parties thereto as if all parties signed the same document.

Z. **Audits and Inspections.** Tenant understands and will abide by all provisions of the Accountability In Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994.

AA. **Public Records.** The parties acknowledge that City is a government entity and subject to the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq., NMSA 1978). Notwithstanding anything contained herein to the contrary, City shall not be responsible for any disclosure of Confidential Information pursuant to the Act or pursuant to the City of Albuquerque's public records act laws, rules, regulations, instructions or other legal requirement.

BB. **Electronic Signatures.** Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The parties agree that this Lease may be electronically signed and that the electronic signatures appearing on the Lease are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

(This space intentionally left blank- Signatures to follow)

IN WITNESS WHEREOF, the parties hereto have signed this Lease as of the date indicated by each signature, and being effective after approval by the City Council and upon the signature of the City's Chief Administrative Officer or authorized designee.

CITY OF ALBUQUERQUE,
A New Mexico municipal corporation

Sarita Nair, Chief Administrative Officer

Date: _____

Recommended & Approved by:

Carol Pierce, Director
Family & Community Services Department

Date: _____

TENANT:
CLNKids,
a New Mexico non-profit corporation

Jeffrey Hoehn, Executive Director

Date: _____

EXHIBIT "A"
The Premises

