

**PHASE ONE LEASE AGREEMENT BY AND BETWEEN THE CITY OF
CHARLOTTESVILLE AND BENNETT'S VILLAGE, INC.**

THIS GROUND LEASE executed in PHASES (hereafter the "**Phase Lease #_____One (1)_____**") and is entered into this ___first _____ day of __April_____, by the CITY OF CHARLOTTESVILLE (hereafter the "City") and BENNETT'S VILLAGE, INC., a Virginia non-stock corporation (sometimes referred to herein as the "Operator," "Lessee," "BV," or "Bennett's Village") authorized to do business in the Commonwealth of Virginia (hereafter "BV or Lessee") (the City and the Operator are sometimes individually referred to herein as a "party" and sometimes jointly referred to herein as the "parties.")

1. **Leased Property:** The City, as the title holder of the subject property, in consideration of the rents and covenants to be paid and performed by BV, leases to the Lessee and the Lessee leases a portion of the property commonly known as Pen Park in the City of Charlottesville, being within the area described on **Exhibit A**, attached hereto and incorporated herein by reference, (hereafter the "Leased Property").

Effective on the date the City issues to BV a written Notice to Proceed with construction/ installation of each phase of the Project ("Phase Commencement Date") which Notice to Proceed will not be unreasonably withheld, delayed, modified or conditioned, BV, as lessee shall have the right of use and possession of the premises described within **Exhibit A** to this Agreement for the term of the this phase lease, or until the date on which the City has accepted the completed work within Phase 1, whichever first occurs ("Expiration Date").

The parties further acknowledge and agree that, before and after the Notice to Proceed, BV, its agents, contractors and employees may enter upon the Property (including permitted ingress and egress through the Property as directed by the City) and perform all inspections, examinations, investigations, tests and undertakings with respect to the Leased Property that BV deems appropriate to confirm the suitability of the Leased Property for the construction and operation of the current phase project.

2. **Rent:** Lessee shall pay to the City nominal rent at the rate of \$1.00 per year, the receipt of which is hereby acknowledged.

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3. **Title to Leased Property:** The City represents and warrants to the Lessee that it has the power and authority to execute this Lease and to carry out and perform all covenants to be performed by the City under this Lease.

4. **Condition of Leased Property and Lessee's Right of Entry:** The Leased Property is currently used as active and passive public recreational areas under the supervision of the City Department of Parks and Recreation. The City makes no representation or warranty as to the condition or suitability of the Leased Property for the intended purpose of this Lease prior to or at the time of the execution of this Phase Lease #____1_____. Lessee accepts the Leased Property "as is" on the effective date hereof. Lessee further accepts the Leased Premises in "as is" condition, subject to all existing utilities and all easements of record.

Lessee shall have the right to enter onto the Leased Property for the purpose of conducting, at Lessee's own risk, cost and expense, surveys, soil borings, engineering studies and other similar examinations necessary to determine the suitability of the Leased Property for the Lessee's intended use. Lessee shall provide reasonable notice to the City Department of Parks and Recreation prior to entering the property and shall exercise this right of entry at all times so as not to unreasonably interfere with the normal operation of Pen Park. If Lessee determines, as a result of its studies, that the Leased Property is not suitable for its intended use, Lessee may terminate this Lease prior to the Commencement Date, and neither party shall have any further rights or obligations hereunder. In the event of such termination, Lessee shall, at its own expense, restore the Leased Property to the condition in which it existed prior to any changes made during its studies. Rights, duties and obligations, if any, of indemnity or insurance shall be as provided in the Amended Agreement.

5. **Term and Termination:** The initial term of this Lease shall be for a period of two (2) years, which shall begin on the date specified in the notice from Lessee to the City required below (the "Commencement Date") and continuing thereafter through the _first____ day of April _____, 2024_____. If a Phase is commenced and not completed during the Initial Term, this Phase Lease shall be automatically extended for an additional two (2) year term according to the same terms and conditions. Each subsequent Phase Lease shall have an Initial Term of two (2) years with the same right to a two (2) year extension. The parties acknowledge and agree that any Phase Lease may be terminated by Lessor, or Lessee pursuant to a Phase Lease Termination Notice as provided in the Amended Agreement or as otherwise provided herein or in the Amended Agreement.

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6. **Use:** Subject to the Lessee's compliance with all applicable local, state and federal laws and regulations, the City hereby grants permission to the Lessee to occupy the Leased Property for the purposes of constructing a recreational area including the design, development, and future operation of the Play Space and ancillary facilities for the Project, with such amenities as are provided for in the Amended Agreement.

7. **Purpose:** Unless otherwise agreed by the parties, the use of the Play Space constructed shall be primarily for the benefit of residents of the City of Charlottesville and Albemarle County and such other visitors to the City as a recreational facility.

8. **Construction:** Subject to delays beyond the reasonable control of the Lessee, the Lessee shall substantially complete construction of the facilities within Phase 1 and obtain approval and acceptance of the constructed facilities within the Leased Property. All construction shall be conducted as described in the Amended Agreement.

9. **Quiet Enjoyment:** The Lessee, on paying the rent and observing and keeping all covenants, warranties, agreements and conditions of the Lease, shall quietly have and enjoy the Leased Property during the Lease Term and any extension thereto.

10. **Approval of Improvements:**

A. No improvements of any kind shall be made to the Leased Property unless and until Lessee shall have obtained all required local, state and federal governmental approvals and permits, and all such improvements shall be undertaken and constructed in strict compliance with all applicable City, state and federal rules, regulations and laws; provided, however, that the City shall waive all filing fees for the City of Charlottesville and otherwise provide Bennett's Village with all waivers from fees and taxes as are accorded to entities recognized as tax-exempt under Section 501(c)(3) of the Internal Code of 1986, as amended.

B. The City and the Lessee acknowledge that the Lessee's intended use of the Leased Property may require compliance with state and local laws including but not limited to zoning, special use permit or site plan approval for all or any portion of the Leased Property. The City Department of Parks and Recreation's consent shall not be construed as a representation that the City will grant or approve any application submitted by Lessee, which is otherwise within the City's discretion to approve or deny.

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C. Lessee shall give written notice to the City’s Director of Parks and Recreation in advance of using any pesticides, cleaners, fertilizers, or other similar products within the Leased Premises, and upon receipt of such notice the Director will promptly advise Lessee of City policies regarding the use of such products on or within City-owned property. Upon being notified of City policies, Lessee shall comply with the requirements of the policies.

D. Except as otherwise provided herein or in the Amended Agreement, Lessee shall not commence any land disturbing or construction activity, unless and until all required governmental permits and approvals for such activity(ies) have been obtained from the Commonwealth of Virginia and the governmental authorities of the City of Charlottesville, as may be required. Unless otherwise agreed upon by both parties, Lessee shall be responsible for all costs and expenses associated with obtaining such approvals; provided, however, that the City shall waive all filing fees for the City of Charlottesville and otherwise provide Bennett's Village with all waivers from fees and taxes as are accorded to entities recognized as tax-exempt under Section 501(c)(3) of the Internal Code of 1986, as amended. Such permits and approvals may include but are not necessarily limited to rezoning or special use permit, final site plans, erosion and sediment control plans, stormwater management plans, a state construction general permit, permits required by the Uniform Statewide Building Code or the Virginia State Fire Prevention Code, and any amendments or modifications of such permits and approvals. As evidenced by the signature of the City Manager to this Lease, BV is hereby authorized to submit any required permit application(s) to any governmental authority relative to any area(s) of land owned by the City and involving the Project.

E. As provided in the Amended Agreement, the Lessee shall, at its own expense, engage licensed professionals as necessary to conduct all required site evaluations and surveys, to include, but not necessarily limited to, public records, easements, utility locations, plat surveys, existing conditions surveys, soils investigations and environmental investigations. Construction Plans shall include, as necessary and/or required by relevant City, State or Federal codes existing at the time of plan submittals, the location and materials for buildings, structures and equipment to be constructed or installed, in specific locations, and the manner in which the development site will be connected to and accessed from other sections of Pen Park (a/k/a “site development plans”); and, as applicable, erosion and sediment control plans; stormwater management plans; water, sewer and electric utility plans (both temporary, to serve construction activities, and permanent); and necessary wildlife conflict resolution strategies. Final

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Construction Plans shall include measures by which BV and its contractors shall minimize disruption to Pen Park and the uses and activities occurring within the park outside of the Leased Premises. Measures may include, but shall not necessarily be limited to, restricted hours of construction or land-disturbing activity; alternative pedestrian access in full compliance with all ADA requirements, parking, or traffic arrangements; sound dampening measures; or tree protection measures. All Construction Plans must be completed consistent with the approval process described in the Amended Agreement.

F. The City agrees to grant to Lessee standard easements to and from the Leased Property for any work to be completed. Lessee shall have a right of access to and from the Leased Property over existing Pen Park ingresses and egresses.

G. The Lessee shall have the right to place signs within the Leased Property and at such other location at Pen Park as may be permitted by the City Parks and Recreation Department.

11. **Existing Improvements within the Leased Property:** If applicable, Lessee shall, at its own expense, be responsible for the removal and disposal of any existing structures or improvements on the Leased Property at the time of the execution of this Lease. Lessee shall be under no obligation to replace any improvements removed pursuant to this provision. In lieu of disposal by the Lessee, the City may, in its discretion, retain ownership of any materials, equipment or structures removed by the Lessee. In the event the City elects to retain ownership, any extra cost for removal over and above demolition costs shall be borne by the City.

12. **Reservation of Easements:** The City reserves to itself, while this Lease is in effect, easements over and for all existing utilities within the Leased Property, including but not limited to water, sanitary sewer, storm water sewer, electrical power and gas if applicable. At the option of the City, Lessee shall execute standard deeds of easement granting the City adequate access to any existing utilities within the Leased Property. Any relocation of existing utilities required by construction of the Facility and related improvements shall require the prior approval of the City of Charlottesville, which approval shall not be unreasonably withheld, and shall be accomplished at the sole expense of the Lessee.

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13. **Existing Recreation or Parking Facilities:** All construction shall be performed in a manner so as not to materially reduce or interfere with the City's or the City Parks and Recreation Department's existing recreational or parking amenities located outside of the Leased Property at Pen Park; provided, however, that the Lessee and the City, through its Department of Parks and Recreation, may agree on certain site or use restrictions during the construction period. The City's Director of Parks and Recreation, after consultation with the City Manager, may issue a written directive requiring unreasonably disruptive construction/installation activities to immediately be stopped; thereafter, the period during which such disruptive land disturbing or construction activities are required to be stopped shall not be considered as good cause for any extension(s) of time requested in accordance with this Lease or this Agreement.

14. **Entry Upon Leased Property:** City or its agents may enter upon the Leased Property at all reasonable times to examine their condition and use, so long as that right is exercised during regular business hours in a manner that does not interfere with the Lessee in the conduct of its business within the Leased Premises.

15. **Title, Liens:** Title to the ground shall remain in the name of the City. Title to the Facilities constructed by the Lessee shall be titled in the name of the Lessee, except as otherwise provided herein. The Lessee agrees that the Leased Property shall not be encumbered by any mortgage, lien (mechanic's lien, materialmen's lien or other lien), pledge other encumbrance during the Term of the Lease. If any such lien or notice of lien rights shall be filed with respect to the Leased Property, the Lessee shall immediately take such steps as may be necessary to have such lien released and shall permit no further work to be performed at the Leased Property until such release has been accomplished.

16. **Financial Assurances and Approvals:** Financial assurances and approvals shall be as required and granted as provided in the Amended Agreement.

17. **Maintenance / Operational Expenses:**

A. Upon the date of commencement of construction of the Facility and continuing throughout the Term of the Phase Lease or its termination, whichever first occurs, the Lessee shall, at its own cost and expense, maintain and keep the Leased Property, whether improved or unimproved, in a reasonably clean, attractive condition, and not commit or allow any waste or damage to be committed on or to any portion of the Leased Property. The Lessee

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shall be responsible for all costs associated with the ongoing maintenance, operation and repair of the Leased Property.

B. As part of its maintenance responsibilities Lessee agrees to comply fully with any applicable governmental laws, regulations and ordinances, limiting and regulating the use, occupancy or enjoyment of the Leased Property, as supplemented and modified by duly enacted ordinances of the City of Charlottesville.

18. **Utilities and Services:** The Lessee shall be responsible for and pay all costs and charges for utilities and services, if any, in connection with the Lessee's occupancy of the Leased Property including, but not limited to, permits and connection charges, trash removal and other utilities or services; provided, however, that the City shall waive all filing fees for the City of Charlottesville and otherwise provide Bennett's Village with all waivers from fees and taxes as are accorded to entities recognized as tax-exempt under Section 501(c)(3) of the Internal Code of 1986, as amended. All the foregoing utilities and services shall be instituted and obligated for in the name of the Lessee, and the City shall have no responsibility whatsoever for the furnishing or cost of the same.

19. **Taxes and Assessments:** Real property taxes shall not be imposed against the leasehold interest of Lessee if Lessee is exempt from the payment of real property taxes.

20. [Intentionally Omitted.]

21. **Damage or Destruction of the Leased Property:** The City shall have no responsibility for any damage caused to the Leased Property or any facilities constructed therein. City Employees or agents shall have no responsibility for any damage caused to the Leased Property or any facilities constructed therein except that caused by the gross negligence or willful misconduct of the City's employees and agents. The Lessee agrees that all property of every kind and description kept, stored or placed on the Leased Property shall be at the Lessee's sole risk and hazard and that the City shall not be responsible for any loss or damage to any of such property resulting from fire, explosion, water, steam, gas, electricity, the elements or otherwise, wherever originating.

22. [Intentionally Omitted.]

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23. **Assignment:** The Lessee shall have no right to assign, in any manner or fashion, any of the rights, privileges or interests accruing to it under this Lease to any other individual or entity, without the prior written consent of the City, which consent shall not be unreasonably withheld in the event of a proposed assignment to a successor non-profit charitable organization. In the event of assignment, the Lessee shall remain fully liable and responsible for all the obligations imposed by this Lease unless it is otherwise agreed in writing by the City.

24. **Sublease:** The Lessee may not sublet the Leased Property.

25. **Nondiscrimination:** During the Term of this Lease, the Lessee agrees that it will not discriminate against any person in its membership, programs or employment because of race, religion, color, gender, sexual orientation, national origin, disability, financial circumstances or any other basis prohibited by law.

26. **Drug-Free Workplace:** During Term of this Lease, the Lessee is to provide a drug-free workplace for the Lessee's employees, and to provide notification of this policy to its employees and applicants for employment. For the purposes of this Paragraph, "drug-free workplace" means a workplace where employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the term of this Lease.

27. **Insurance:** The parties acknowledge and agree that BV is a charity qualified as tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and has no employees. It is the intention of the parties that BV will complete the Project through contracts with properly licensed and properly insured contractors. The parties further acknowledge and agree that the Project is unique as it involves no residential or commercial construction and few, if any, utility connections. As a result, the parties shall evaluate the level and type of insurance to be required for each Phase Lease issued under the terms of the Amended Agreement and shall, prior to the execution and delivery of each Phase Lease, mutually agree to such insurance terms that may vary among Phase Leases and may include insurance obligations of BV, its contractors or both. Prior to commencing any construction of the Project, the Lessee, at its sole cost and expense, shall secure and maintain (or cause to be secured and maintained) throughout the Term of each Phase Lease, the following insurance coverage, individual components of which may be waived or amended if agreed to, in writing, by both parties:

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(a) As applicable to BV, its contractors or both, Workers' Compensation insurance, as may be required pursuant to the provisions of Chapter 8 (Section 65.2-800 et seq.) of Title 65.2 of the Code of Virginia, 1950, as amended.

(b) Commercial General Liability Insurance: \$1,000,000.00 general aggregate limit (other than products/completed operations); \$1,000,000.00 aggregate limit products/completed operations; \$1,000,000.00 personal injury and advertising injury limit liability; \$1,000,000.00 each occurrence limit; Builder's Risk Insurance: \$1,000,000.00; Automobile Liability, \$1,000,000.00; \$100,000.00 fire damage limit (any one fire); and \$10,000.00 medical expenses limit (any one person). The required insurance coverages, and the required limits of the insurance may be reviewed by the parties and amended or waived from time to time by mutual agreement; provided, however, that all agreed-upon insurance shall be issued by one or more companies authorized to underwrite and issue insurance in the Commonwealth of Virginia.

(c) Fire and Extended Coverages, providing coverage against loss, damage, or destruction by fire and such other hazards, under policies of insurance commonly referred to and known as "extended coverage."

(d) Each insurance policy required by paragraphs (a)-(c) above, shall be written or endorsed (or caused to be written or endorsed) to preclude the exercise of the right of subrogation against the City and, except for Workers' Compensation Insurance, shall name the City as an additional insured. Each such insurance policy shall be endorsed to include a requirement that, should any of the insurance policies be canceled before the expiration date thereof, the issuing insurance company will mail written notice of such cancellation to the City at least ten (10) days in advance; upon receipt of any notice, verbal or written, that the said insurance is subject to cancellation, the Lessee shall immediately (within five (5) business days) notify the City. In the event Lessee fails to comply with the requirements of this section, the City shall have the right to require the Lessee to suspend use of the Leased Premises until such time as the requirements of this paragraph are met.

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(e) The Lessee shall provide the City with one or more certificate(s) of insurance confirming the insurance required by this Lease Agreement. The Workers' Compensation Insurance and Commercial General Liability Insurance certification shall be provided to the City by the Lessee upon the Commencement Date of this Lease, then again (without demand) on or before the expiration date of any policy or upon request by the City, on each anniversary of the Commencement Date of this Lease. The Fire and Extended Coverages certificate shall be provided to the City by the Lessee prior to the commencement of construction of Phase 1, then again (without demand) on or before the expiration date of any policy and, upon request by the City, on each subsequent anniversary of the Commencement Date of this Lease. Upon demand by the City, Lessee shall furnish (or cause to be furnished) copies of the Lessee's insurance policies, together with the required endorsements as provided herein.

27. **Annual Report; Financial Records:** These requirements are as provided in the Amended Agreement.

28. **Default:** Each of the following occurrences relative to the Lessee shall constitute default:

- (a) Failure or refusal by the Lessee to make the timely payment of rent or other charges due under this Lease when the same shall become due and payable, provided the City has given the Lessee fifteen (15) days written notice of the same. Notwithstanding the foregoing, the City acknowledges receipt of payment of all rent.
- (b) Unless otherwise dismissed within sixty (60) days of any of the following to occur, the filing or execution or occurrence of an insolvency proceeding by or against the Lessee; or an assignment for the benefit of creditors; or a petition or other proceeding by or against the Lessee for the appointment of a trustee or a receiver or for the liquidation of any of the Lessee's property; or a proceeding by any governmental authority for the dissolution or liquidation of the Lessee.
- (c) Failure by the Lessee in the performance or compliance with any of the terms, covenants, or conditions provided in this Lease, which failure continues uncured for a period of six (6) months after written notice from the City to the Lessee specifying

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the items in default; provided, however, if such failure is of a type that is not reasonably capable of being cured within six (6) months, such six (6) month period shall be extended for so long as the Lessee is making diligent efforts to cure such default; or

- (d) Any change in the operation, charter, or ownership of the Lessee (including, but not limited to, loss of Internal Revenue Code 501 (c)(3) tax-exempt status) incompatible with the purpose of this Lease, or a change, incompatible with the purpose of this Lease, in the nature of the intention to provide a Play Space as agreed upon in the Amended Agreement between the City and BV.

In the event of default as defined in this Paragraph, title to any facilities or improvements in the leased property shall revert automatically to the City, and the Lessee shall surrender such improvements in accordance with the Amended Agreement between the City and BV and execute all documents deemed necessary by the City to convey, by Gift Deed as described in the Amended Agreement, title to that portion of the Project completed by Lessee.

29. [Intentionally Omitted.]

30. **Surrender:** Upon termination of the Lease, the Lessee shall quit and surrender to the City the Leased Property and the Project by Gift Deed as provided in the Amended Agreement.

32. **Failure to Construct Facility or Abandonment of Use:** These requirements are as provided in the Amended Agreement.

33. **Right of Entry:** At any time during the Term of the Lease, the City shall have the right, upon prior notice to the Lessee (except in the event of an emergency), to enter the Leased Property at all reasonable times for the purposes of inspecting the Leased Property and the Facilities to ensure compliance with the terms of this Lease. Notwithstanding the City's right to inspect the Leased Property, the City shall have no obligation to inspect the same. The City's failure to detect any violation or to notify the Lessee of any violation shall not relieve the Lessee of obligations under the terms of this Lease.

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34. **Waiver:** Except as provided in the Amended Agreement, no failure on the part of the City to enforce any of the terms or conditions set forth in this Lease shall be construed as or deemed to be a waiver of the right to enforce such terms or conditions. No waiver by the City of any default or failure to perform by Lessee shall be construed as or deemed to be a waiver of any other and/or subsequent default or failure to perform. Except as otherwise provided in this Lease or the Amended Agreement, the acceptance or payment of any rentals, fees and/or charges and/or the performance of all or any part of this Lease, for or during any period(s) following a default or failure to perform by the Lessee, shall not be construed as or deemed to be a waiver by the City of any rights hereunder.

35. **Identity of Interest:** The execution of this Lease or the performance of any act or acts pursuant to the provisions hereof shall not be deemed to have the effect of creating between the Lessee and the City any relationship of principal and agent, partnership or relationship other than that of lessee and lessor.

36. **Notice:** Notice shall be provided consistent with the notice requirements under the Amended Agreement.

37. **Modification or Amendment:** Any other modification or amendment of the Lease (other than for an extension or enlargement of the time or territory of the Phase Lease, shall be binding only if approved by the Lessee and the City and evidenced in a writing signed by each.

38. **Time of Essence:** Unless specifically provided herein or in the Amended Agreement to the contrary, in all instances where a party is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood and stipulated that time is of the essence.

39. **Cooperation:** The City and the Lessee agree to provide any further documentation or cooperate in any way necessary to carry out the basic intent of this Lease consistent with the Amended Agreement.

40. **Persons Bound:** The covenants, agreements, terms, provisions and conditions of this Lease shall bind and inure to the benefit the respective parties hereto and to their representatives, successors and (where permitted by this Lease) their assigns.

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41. **Entire Agreement:** This Lease, together with the exhibits, if any, attached, and the Amended Agreement contains the entire agreement between the City and the Lessee.

42. **Recording:** Any party shall have the right, at its sole cost and expense, to prepare and record a Memorandum of Lease or short form of the lease in recordable form but excluding detailed provisions of this Lease.

43. **Headings:** The section headings are for convenience only and shall not be used to explain, modify, simplify, limit, define or aid in determining the meaning or content.

44. **Interpretation:** In the event of any conflict, discrepancy or inconsistency between this document and any other documents which have been incorporated into this document by reference or made exhibits or attachments hereto, then the provisions set forth within the body of this document shall govern the parties' intent.

45. **Severability:** If any term, provision or condition of this Lease, or the application thereof to any person or circumstances, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, and the application of any term, provision or condition contained herein to any person or circumstances other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

46. **Governing Law:** This Lease shall be governed, construed and enforced by and in accordance with the laws of the Commonwealth of Virginia. Any suit or controversy arising under this Lease shall be litigated in the General District or Circuit Court of the City of Charlottesville, Virginia.

We agree to be bound by this Lease and its terms and conditions.

BV:

By: _____

Title: _____

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CITY

By: _____

Title: City Manager

Approved As to Form: _____

City Attorney or designee

Funds Are Available: _____

Director of Finance or designee

EXHIBT A