

**PROPERTY USE AGREEMENT
BY AND AMONG
THE CITY OF MILPITAS
AND
SJB CHILD DEVELOPMENT CENTERS**

THIS Agreement (this “Agreement”), dated as of August 20, 2013 (the “**Effective Date**”), is entered into by and among the City of Milpitas, a municipal corporation of the State of California (hereinafter “**City**” or “**City**”) and SJB Child Development Centers, a California 501(c)(3) non-profit corporation (hereinafter “**Tenant**”). Each City and Tenant are hereinafter referred to as a “**Party**” and collectively referred to as the “**Parties.**”

RECITALS

A. WHEREAS, FIRST 5 Santa Clara County (hereinafter “**First 5**”) was established in 1998 with the passage of California Proposition 10 and funded by a tax on tobacco to provide programs that focus on a child’s early development in the areas of health, education, social/emotional development and safety during the first five years of a child’s life.

B. WHEREAS, First 5 funds corporations and other not for profit organizations who provide free school readiness, health and oral language development information to families with children prenatal through age five, seeking to increase the capacity of families and communities to ensure children are healthy and prepared to enter school.

C. WHEREAS, each Tenant are, and remain, existing grantees of First 5.

D. WHEREAS, First 5 seeks to establish Family Resource Centers located in the City of Milpitas and Santa Clara County, operated by its grantees, SJB Child Development and The Health Trust, who will use the Family Resource Center to offer free, safe, high-quality, hands-on learning environments where parents/caregivers can access information, resources and services for children prenatal through age five.

E. WHEREAS, City is the owner of fee title to the real property located at 1325 East Calaveras Boulevard, as more particularly described in Exhibit A and commonly called the “Milpitas Sports Center”, attached hereto and incorporated herein by this reference (the “**Property**”).

F. WHEREAS, Tenant desires to lease a portion of the Property commonly called the “Teen Center” as more particularly described in Exhibit B, attached hereto and incorporated herein by this reference (the “**Premises**”) for the purpose of providing free school readiness, health and oral language development information to families, and seek to increase the capacity of families to ensure children are healthy and prepared to enter school.

G. WHEREAS, the California State Legislature enacted Assembly Bill 26 (hereinafter “**AB 26**”) to dissolve redevelopment agencies formed under the Community Redevelopment

Law (Health and Safety Code section 33000 et seq.), as amended by Assembly Bill 1484, Statutes of 2012, enacted June 27, 2012 (the “Dissolution Law”).

H. WHEREAS, fee title to the Property, including the Premises, was transferred from the Milpitas Redevelopment Agency (“Agency”) to the City in 2011 and the State Controller has notified the City that it believes the asset transfer was invalid and the Property, along with other properties transferred from the Agency to the City, should be returned to the Successor Agency to the Milpitas Redevelopment Agency (“Successor Agency”).

I. WHEREAS, there is a dispute between the City, Successor Agency, Santa Clara County and State Controller relating to previous assets transferred between the Agency and City and the parties are currently involved in two separate litigations (hereinafter collectively “**Litigation**”).

J. WHEREAS, Tenant acknowledges the existence of the pending dispute and Litigation surrounding the Property, including the Premises, and that the City, may have to terminate this Agreement prior to the expiration of the term as further provided herein.

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Tenant hereby agree as follows.

ARTICLE I

DEMISE OF PREMISES

1.1. Creation of Agreement. City hereby leases to Tenant, and Tenant hereby leases from City, the Premises for the Term (as defined in Section 2.1 below) subject to the terms and conditions set forth in this Agreement.

1.2. Condition of Title. City leases the Premises to Tenant subject to all easements, covenants, conditions, restrictions and other title matters of record or not of record existing as of the Effective Date, and all matters that would be apparent from an inspection of the Premises on the Effective Date.

1.3. Condition of Premises. Tenant will lease the Premises in its “AS IS” condition. Tenant acknowledges that City makes no representations or warranties expressed or implied regarding the condition of the Property or Premises or the fitness or suitability thereof for the Tenant’s purposes, including but not limited to, the condition of the soil, its geology, topography, the presence or absence of fill, the presence or absence of Hazardous Materials, drainage, flood zone designation, or compliance with Hazardous Materials Laws, and no patent or latent defect or deficiency in the condition of the Property or Premises shall affect the rights of the Tenant or the City hereunder. Tenant shall rely solely on its own independent investigation and judgment as to all matters relating to the Property and Premises. Tenant acknowledges and agrees that prior to the Effective Date it has made such investigations of the Property and Premises, including without limitation such inquiries of governmental agencies, soils testing, tests and inspections as Tenant deemed necessary to determine the condition of the Property and Premises,

and has approved all such characteristics and conditions and shall lease the Premises in its condition as of the Effective Date “AS-IS” “WHERE-IS” AND WITH ALL FAULTS. Tenant further acknowledges that the City has made available all data and information on the Property available to the Tenant, but without warranty or representation by the City as to the completeness, correctness or validity of such data and information.

1.4 Incorporation of Recitals. The Parties hereby acknowledge the truth of the Recitals set forth above, and such Recitals are hereby incorporated into this Agreement.

ARTICLE II TERM OF AGREEMENT

2.1 Term. The term of this Agreement (the “**Term**”) commences on the Effective Date and expires on June 30, 2015, subject to earlier termination by City as provided below. The expiration or sooner termination of the Term shall be referred to as “**Agreement Termination.**”

2.2 Surrender. Upon the expiration or earlier termination of this Agreement, or upon the exercise by City’s right to reenter the Premises without terminating this Agreement, Tenant shall surrender the Premises in good condition and repair except for ordinary wear and tear.

ARTICLE III RENT; MONETARY OBLIGATIONS

3.1 Rent. The Parties acknowledge the significant public benefit Tenant will provide to the City of Milpitas and its residents under this Agreement as further explained in the Recitals of this Agreement. In exchange for the significant public benefit, City agrees to allow Tenant to lease the Premises, subject to the terms and conditions herein, for the sum of One Thousand Three Hundred Sixty Seven Dollars and Twenty-Five Cents (\$1,361.25) (“**Rent**”) per month. Payments shall be made to City on or before the first day of each month during the Term. The first month shall be prorated and payment is due upon execution of this Agreement.

3.2 Shared Cost. In addition to Rent, Tenant shall pay all costs and expenses relating to the Premises of any kind or nature whatsoever. Such costs and expenses shall include, without limitation, all amounts attributable to, paid or incurred in connection with the ownership, operation, repair, restoration, maintenance and management of the Premises; real property taxes; rent taxes; gross receipt taxes (whether assessed against the City or assessed against the Tenant and collected by the City, or both); water and sewer charges; insurance premiums; utilities; refuse disposal; lighting (including outside lighting); fire detection systems including monitoring, maintenance and repair; security; janitorial services; labor; air-conditioning and heating; maintenance and repair costs and service contracts; costs of licenses, permits and inspections; and all other costs and expenses paid or incurred with respect to the Premises. Payments shall be made to City within ten (10) days of the date of invoice submitted to Tenant.

Tenant agrees to pay City the sum of Six Hundred and Fifty Dollars (\$650.00) per month for the following: (i) water, (ii) gas, (iii) electricity, and (iv) refuse disposal. Payment shall be

made to City on or before the first day of each month during the Term. The first month shall be prorated and payment is due upon execution of this Agreement.

ARTICLE IV

TAXES, ASSESSMENTS AND OTHER CHARGES

4.1 Impositions. Throughout the Term, Tenant shall pay prior to delinquency, all real property taxes, possessory interest taxes, license and permit fees, sales, use or occupancy taxes, assessments whether general or special, ordinary or extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever, pertaining to the Premises or part thereof, including, but not limited to (i) any assessment, levy, imposition or charge in lieu of or in substitution for real estate taxes, and (ii) any assessment for public improvements or benefits which is assessed, levied, or imposed upon or which becomes due and payable and a lien upon (a) the Premises or any part thereof or any personal property, equipment or other facility used in the operation thereof, (b) the income received by the Tenant, if any, (c) any use or occupancy of the Premises or part thereof, or (d) this transaction or any document to which the Tenant is a party creating or transferring an estate or interest in the Premises or part thereof. All of the foregoing are hereinafter referred to as “Impositions.”

4.1.1 Installments. If by law any Imposition is payable, or may at the option of the taxpayer be paid in installments (whether or not interest accrues on the unpaid balance of such Imposition), Tenant may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same respectively become due and before any fine or penalty may be added thereto for the nonpayment of any such installment and interest. Any Impositions relating to tax years that are only partially included in the Term of this Agreement will be prorated between the Tenant and the City.

4.1.2 Evidence of Payment. Upon request by City, Tenant shall furnish, in a form satisfactory to City, evidence of payment prior to delinquency of all Impositions payable by Tenant.

4.2 Tenant Duty to File. Tenant shall have the duty of making or filing any declaration, statement or report which may be necessary or advisable in connection with the determination, equalization, reduction or payment of any Imposition which is or which may become payable by Tenant under the provisions of this Article IV, and shall notify City in writing upon making such filing, declaration, statement or report, and City shall not be responsible for the contents of any such declaration, statement or report.

ARTICLE V

ALTERATIONS AND NEW CONSTRUCTION

5.1 Improvements. Subject to all required City review and approvals, City, at its sole cost and expense, may install on the Premises the fixtures, furniture and equipment within the Premises as set forth in the attached Exhibit C for Tenant’s use during the Term of this Agreement.

5.2 Changes and Alterations. During the Term of this Agreement, Tenant shall not make any changes, improvements, repairs, alteration, addition or otherwise to the Premises (collectively, the “**Improvements**”) without the prior written consent of City. Any approved alterations and additions shall be made at the sole cost and expense of the Tenant and shall comply with all of the following:

(a) The change or alteration shall not materially impair the value or structural integrity of the Premises.

(b) The change or alteration shall be for a use which is permitted hereunder.

(c) No change, alteration or addition shall be undertaken until Tenant shall have obtained and paid for, so far as the same may be required from time to time, all required permits from the City of Milpitas, or where otherwise appropriate, and authorizations of any federal, state or local government or departments or subdivisions of any of them, having jurisdiction.

(d) Any change, alteration or addition shall be made in a good and workmanlike manner and in accordance with all applicable permits and all Applicable Laws.

(e) During the period of initial construction of the Improvements or the construction of any change, alteration or addition in, to or of, the Improvements, new construction or any restoration, Tenant shall comply with the insurance requirements set forth in Article VIII, which policy or policies by endorsement thereto, if not then covered, shall also insure any change, alteration or addition or new construction, including all materials and equipment incorporated in, on or about the Improvements or the Property.

(f) Prior to commencement of any construction, change, alteration or repair Tenant shall deliver to City no later than ten (10) business days written notice of the proposed work and a general description of the proposed work. Such work shall not proceed until City has approved in writing:

(i) Tenant’s contractor;

(ii) The amount and coverage of public liability and property damage insurance, with City named as an additional insured;

(iii) Complete and detailed plans and specifications for such work; and

(iv) A schedule for the work.

5.3 No Right to Demolish. Notwithstanding any other provisions of this Article V, Tenant shall have no right to remove or demolish any Improvement, once built, without prior written consent of City.

5.4 Indemnity. Tenant agrees to indemnify, defend and hold City, its officers, employees, agents, and representatives harmless for any work or omission relating or arising from this Section 5 of the Agreement.

ARTICLE VI

USE OF THE PREMISES; UTILITIES; MAINTENANCE

COMPLIANCE WITH LAWS

6.1 Use of Premises

6.1.1 Permitted Uses. It is agreed that the Premises shall be used by Tenant for the sole purpose of providing First 5 funded services directed at improving the quality of life for parents/caregivers consistent with Recital B and Recital D of this Agreement.

6.1.2 Hours of Operation. It is agreed that the use of the Premises are those consistent with normal business hours: Monday through Friday, from 8 a.m. to 5:30 p.m., with occasional evenings and weekends. City will provide Tenant with keys to the Premises and Tenant and its employees, invitees, patrons and others shall have access to the Premises from the outside entrance door marked with an "X" on Exhibit B only.

6.1.3 Parking. Tenant, and its employees, invitees and patrons, will have nonexclusive use, in common with the City and others, of the non-reserved common automobile parking spaces. Tenant agrees to cause its employees, patrons, invitees, and others to park their automobiles in accordance with City's parking rules and regulations as established from time to time.

6.1.4 Signs. Tenant may not install any exterior signs on the Premises without obtaining prior written consent from City or by going through other appropriate permitting channels to obtain City approval.

6.1.5 Prohibited Uses. Tenant shall not use the Premises for or carry on or permit in or upon the Premises, or any part thereof, any offensive, noisy or dangerous trade, business, manufacture or occupation, or any nuisance, or anything against public policy, or interfere with the business of any other tenants or occupants in the Property, or permit any going-out-of-business, auction, liquidation, fire or bankruptcy sale to be held or conducted in and about the Premises. Tenant agrees not to cause, permit or suffer any waste, damage disfigurement or injury to the Premises, to the fixtures or equipment thereon, or to the Common Areas, not to permit or suffer any overloading of the floor of the Premises or other parts of the Property.

6.1.6 Permits. Prior to opening and operating the Premises as provided herein, Tenant shall obtain all required approval(s) from the Milpitas Building Department and Fire Department, including Certificate of Occupancy permit.

6.1.7 Electrical Equipment. Tenant shall not install, operate or maintain in the Premises any electrical equipment which does not bear the Underwriters Laboratory approval, or

which equipment would overload any portion of the electrical system of the Property in City's sole determination.

6.1.8 Nuisance. Tenant shall not do or permit anything to be done in or about the Premises which shall in any way obstruct or interfere with the operation of the Property or Common Area or with the rights of other tenants or occupants of the Property or Common Areas or injure, disturb or annoy other tenants or occupants of the Property of Common Areas.

6.1.9 Access by City. City reserves the right for City and City's Authorized Representatives to enter the Premises at any reasonable time: (a) to inspect the Premises; (b) to supply services to be provided by City to Tenant under this Agreement; (c) to show the Premises to prospective lenders, purchasers or tenants; (d) to alter, improve, maintain or repair the Premises or any portion of the Property; (e) to install, maintain, repair, replace or relocate any pipe, duct, conduit, wire or equipment serving other portions of the Property but located in the ceiling, wall or floor of the Premises; (f) to determine whether Tenant is complying with Tenant's obligations hereunder; (g) to perform any other obligation of Tenant after Tenant's failure to perform same; or (h) upon default by Tenant under this Agreement. If City enters the Premises for the purposes set forth in items (b), (d), (e) or (g) of the preceding sentence, City may erect scaffolding and store tools, materials, and equipment in the Premises when required by the character of the work to be performed.

6.2 Nondiscrimination. Tenant hereby covenants by and for itself and its successors and assigns, and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises nor shall Tenant or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the Premises.

6.3 Utilities. Tenant acknowledges that a separate meter will not be installed to provide gas and electricity to the Premises. City shall not be liable to Tenant in damages or otherwise: (i) if any utility, whether its water, gas, electricity or otherwise, becomes unavailable from any public utility company, public authority or any other person or entity supplying or distributing such utility; or (ii) for any disruption in any utility service caused by the making of any repairs or improvements or by any cause; or (iii) for any disruption of any utilities services whatsoever.

6.4 Maintenance, Repairs and Inspection of the Premises.

6.4.1 Tenant's Maintenance and Repairs Obligations. At Tenant's sole cost and expense throughout the Term, Tenant shall operate, maintain, repair and manage the Premises in good order and repair and in neat, clean sanitary and safe condition in compliance with all local,

state and federal laws, statutes and regulations relating to the use, occupancy or operation of the Premises. Tenant shall ensure that the Premises is served by adequate lighting in accordance with applicable building codes. Tenant shall promptly, at the Tenant's own cost and expense, make all necessary repairs, including replacements or renewals when necessary, and all such repairs shall be at least equal in quality to the original work, reasonable wear and tear accepted. Tenant shall keep and maintain all portions of the Premises in a clean and orderly condition, free of accumulation of dirt, rubbish, and graffiti. All repairs shall be completed by contractors approved by City, subject to all City review and prior approval. Any replacements required of Tenant shall be made with equipment and/or materials equal to the specification and quality of the original as approved by City. Tenant's failure to maintain the Premises in accordance with this Agreement shall, in City's discretion, be grounds for termination of this Agreement pursuant to Article XII.

6.4.2. City's Maintenance and Repairs Obligations. City will maintain: a) roofs (excluding interior ceilings), foundations, and exterior walls at the Premises (excluding all doors, plate glass, storefronts, display and other windows) and (b) plumbing, pipes and conduits. Tenant shall reimburse City within ten (10) days of receipt of an invoice for all costs and expenses incurred by City which are required to make any repair to the Premises in connection with or resulting from (i) any alteration or modification to the Premises performed by, for or because of Tenant or to special equipment or systems installed by, for or because of Tenant, (ii) the installation, use or operation of Tenant's property, fixtures and equipment, (iii) the moving of Tenant's property into or out of the Premises or in and about the Premises, (iv) Tenant's use or occupancy of the Premises in violation of this Agreement or in a manner not contemplated by the parties at the time of execution of this Agreement (e.g., subsequent installment of special use rooms), or (v) the acts or omissions of Tenant or Tenant's invitees, subtenants, and/or licensees, all of which shall be solely Tenant's obligation.

6.4.3 Common Area Maintenance. The Parties agree that maintenance of the landscaping, pedestrian walkway, refuse collection area serving the Property, and abutting public sidewalks (collectively, the "Common Area") will be responsibility of City.

6.4.4 Inspection. At any time during the Term during normal business hours, City may conduct interior inspections of the Premises to confirm that it is being properly maintained as required by this Agreement. Following its inspection, City may deliver to the Tenant written notification of any portions of the Premises which the City has determined are not being properly maintained, and Tenant shall promptly prepare and deliver to City the Tenant's proposed plan for remedying the indicated deficiencies. Tenant's failure to deliver a remedial plan and to complete remedial work within a reasonable time as determined by City in its discretion shall be a default under this Agreement. City's failure to deliver, following any City's inspection, any notice of deficiency to Tenant, shall not be a waiver of any default by Tenant under this Article. Tenant shall defend, indemnify and hold the Indemnitees, defined below, harmless from and against any and all Claims arising out of the Tenant's failure to fully and timely fulfill its obligations to maintain and repair the Premises as required hereunder.

6.5 City's Right to Perform Tenant Obligations. If Tenant fails to perform its obligations to maintain the Premises in accordance with the standards set forth in this

Agreement, the City shall have the right, but not the obligation, to perform such work upon delivery of written notice to the Tenant, and the Tenant shall reimburse the City for all expenditures the City incurs in connection with such work. City's election to undertake such obligation shall not operate as a waiver of any other right or remedy City may have pursuant to this Agreement.

6.6 City Not Obligated to Perform Repairs. Notwithstanding any contrary provision in this Agreement, City shall not be obligated to make any repairs, alterations, additions, improvements or betterments to the Premises caused by Tenant during the Term of this Agreement nor shall City be obligated to maintain or operate the Premises.

6.7 Compliance with Laws. Tenant, at its sole cost and expense, shall comply with all applicable state and federal laws and regulations, including without limitation, all applicable state and federal labor laws and standards, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., California Government Code Section 4450, et seq., California Government Code Section 11135, et seq., and the Unruh Civil Rights Act, California Civil Code Section 51, et seq. Tenant shall comply with all City ordinances and regulations relating to noise, business hours, pertaining to the use, operation, and management of the Premises. (All of the foregoing state, federal and local laws, regulations and ordinances are referred in this Agreement as the "Applicable Laws.") Tenant shall not use the Premises for any unlawful purpose or perform, permit or suffer any act of omission or commission upon or about the Property or the Premises which would result in a nuisance or a violation of law. Tenant shall not permit any permittees, licensees, guests or invitees to use the Property or Premises for any unlawful purpose or perform, permit or suffer any act of omission or commission upon or about the Property or the Premises which would result in a nuisance or a violation of law.

ARTICLE VII

ENVIRONMENTAL MATTERS

7.1 Tenant's Covenants. Tenant hereby covenants and agrees that throughout the Term:

(a) The Premises, and the use and operation thereof, shall be in compliance with all Hazardous Materials Laws, and Tenant shall not cause or permit the Premises or any portion thereof to be in violation of any Hazardous Materials Laws.

(b) Tenant shall not permit the Property or Premises or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials nor shall Tenant permit the presence or release of Hazardous Materials in, on, under, about or from the Property or Premises.

(c) Upon receiving knowledge of the same, Tenant shall immediately advise the City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Tenant, the Premises or the Property pursuant to any applicable Hazardous Materials Laws; (ii) any and all complaints, claims, citations,

demands, inquiries, reports, or notices made or threatened by any third party against the Tenant, the Premises or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; (iii) the presence or release of any Hazardous Materials in, on, under, about or from the Premises or the Property; or (iv) Tenant's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in connection therewith, that may in any way affect the Premises or Property pursuant to any Hazardous Materials Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as "Hazardous Materials Claims." City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim, and to have its reasonable attorney's fees in connection therewith paid by Tenant.

(d) Without City's prior written consent, Tenant shall not take any remedial action in response to the presence of any Hazardous Materials in, on, under, or about the Premises or the Property (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the City agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise with respect to any Hazardous Materials Claim.

(e) If the presence of any Hazardous Material on the Premises or the Property results in any contamination of the Property in violation of Hazardous Materials Laws, except to the extent such contamination is caused directly by City, Tenant shall promptly take all actions at its sole expense as are necessary to remediate the Premises or Property as required by law; provided that the City's approval of such actions shall first be obtained. All costs and expenses of any Remedial Work shall be paid by Tenant, it being understood that City shall incur no cost, expense or liability in connection with any Remedial Work. City shall have the right, but no obligation, to join and participate in, as a party if it so elects at the City's cost, any legal proceedings or actions initiated in connection with any Hazardous Material Claims. For purposes of this Agreement, "Remedial Work" means all investigation, testing, analysis, monitoring, restoration, abatement, detoxification, containment, handling, treatment, removal, storage, decontamination, clean-up, transport, disposal or other ameliorative work or response action required by (i) any Hazardous Materials Laws, (ii) any order or request of any federal, state or local governmental City, or (iii) any judgment, consent decree, settlement or compromise with respect to any and all enforcement, clean-up, removal, remedial or other governmental or regulatory actions or agreements or orders threatened, instituted, or completed pursuant to any Hazardous Materials Laws or any actions, proceedings or claims by such entities or third parties relating to or arising out of the breach of any Hazardous Materials Laws or the presence or release of any Hazardous Material in, on, under or from the Premises or the Property.

7.2 Release of Claims. Tenant hereby waives, release and discharges forever the Indemnitees from all present and future Claims the Tenant may have arising directly or indirectly from the presence or alleged presence of Hazardous Materials on, under, in or about the Property or Premises.

Tenant is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides:

A GENERAL REAGREEMENT DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE REAGREEMENT, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

As such relates to this Section 7.2, Tenant hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

Tenant Initials

7.3 Environmental Indemnity. Tenant shall indemnify, defend (with counsel reasonably acceptable to the City) and hold the Indemnitees harmless from and against all Claims arising during the Term and resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, transport, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from the Property or Premises during the Term, (ii) the failure of the Tenant, the Tenant's employees, agents, contractors, subcontractors, licensees, permittees, or any person acting on behalf of any of the foregoing to comply with Hazardous Materials Laws, or (iii) the breach by the Tenant of any of its covenants contained in this Article VII. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or Premises or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws and shall include, without limitation, any Claims arising in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work ordered by a court or required by any federal, state, or local governmental agency or political subdivision. This Section 7.3 shall survive the expiration or earlier termination of this Agreement.

7.4 Definitions.

7.4.1 Hazardous Materials. As used in this Agreement, "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, agency or governmental body, including any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8(CarpenterPresley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials ReAgreement Response Plans and Inventory); (iv) defined as a "hazardous substance" under

Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (42 U.S.C. §6903); (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq., as the foregoing statutes and regulations now exist or may hereafter be amended; or (xii) as otherwise defined by law.

7.4.2 Hazardous Materials Laws. As used in this Agreement “Hazardous Materials Laws” means all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the preceding Section 7.4.1, as any of the foregoing may be amended from time to time.

ARTICLE VIII

INDEMNITY AND INSURANCE

8.1 Indemnity. To the fullest extent allowed by law, Tenant shall indemnify, defend and hold City, its employees, officers, agents, contractors and representatives (“Indemnitees”) harmless from and against any and all Claims arising during the Term and arising from or in connection with any of the following: (i) the operation or management of the Premises, (ii) any work or thing done on or in the Premises, (iii) any condition of any alteration or addition constructed by the Tenant on the Premises, (iv) any breach or default by the Tenant in the performance of any covenant or agreement to be performed by the Tenant pursuant to the terms of this Agreement, (v) any negligence of the Tenant, or any of its agents, contractors, subcontractors, employees, or licensees, (vi) any accident, injury or damage caused to any person occurring during the Term in or on the Property or Premises, and (vii) the furnishing of labor or materials by the Tenant or its contractors, subcontractors, employees, or agents. In the event any such action or proceeding is brought against the City by reason of any such Claim, the Tenant, upon notice from the City, covenants to defend such action or proceeding by counsel reasonably satisfactory to the City. If an insurer under insurance required to be maintained by the Tenant hereunder shall undertake to defend the City under a reservation of rights with respect to ultimate coverage and the City shall deem it necessary to retain independent counsel with respect to such matter, Tenant shall pay the reasonable fees of such counsel. This Section shall survive the expiration or earlier termination of this Agreement.

8.2 Insurance Requirements. Tenant shall procure, at its sole expense, and maintain in full force and effect during the Term, the following insurance naming the City as additional insured and/or loss payee:

8.2.1 Minimum Scope of Insurance: (Check Mark Indicates Required)
Coverage must be at least as broad as:

- (X) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
- (X) Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
- (X) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- () Professional Liability or Errors & Omissions Liability insurance appropriate to the contractor's profession.
- () Architects' and Engineers' coverage is to be endorsed to include contractual liability.

8.2.2 Minimum Limits of Insurance

Tenant shall maintain limits no less than:

- (a) General Liability. (Including operations, products and completed operations as applicable.) **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
- (b) Automobile Liability. \$1,000,000.00 per accident for bodily injury and property damage.
- (c) Workers Compensation Employer's Liability. Statutory compliance: \$1,000,000.00 each accident; \$1,000,000.00 disease-policy limit; \$1,000,000.00 disease-each employee.
- (d) Professional Liability or Errors & Omissions Liability. \$1,000,000.00 each occurrence; \$1,000,000.00 policy aggregate.

8.2.3 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

8.2.4 Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (a) **The City of Milpitas, its officers, officials, employees, and volunteers** are to be covered as insureds with respect to liability arising out of automobiles owned, operated, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Tenant including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an

endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy.

- (b) For any claims related to this operation on the Property or Premises, the **Tenant's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the **Tenant's insurance and shall not contribute with it.**
- (c) The Insurance Company agrees to **waive all rights of subrogation** against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the City. This provision also applies to the Tenant's Workers' Compensation policy.
- (d) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail, return receipt requested, has been given to the City. If Tenant's insurer refuses to provide this endorsement, Tenant shall be responsible for providing written notice to the City that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

8.2.5 Acceptability of Insurers. Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

8.2.6 Verification of Coverage. Tenant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

The Certificate with endorsements and notices shall be mailed to: City of Milpitas, Attention: Carmen Valdez, 455 East Calaveras Boulevard, Milpitas California, 95035-5411.

8.2.7 Subcontractors. Tenants must include all sub-contractors as insureds under its policies or furnish separate certificates and endorsements for each sub-contractor. All coverage for sub-contractors are subject to all of the requirements included in these specifications.

8.2.8 Absence of Insurance. If the Tenant allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Tenant shall cause all operations on the Premises to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered Tenant's delay and shall not be considered to increase cost to the City or increase time in which the Premises shall be Agreementd.

Tenant agrees that if it does not keep the aforesaid insurance in full force and effect, City may immediately terminate this Agreement.

ARTICLE IX

DAMAGE AND DESTRUCTION

9.1 Damage or Destruction. In the event of any damage to or destruction of the Property or Premises during the Term, the City shall elect by written notice delivered to Tenant within sixty (60) days following the date of the occurrence of the damage to either remove the Premises or restore and rebuild the Premises as nearly as possible to their condition immediately prior to such damage or destruction, subject to any restrictions imposed by changes in any Applicable Law. If City does not elect to restore the Premises and the City does not exercise its right to terminate this Agreement within 120 days following the date of the occurrence of the damage, then at the City's option this Agreement shall terminate upon delivery of written notice to the Tenant.

9.2 Notice Required. In the event of material damage to or destruction of the Premises, or any part thereof, the Tenant shall promptly give the City notice of such occurrence and take all actions reasonably required to protect against hazards caused by such damage or destruction. For purposes of this Article IX, damage or destruction shall be deemed to be material if the estimated cost to repair equals or exceeds Five Thousand Dollars (\$5,000).

9.3 City's Right to Terminate. Notwithstanding any contrary provision of this Article IX, the City shall have the option to terminate this Agreement and be relieved of the obligation to restore the Property or Premises where all or substantially all of the Property or Premises are substantially damaged or destroyed.

ARTICLE X

CITY'S RIGHT TO PERFORM TENANT'S COVENANTS

10.1 If Tenant shall at any time fail to pay any Imposition or other charge payable by the Tenant to a third party as required by this Agreement, or to comply with the requirements set forth in Section 8.2 pertaining to insurance, or to make any other payment or perform any other act on its part to be made or performed hereunder within the time permitted by this Agreement, then the City, may (but shall not be required to): (i) pay such Imposition or other charge payable by the Tenant; (ii) pay for and maintain the insurance policies required pursuant to this Agreement, or (iii) make such other payment or perform such other act on the Tenant's part to be made or performed under this Agreement; and the City may enter upon the Premises for such purpose and take all such action thereon as may be reasonably necessary therefore.

ARTICLE XI
ASSIGNMENT

11.1 Assignment and Subletting. Tenant shall not assign, transfer, let or sublet the whole or any portion of the Premises without the prior approval of the City, which City may provide or withhold at its sole discretion.

ARTICLE XII
DEFAULT; REMEDIES; TERMINATION

12.1 Events of Default.

12.1.1 Tenant Event of Default. Tenant shall be in default under this Agreement upon the occurrence of any of the following (“Events of Default”):

(a) Monetary Obligation. Tenant at any time is in default hereunder as to any monetary obligation required by this Agreement;

(b) Insurance. Tenant fails to obtain and maintain any policy of insurance required pursuant to this Agreement;

(c) Abandonment. Tenant abandons or ceases to use the Property or Premises in accordance with Section 1951.3 of the California Civil Code except when prevented by Force Majeure;

(d) Transfer. A voluntary or involuntary Transfer of all or any portion of the Tenant’s interest in this Agreement occurs in violation of the provisions of Article XI;

(e) Bankruptcy. Tenant files a voluntary petition in bankruptcy or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due;

(f) Attachment. A writ of execution or attachment or any similar process is issued or levied against all or any part of the interest of Tenant in the Property or Premises and such execution, attachment or similar process is not reAgreementd, bonded, satisfied, or vacated or stayed within sixty (60) days after its entry or levy, such sixty (60) day period to be extended during any period of a bona fide appeal diligently pursued by Tenant;

(g) Reorganization. A court of competent jurisdiction enters an order, judgment or decree approving a petition filed against the Tenant seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days from the first date of entry thereof, or any trustee receiver or liquidator of the Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof is appointed without the consent or acquiescence of the Tenant and such appointment remains unvacated and unstayed for an aggregate of 20 sixty (60) days, such sixty (60) day period to be extended in all cases during any period of a bona fide appeal diligently pursued by Tenant;

(h) Nonmonetary Obligations. Tenant is in default in any other of its promises, covenants or agreements contained in this Agreement.

12.2 City's Remedies. Upon the occurrence of any Event of Default and in addition to any and all other rights or remedies of the City hereunder and/or provided by law, the City shall have the right to terminate this Agreement and/or the Tenant's possessory rights hereunder, in accordance with applicable law to re-enter the Premises and take possession thereof and of any Improvements, and except as otherwise provided in this Agreement, to remove all persons and property therefrom, and to store such property at the Tenant's risk and for the Tenant's account, and the Tenant shall have no further claim thereon or hereunder. The City's re-entry or taking of possession of the Premises shall not be construed as an election on the City's part to terminate this Agreement unless the City shall have given written notice of such intention to the Tenant. In no event shall this Agreement be treated as an asset of the Tenant after any final adjudication in bankruptcy except at the City's option so to treat the same but no trustee, receiver, or liquidator of the Tenant shall have any right to disaffirm this Agreement.

12.2.1 Remedies Upon Abandonment. If the Tenant should default under this Agreement and abandon the Premises, the City may, at its option, enforce all of its rights and remedies under this Agreement, including the right to recover the rent as it becomes due hereunder. Additionally, the City shall be entitled to recover from the Tenant all costs of maintenance and preservation of the Premises, and all costs, including attorneys' and receiver's fees incurred in connection with the appointment of and performance by a receiver to protect the Premises and the City's interest under this Agreement.

12.2.2 City Right to Continue Agreement. In the event of any default under this Agreement by the Tenant (and regardless of whether or not the Tenant has abandoned the Premises), this Agreement will not terminate (except by an exercise of the City's right to terminate under this Section 12.3) unless the City makes such election by the giving of any notice (including, without limitation, any notice preliminary or prerequisite to the bringing of legal proceedings in unlawful detainer) to terminate the Tenant's right to possession. For so long as this Agreement continues in effect, the City may enforce all of the City's rights and remedies under this Agreement, including, without limitation, the right to recover all rent and other monetary payments as they become due hereunder. For the purposes of this Agreement, the following shall not constitute termination of the Tenant's right to possession: (a) acts of

maintenance or preservation or efforts to relet the Premises; or (b) the appointment of a receiver upon initiative of the City to protect the City's interest under this Agreement.

12.2.3 Right to Injunction; Specific Performance. In the event of a default by the Tenant under this Agreement, the City shall have the right to commence an action against the Tenant for damages, injunction and/or specific performance. The Tenant's failure, for any reason, to comply with a court-ordered injunction or order for specific performance shall constitute a breach under this Agreement.

12.3 Remedies Cumulative. No remedy specified in this Article XII shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy provided hereunder or now or hereafter existing at law or in equity or by statute, and every power and remedy provided by this Agreement may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, subject to any limitations set forth in this Agreement.

12.4 No Election of Remedies. The rights given in this Article XII to receive, collect or sue for any rent or rents, moneys or payments, or to enforce the terms, provisions and conditions of this Agreement, or to prevent the breach or nonobservance thereof, or the exercise of any such right or of any other right or remedy hereunder or otherwise granted or arising, shall not in any way affect or impair or toll the right or power of the City upon the conditions and subject to the provisions in this Agreement to terminate the Tenant's right of possession because of any default in or breach of any of the covenants, provisions or conditions of this Agreement beyond the applicable cure period.

12.5 Survival of Obligations. Nothing in this Agreement affects the right of the City under VIII of this Agreement to indemnification for liability arising prior to the termination of this Agreement for personal injuries or property damage, nor shall anything in this Agreement be deemed to affect the right of the City to equitable relief where such relief is appropriate. No expiration or termination of the Term by operation of law, or otherwise, and no repossession of the Improvements or any part thereof will relieve the Tenant of its previously accrued liabilities and obligations hereunder, all of which survive such expiration, termination or repossession.

12.6 Termination. Notwithstanding any other provision in this Agreement, City may terminate this Agreement for any reason whatsoever with thirty (30) calendar days notice to Tenant.

ARTICLE XIII

GENERAL PROVISIONS

13.1 Force Majeure. Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or

failures to act of any public or governmental agency or entity (other than the Parties which shall not excuse delay in performance), or any other cause beyond the affected Party's reasonable control (all of the foregoing "Force Majeure"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

13.2 City's Right to Enter the Premises. The City and its agents may enter the Premises from time to time with reasonable notice, except in the case of emergency in which case no notice shall be required, to inspect the same, to post notices of nonresponsibility and similar notices, and to discharge the Tenant's obligations hereunder when the Tenant has failed to do so within a reasonable time after written notice from the City.

13.3 Representations of Tenant.

13.4.1 Representations of the Tenant. Tenant hereby represents and warrants that all of the following are true and correct as of the Effective Date:

(a) Tenant has taken all requisite action in connection with the execution of this Agreement and the undertaking of the obligations set forth in this Agreement. This Agreement constitutes the legally valid and binding obligation of the Tenant, enforceable against the Tenant in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally; and

(b) The execution of this Agreement and the acceptance of the obligations set forth in this Agreement do not violate any court order or ruling binding upon the Tenant or any provision of any indenture, agreement or other instrument to which Tenant is a party or may be bound. Neither the entry into nor the performance of this Agreement will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to the Tenant.

13.4 Venue. In the event that litigation is commenced by any party hereunder, the parties agree that such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California, San Jose.

13.5 Miscellaneous.

13.5.1 Holding Over. Tenant shall not be entitled to any hold over rights. If Tenant or any subtenant remains in possession of the Premises after the expiration or termination of this Agreement, without City's consent, such Tenant shall be deemed to be trespassing and

City shall have the right to seek such Tenant's or subtenant's immediate ejection from the Premises in accordance with State law.

13.5.2 Binding on Successors and Assigns. Each provision of this Agreement to be performed by Tenant shall be deemed both a covenant and a condition. The terms, conditions and covenants of this Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their personal representatives, successors and assigns.

13.5.3 Notices. Whenever under this Agreement a provision is made for any demand, notice or declaration of any kind, it shall be in writing and served either personally or sent by registered mail or certified United States mail, postage prepaid, addressed as set forth below, or to such other address as a Party may designate in writing for the purpose of receiving notices:

to City at: City of Milpitas
 Attn: City Manager
 455 East Calaveras Boulevard
 Milpitas, CA 95035
 Phone: (408) 586-3050
 Fax: (408) 586-3056

to Tenant at: SJB Child Development
 Attn: Executive Director
 65 Civic Avenue
 Pittsburg, CA 94565
 Phone: (925) 252-4850
 Fax: (925) 252-4851

Such notice shall be deemed to be received within forty-eight (48) hours from the time of mailing, if mailed as provided for in this Section 13.5.3.

13.5.4 Mail. No Tenant mail shall be delivered to the Premises.

13.5.5 Waivers. No waiver by City of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provisions.

13.5.6 Legal Effect. Although this Agreement has attempted to express the rights and duties of the Parties in simple language understandable to a layman, Tenant understands that this Agreement will be treated as a formal legal instrument and will be binding on all persons having any future dealings with the Premises. If more than one copy is signed, all copies will be equally effective. If more than one person is named as Tenant, City may hold any such person legally responsible for all of the obligations of Tenant under this Agreement.

13.5.7 No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor shall any provision of this Agreement be deemed or construed by the

Parties or by any third person, to be for the benefit of any third party, nor shall any third party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by the Parties of any of the provisions of this Agreement.

13.5.8 Not Construed Against Drafter. No Party shall be deemed to be the drafter of this Agreement, or of any particular provision or provisions, and no part of this Agreement shall be construed against any Party on the basis that the particular Party is the drafter of any part of this Agreement.

13.5.9 Non-Liability of Officials, Employees, and Agents. No member, official, employee or agent of City or City shall be personally liable in the event of any default or breach hereunder by either Party.

13.5.10 Essence of Time. Time is of the essence for every provision, covenant and condition of this Agreement.

13.5.11 Severability. The determination by a court of competent jurisdiction that a provision of this Agreement is illegal or unenforceable shall not affect any other provision of this Agreement.

13.5.12 Entire Agreement. This Agreement contains all the agreements of the Parties and supersedes all prior negotiations. There have been no representations by City or understandings made between City and Tenant other than those set forth in this Agreement.

13.5.13 Amendment. This Agreement may only be modified or amended by a written instrument duly executed by the Parties.

13.5.14 Captions; Construction. The section headings and captions used in this Agreement are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree that since both Parties have participated in the negotiation and drafting of this Agreement with the advice of counsel, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

13.5.15 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

13.5.16 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

IN WITNESS WHEREOF, Tenant and City have entered into this Agreement as of the Effective Date.

CITY:
CITY OF MILPITAS

TENANT:
SJB CHILD DEVELOPMENT

By: _____
Tom Williams, City Manager

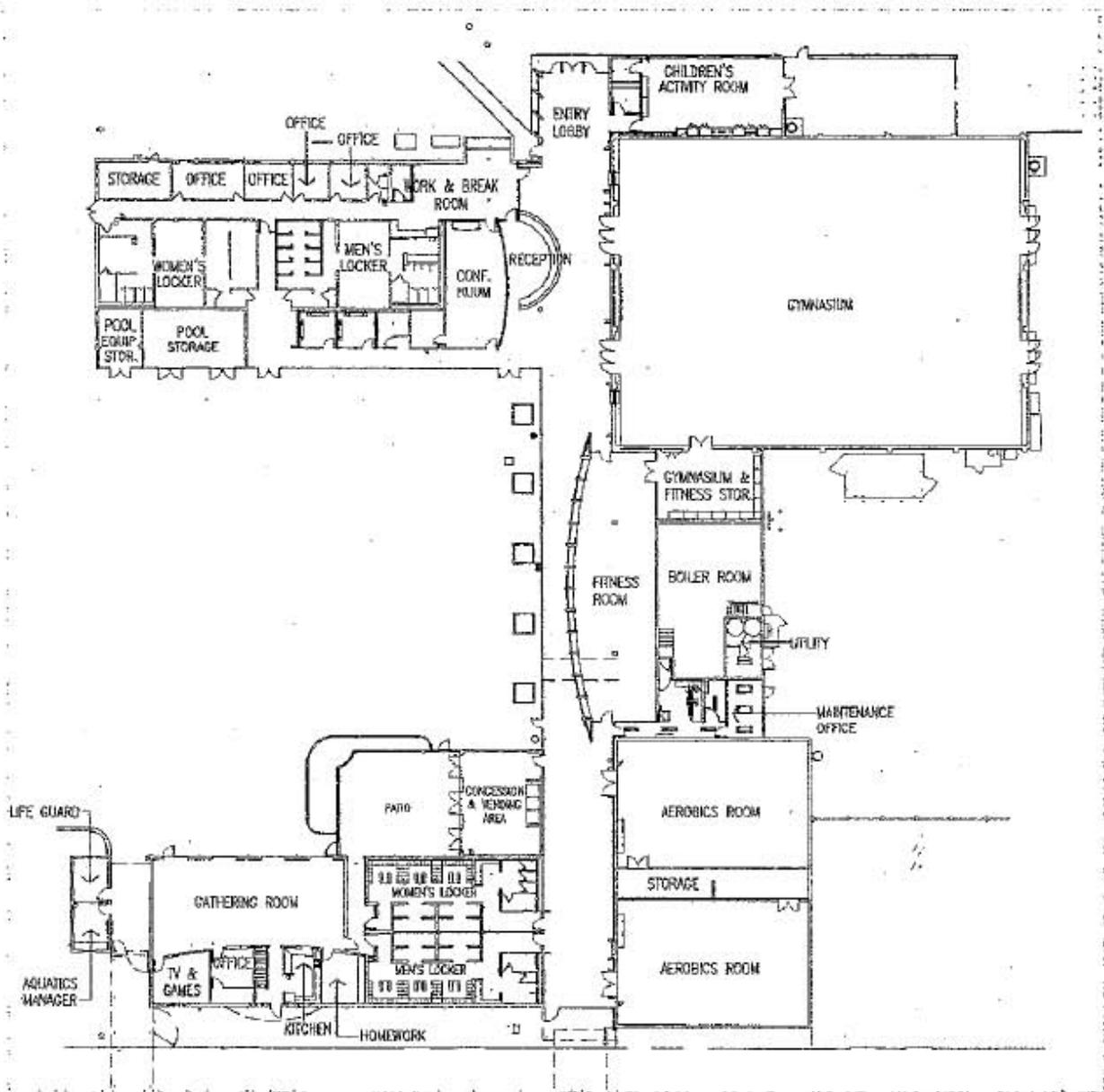
By: _____
Name:
Title:

APPROVED AS TO FORM

By: _____
Michael J. Ogaz, City Attorney

EXHIBIT A

MILPITAS SPORTS CENTER ("PROPERTY")



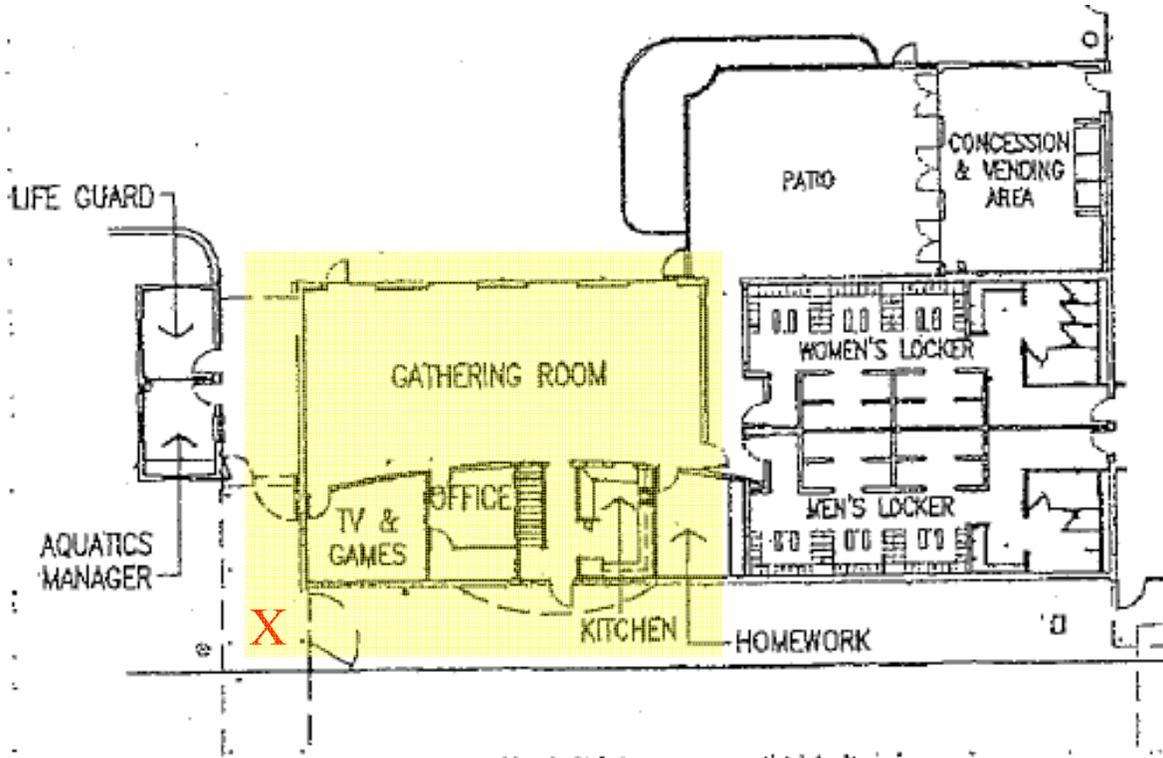
3

REFERENCE PLAN

1/16" = 1'-0"



EXHIBIT B
TEEN CENTER (“PREMISES”)



- “X” above indicates separate entrance to the Teen Center
- Yellow highlighted area indicates the Teen Center

EXHIBIT C
TENANT IMPROVEMENTS TO BE COMPLETED BY CITY PRIOR TO
CERTIFICATE OF OCCUPANCY

1. Change door lock at youth locker rooms so no access is permitted to the Milpitas Sports Center and secure door in Teen Center which leads directly onto the pool deck and cover up Exit sign.
2. Set up a safety card key entry to access doors that lead to restrooms and pool.
3. Paint the interior first floor of the Teen Center.
4. Install an exterior sign provided by Tenant identifying Tenant's business at the same location of the existing "Teen Center" sign. New sign shall be same or smaller size of the existing sign.