

**Lease Agreement**  
(2701 S. Presa)

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**1. Basic Information, Definitions.**

**Authorizing Ordinance:**

**Landlord:** CVC Properties, LLC

**Landlord’s Address:** 3605 Hillbrook Drive, Austin, Texas 78731

**Tenant:** City of San Antonio

**Tenant's Address:** P.O. Box 829966, San Antonio, Texas 78283-3966  
(Attention: Assistant Director, Capital Improvements  
Management Services Department, Real Estate Division)

**Premises:** Approximately 10,840 square feet of space in a former HEB  
store located at 2701 S. Presa, San Antonio, Bexar County,  
Texas, the Premises being graphically depicted on **Exhibit A**.

**Building:** The building in which the Premises are located. The Building  
and the property on which it is located are depicted on  
**Exhibit B**.

**Square Footage:** Any time this lease calls for a calculation based on square  
footage, the number of square feet to be used is 10,840

**Permitted Use:** Senior Services Center, and related uses

**No. of Parking Spaces:** 3 reserved, plus use of all of the spaces in the parking lot on  
a first come, first served basis

**Commencement Date:** The date of issuance of a Certificate of Occupancy. The  
parties must memorialize the actual Commencement Date by  
a written Memorandum of Lease Commencement  
substantially in the form of **Exhibit C**.

**Term:** 10 years

**Base Rent:** Months 1 through 60: \$16,034.17 per month  
Month 61 through 120: \$17,163.33 per month.

**Address for Payment of  
Rent:** 3605 Hillbrook Drive, Austin, Texas 78731

**Asbestos Survey  
Deadline:** No later than 30 days after the Binding Date of this Lease  
Agreement

**Common Areas:** Those parts of the Building and parking area open to the non-  
exclusive use of all tenants in the Building

**Tenant's Pro Rata  
Percentage:** 49%

**CAM Charges:** All expenses that Landlord must reasonably pay in  
connection with ownership, operation, and maintenance of  
the Common Areas, except costs for (i) principal or interest  
on any debt, (ii) capital expenditures classified as such for  
federal income tax purposes; (iii) repair, replacements, and  
general maintenance paid by proceeds of insurance or by  
Tenant or other third parties; (iv) depreciation; (v) leasing

commissions; (vi) legal expenses; (vii) renovating or otherwise improving space in the Building; (viii) federal income taxes imposed on or measured by the income of Landlord; and (ix) marketing expenses.

The exhibits to this Lease are:

- Exhibit A:** Premises
- Exhibit B:** Plat of Building
- Exhibit C:** Lease Commencement Memorandum
- Exhibit D:** Work Letter
- Exhibit E:** Exterior Rendering

## **2. Grant.**

Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease. As a part of the Lease, Landlord must reserve for Tenant the number of parking spaces indicated above. Tenant may cancel this Lease and be free of all its obligations if the Commencement Date has not occurred 270 days after the Binding Date.

## **3. Rent.**

3.01. Base Rent is as stated in the table at the beginning.

3.02. In addition to the Base Rent, Tenant must pay Landlord as Additional Rent Tenant's pro-rata share of actual increases in CAM Charges over the actual CAM Charges Landlord pays in 2011. Tenant's pro-rata share is determined by multiply the total increase in CAM Charges times Tenant's Pro-Rata Percentage stated in the table at the beginning.

3.02.01. Pending calculation of adjusted Additional Rent for a new year, Tenant need pay only the Base Rent plus the Additional Rent, if any, for the previous year. When the new Additional Rent is determined, Tenant will pay Additional Rent in equal monthly payments over the remainder of the calendar year.

3.02.02. No increase in Additional Rent may be more than 5% from the previous years Additional Rent. The unrecovered increase from a previous year does not accrue to succeeding years. Tenant need pay no Base or Additional Rent after the expiration or other termination of the Lease, except delinquent rent.

3.02.03. By April 1, 2013 and each year of the term after that, or as soon thereafter as practicable, Landlord must furnish Tenant a statement of Additional Rent and supporting documentation for the previous year ("Additional Rent Statement").

3.02.04. On three business-days' written notice, Tenant and its agents and representatives may inspect and copy Landlord's business records relating to calculation of Additional Rent. Unless otherwise mutually agreed, the inspection will be conducted during normal working hours. Landlord must make the records available at a location in San Antonio or Austin, Texas where Tenant and its agents and representatives will have reasonable accommodations, including HVAC, seating, workspace, access to electric power, and access to copy machines. Tenant will pay Landlord 10 cents a copy for any copies made on Landlord's machine.

3.03. Tenant must pay Base Rent and Additional Rent in the proper amounts in advance on the first day of each month or within 15 days thereafter without penalty. If Tenant fails to pay the entire monthly Rent within the 15-day grace period more than twice in a calendar year, then a late charge equal to ten percent of the delinquent amount shall be additionally due and payable by Tenant as additional rent. The parties agree that such late charge represents a fair and reasonable estimate of costs Landlord will incur by reason of such late payment. Interest and late charges are in addition to all Landlord's other rights and remedies.

3.04. If Landlord receives prepaid rent from or for the account of Tenant, Landlord must apply the prepaid rent according to Tenant's directions.

3.05. Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant must not abate Rent.

#### **4. Term, Renewal.**

4.01. The term of this Lease is the Initial Term, unless sooner terminated as provided in this Lease.

4.02. Tenant may renew this Lease for two 5-year terms by giving Landlord 120-days written notice before expiration of the Initial Term, or first Renewal Term. Renewal is on the same terms and conditions as the Initial Term, except for Base Rent. Base Rent during the first renewal term is \$20.00 a rentable square foot annually (\$18,066.67 monthly Base Rent). Base Rent during the second renewal term is \$21.25 a rentable square foot annually (\$19,195.83 monthly). The monthly amounts

are totals, not per square foot. All renewals must be approved by City Council at the time of renewal.

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

Tenant promises that it will:

5.01. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Building; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (c) any rules and regulations for the Building and Common Areas adopted by Landlord.

5.02. Obtain and pay for electric and gas, communications (telephone, internet, cable, etc.), security system, alarm (including fees associated with the renewal or operation of any alarm systems), and janitorial services.

5.03. With 24-hours written notice to Tenant, allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants. In an emergency situation, Landlord may enter the Premises without notice to Tenant.

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

5.05. Vacate the Premises and return all keys to the Premises on the last day of the Term, subject to any holdover rights.

5.06. Execute an estoppel certificate within 30 days of Landlord's request, that states the Commencement Date and duration of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. Tenant need not sign any certificate that purports to modify Tenant's obligations in any respect, except for a change in the address for notice or payment of rent.

5.07. Subject to the exception in the next sentence, repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear and tear excepted. Tenant will reimburse Landlord up to a total of \$1,000 annually for HVAC and plumbing repairs, combined.

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

Tenant promises that it will not:

- 6.01. Use the Premises for any purpose other than the Permitted Use.
- 6.02. Create a nuisance.
- 6.03. Interfere with Landlord's management of the Building.
- 6.04. Permit waste.
- 6.05. Use the Premises in any way that would void insurance on the Building.
- 6.06. Change Landlord's lock system.
- 6.07. Alter the Premises.
- 6.08. Allow a lien to be placed on the Premises.
- 6.09. Assign this lease or sublease any portion of the Premises without Landlord's written consent.

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

Landlord promises that it will:

7.01. Finish-out the Premises at Landlord's sole cost and expense in accordance with the Work Letter attached as **Exhibit D**.

7.02. Before the Commencement Date, at Landlord's sole cost and expense, remodel the exterior of the Building substantially in the style shown in **Exhibit E**, the Premises actually to be on the opposite end of the Building from that shown on Exhibit E.

7.03. Lease to Tenant the Premises for the entire Term, beginning on the Commencement Date.

7.04. Obey all applicable laws with respect to Landlord's operation of the Building.

7.05. At Landlord's sole cost and expense, repair, replace, and maintain the (a) roof, (b) foundation, (c) Common Areas, (d) structural soundness of the exterior walls, doors, corridors, and windows, (e) HVAC, wiring, and plumbing, (f) floors, and (g) other structures and facilities serving the Premises.

7.06. Deliver to Tenant an Asbestos Survey of the Premises and the Building not later than Asbestos Survey Deadline, in accordance with the provisions of § 6-293 of the City Code of the City of San Antonio, Texas.

7.07. Hire a tax consultant to protest any increase in the appraised value of the Premises as assessed by the Bexar County Appraisal District (BCAD), at Landlord's sole cost and expense. Landlord shall provide written evidence that the protest filing has occurred to the Address for Notice in this lease, simultaneous with the filing of the actual protest to BCAD.

7.08. Obtain a certificate of occupancy not later than 270 days after the Binding Date. Failure to do so is grounds for Tenant to terminate this Lease.

7.09. Obtain and provide trash disposal and water and sewer services to the Premises without additional charge.

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

Landlord promises that it will not:

8.01. Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

8.02. Unreasonably withhold consent to a proposed assignment or sublease.

## **9. Alterations.**

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

## **10. Insurance.**

10.01. Tenant will self-insure as it deems advisable against property loss. As a political subdivision of the State of Texas, Tenant is subject to the Texas Tort Claims Act, and the obligations of Tenant and the rights of persons claiming against Tenant are subject to that Act.

10.02. Landlord must maintain Commercial General Liability insurance of not less than \$1,000,000 and property and casualty insurance for physical damage to the Premises in the amount of 80% of their actual cash value.

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

“This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 60-days’ prior written notice has been given to:

|  |     |   |
|--|-----|---|
| City Clerk, City of San Antonio<br>City Hall/2nd Floor<br>P. O. Box 839966<br>San Antonio, Texas 78283-3966<br>Attention: Risk Manager | and | Department of Capital Improvements<br>Management Services<br>City of San Antonio<br>P.O. Box 839966<br>San Antonio, Texas 78283-3966<br>Attention: Assistant Director for Real Estate |
|--|-----|---|

“The insurance provided by Landlord is primary to any insurance or self-insurance maintained by the City of San Antonio.”

“Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy.”

Each insurance policy required by this Lease must contain the following clause:

“The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio. This policy cannot be invalidated as to Tenant because of Landlord’s breach of representation, warranty, declaration, or condition of this policy.”

10.02.02. Within 30 days after the Commencement Date and promptly after Tenant’s later request, Landlord must, at its own expense, deliver certificates to Tenant’s Risk Manager and to the City Clerk, reflecting all required insurance coverage, together with copies of policies and endorsements. All endorsements and certificates must be signed by an authorized representative

of the insurance company and must include the signatory's company affiliation and title. If requested by Tenant, Landlord must send Tenant documentation acceptable to Tenant that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company. Tenant may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Tenant does so and the changes would increase premiums, Tenant will discuss the changes. If Tenant still wants the changes after discussion, Landlord must make the changes and pay the cost thereof. Tenant's review and approval of a certificate does not waive the certificate's noncompliance with the requirements of this Lease.

10.02.03. The Notices and Certificates of Insurance must be provided to the same addresses as for notices of cancellation.

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

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

## **12. Indemnity.**

12.01. These definitions apply to the indemnity provisions of this Contract:

12.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising out of acts or omissions of any person other than an Indemnitee that give rise to assertions of Indemnitee liability under this Contract, whether or not the person is a party to this agreement. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death.

12.01.02. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

12.01.03. "Indemnitor" means Landlord.

**12.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.**

**12.03. If Indemnitor and one or more Indemnitees are finally adjudged to be jointly liable for Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.**

12.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees..

12.05. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

12.06. In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

12.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance

written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnatee must first be approved by City Council.

12.08. Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

12.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

### **13. Casualty/Total or Partial Destruction.**

13.01. If the Premises are damaged by casualty and can be restored within 120 days, Landlord will, at its expense, restore the roof, foundation, Common Areas, and structural soundness of the exterior walls of the Premises and all leasehold improvements within the Premises, including interior partitions, ceilings, wiring, light fixtures, and plumbing.. Restoration must be to substantially the same condition existing before the casualty. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within 120 days from the loss, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

13.02. If the Premises cannot be restored within 120 days, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within 10 days. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

13.03. During the period before Landlord completes restoration, the Rent will be adjusted as may be fair and reasonable.

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

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

14.01. If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

14.02. If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

14.03. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

## **15. Holdover.**

15.01. If the Lease has not been earlier terminated according to its terms and Tenant is current on rent, both after the Initial Term and after any renewals provided for in this instrument, Tenant may hold-over for up to six additional months on a month-to-month basis. Tenant need not give advance notice of intent to exercise this hold-over right, and it need not hold over all of the allowable six months. The rent during a hold over is 110% of the rent due during the last month of the initial term or renewal term. Council's authorization of this instrument is authority for the City as Tenant to enter into the hold-over period without further council action if the Director of Capital Improvements Management Services deems the holdover beneficial.

15.02. If prior notice is required to initiate a renewal under this Lease, the required notice period may include time in the hold-over period. If the required notice of renewal is less than the hold-over period, Tenant may deliver notice in the hold-over period.

15.03. Whenever this Lease refers to its term, events to occur during the term, or rights and obligations of Landlord and Tenant during the term, a hold-over period is considered a part of the term.

## **16. Default.**

16.01. *Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice.

16.02. *Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages or, if the Premises become untenable, terminate the Lease.

16.03. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning or vacating a substantial portion of the Premises, and (c)

failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b) above.

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

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

## **17. Warranty Disclaimer.**

**There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease.**

## **18. Environmental.**

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

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

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

18.04. Landlord represents that the Premises and the property of which the Premises are a part, if applicable, comply with all applicable Environmental Laws. Landlord must cause its employees, agents, contractors, tenants, and other persons occupying or present on or about the property on which the Premises are located

(other than the Premises) (collectively, "Occupants") to comply with all applicable Environmental Laws.

18.05. Landlord represents and warrants that there has been no Release and there is no threat of Release of any Hazardous Materials on, onto, or from the Premises and that the Premises has not contained and does not contain any asbestos, underground or aboveground storage tanks, or "PCBs" or "PCB items," as defined in 40 CFR § 761.3.

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

18.07. Landlord represents and warrants that, (y) with regard to activities and conditions on the Property Landlord has not given, nor was it required to give, and Landlord has not received, any notice that: (i) the Property violates any Environmental Law; (ii) there has been a Release, or threat of Release, of Hazardous Materials from the Property; (iii) the Landlord may be or is liable, in whole or in part, for costs of cleaning up, remediating, removing, or responding to a Hazardous Materials release; or (iv) the Property is subject to a lien under any Environmental Laws; and (z) no conditions currently exist, or are reasonably foreseeable, that would give rise to such a notice. In case of receipt of such notice, Landlord must immediately provide Tenant a copy.

18.08. Before the Commencement Date, Landlord must permit Tenant and its, representatives and contractors to enter upon the Premises at reasonable times and in a reasonable manner to investigate environmental matters. Tenant may perform such tests, including without limitation, subsurface testing, soils, and groundwater testing, and any other tests, as the Tenant, in its sole discretion, determines are necessary to identify environmental concerns. The investigation is at Tenant's sole cost. Tenant must minimize the intrusion upon and inconvenience to Landlord and the ongoing operations at the Premises. If Tenant performs any tests that disturb the Property, Tenant must restore the Property. Tenant is responsible for damages arising from its testing on the Property and for the proper disposal of any wastes generated by its testing.

18.09. Landlord must indemnify Tenant and its officials, employees, and contractors from loss, cost, liability, or expense (including, but not limited to, attorneys' fees and expenses, including all attorney's fees and expenses incurred by Tenant in enforcing this indemnity) arising from or relating to breach of Landlord's environmental representations, warranties, and covenants.

## **19. Appropriations.**

All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. If the City Council fails to appropriate money for this Lease in an annual City of San Antonio Budget, the City may terminate this Lease and have no further liability.

## **20. Dispute Resolution.**

20.01. Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

20.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

20.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

20.04. The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

20.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

20.06. Mediator fees must be borne equally.

20.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

## **21. Prohibited Interests in Contracts.**

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

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

21.02. Landlord warrants and certifies as follows:

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

21.03. Landlord acknowledges that City’s reliance on the above warranties and certifications is reasonable.

## **22. Miscellaneous.**

22.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. Both parties’ obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

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

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

22.04. *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

22.05. *Modification.* This Agreement may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Agreement's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion.

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

22.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

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

22.09. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

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

22.11. *Administrative Agreements.* The Assistant Director for Real Estate of CIMS may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of

nonmaterial rights and obligations arising under this Lease and may declare Landlord defaults and pursue remedies for such defaults. This paragraph does not authorize lease amendments or renewals without council consent.

22.12. *Conflicts Between Numbers Stated Two Ways.* Whenever this lease states numbers more than one way and there is a conflict, the lowest number controls.

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

22.14. *Binding Date.* This agreement is binding on the parties on the later of (A) the effective date of the Authorizing Ordinance or (B) the later of the signatures of the two parties.

22.15. *Broker Commission.* Landlord recognizes Providence Commercial Real Estate Services, Inc. ("Tenant's Broker") as Tenant's broker procuring this Lease and must pay Tenant's Broker a commission in respect of this lease.

### **23. Public Information.**

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

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

**Tenant**

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

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

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

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

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

**Landlord**

**CVC Properties, LLC**, a Texas limited  
liability company

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

Printed  
Name: Chris V Cox

Title: general partner

Date: 8/28/09

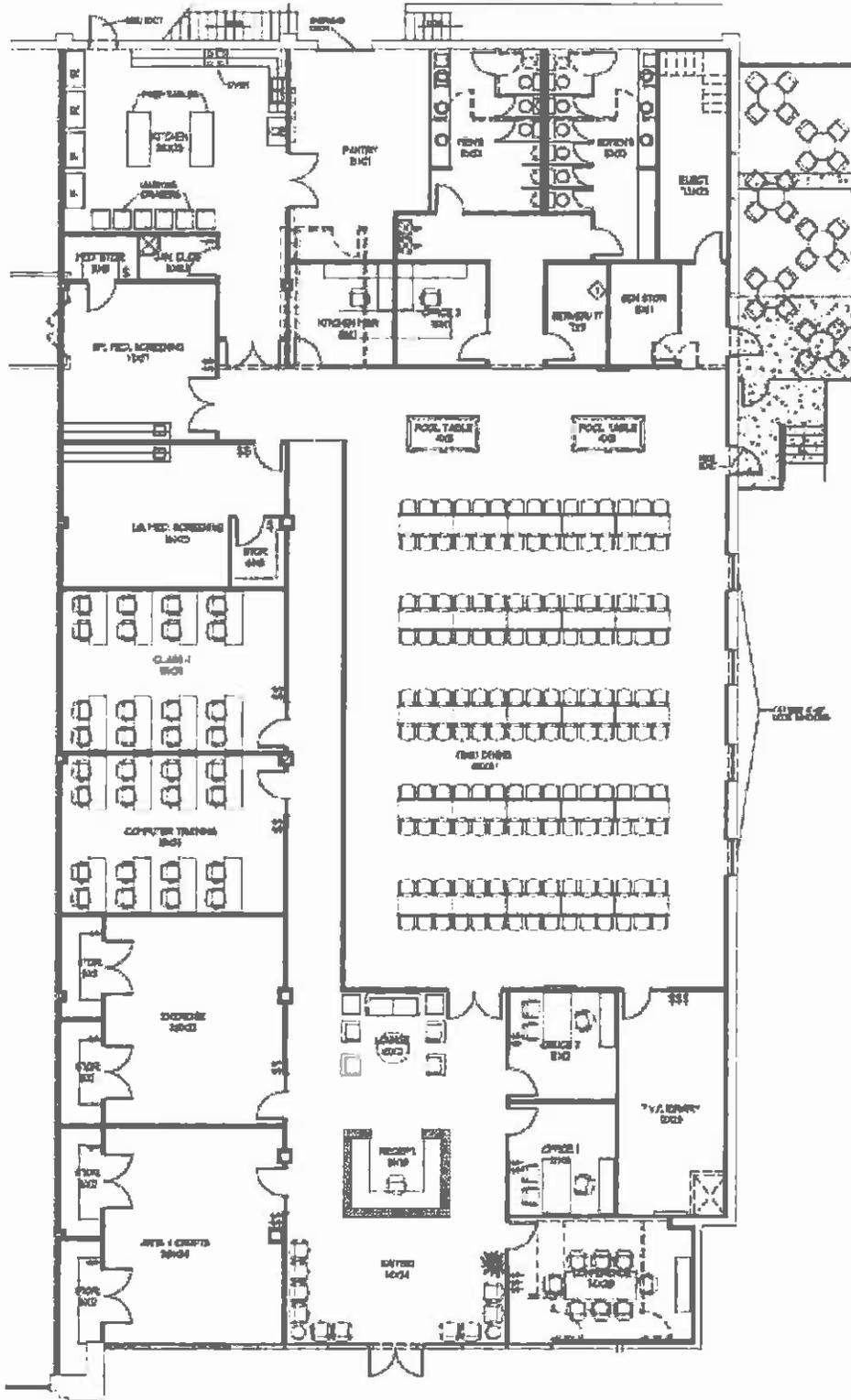
**Attest:**

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

**Approved as to Form:**

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

Exhibit A: Premises



SCALE: 1/32" = 1'-0"  
**COSA SENIOR CENTER**  
 7101 SOUTH PUEBLO  
 DENVER, CO 80231  
 303.440.1517



## Exhibit C: Lease Commencement Memorandum

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**Landlord:** CVC Properties, LLC

**Tenant:** City of San Antonio

**Lease:** Lease Agreement (2701 S. Presa Senior Services Center) between Landlord and Tenant pertaining to approximately 10,840 square feet located at 2701 S. Presa and authorized by the Authorizing Ordinance

### **Authorizing Ordinance:**

#### *Predicate Facts:*

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

The Lease Term is to begin upon issuance of a Certificate of Occupancy.

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

#### *Rights and Obligations:*

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

#### **1. Defined Terms.**

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

#### **2. Lease Commencement.**

The Lease Term commences ??????.

#### **3. No Default.**

As a part of the inducement to Landlord to execute and deliver this consent, Assignor represents to Landlord and Assignee that:

- a. The Lease is in full force and effect according to its terms.
- b. Neither party is in default under the Lease.
- c. Neither party has any offset or claim against the other that would reduce or impair its obligations under the Lease.

**4. Conflict of Terms.**

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

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

**Tenant**

**Landlord**

City of San Antonio, a Texas  
municipal corporation

CVC Properties, LLC, a Texas limited  
liability Company

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

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

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

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

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

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

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

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

**Attest:**

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

**Approved as to Form:**

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

## Exhibit D: Work Letter

---

This Work Letter is entered into between Landlord and Tenant as described below in connection with the lease described below.

**Landlord:** CVC Properties, LLC

**Landlord's Address:** 3605 Hillbrook Drive, Austin, Texas 78731

**Tenant:** City of San Antonio

**Tenant's Address:** P.O. Box 829966, San Antonio, Texas 78283-3966  
(Attention: Assistant Director, Capital Improvements  
Management Services Department, Real Estate  
Division)

**Lease:** Lease Agreement (2701 S. Presa Senior Services Center) between Landlord and Tenant pertaining to approximately 10,840 square feet located at 2701 S. Presa and authorized by the Authorizing Ordinance

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

1. *Performance of Landlord's Work.*

(a) Immediately after the Binding Date, Landlord and Tenant will seek agreement on the terms of a Space Plan on which to base construction-ready drawings of all partitions and work spaces developed by Landlord's architect ("Construction Drawings"). The Construction Drawings, when completed, must put the Premises in a condition consistent with **Exhibit A** to the Lease Agreement.

(b) Tenant may specify in the Construction Drawings the following details:

(i) the location of file cabinets; special equipment and furniture;

(ii) the location of doors and interior windows,

(iii) any electrical, special air conditioning and plumbing requirements,

(iv) any telephone equipment requirements and telephone outlet locations,

- (v) electrical outlet and switch locations,
- (vi) room sizes and locations,
- (vii) lighting requirements,
- (viii) cabinet work or other millwork requirements,
- (ix) acoustical or special wall requirements,
- (x) color and material selections for finishes,
- (xi) required data wiring and computer locations,
- (x) equipment specifications and locations,
- (xi) location of entrances, stairs, escalators, elevators, service areas, and floor design of the Premises, and
- (xii) signs.

In addition, all other finishout details including but not limited to paint, carpeting, hardware, plumbing, doorways, and the like, must conform to the Construction Drawings. Landlord's Work consists of completing in a good and workmanlike manner all work required by the Final Plans, as defined in paragraph 3.

*2. Plan Preparation.* Within 30 days after the Binding Date, Landlord must submit the Construction Drawings to Tenant for approval. Tenant has 10 business days to either approve the Construction Drawings or to make reasonably detailed comments thereon. Tenant's failure to timely object to the Construction Drawings is Tenant's acceptance of them. If Tenant timely objects, Landlord must revise the Construction Drawings according to Tenant's comments and resubmit them to Tenant for approval. Tenant then has an additional 10 business days for approval. Again, Tenant's failure to timely object to the Construction Drawings is Tenant's acceptance of the plans. If Tenant timely objects, the revision process repeats.

*3. Additional Work.* If Tenant requires changes to the Construction Drawings or other work or materials in the Premises in addition to or in substitution for the Landlord's Work (collectively, "Additional Work"), Tenant must deliver to Landlord for its review and approval the plans and specifications encompassing such Additional Work. All plans and specifications for the Additional Work ("Additional Plans") (together with any changes to the Final Plans for the Landlord's Work required as a result of the Additional Work) will be prepared by Landlord. Before beginning

Additional Work, Landlord must submit to Tenant written cost estimates, including costs for delay and out-of-sequence work. Tenant's failure to approve the estimates within five days is Tenant's disapproval, and Landlord need not perform the Additional Work. For Tenant to be obligated to pay costs more than the estimate, Landlord must notify Tenant in writing when Landlord should reasonably foresee the overrun and give Tenant a chance to modify the required work. The Construction Drawings that are finally approved or deemed approved, together with the Additional Plans, if any, are the "Final Plans".

4. *Payment.* The cost of Landlord's Work will be paid as follows:

(a) The Landlord's Work must be paid for by Landlord. Landlord's Work includes all work necessary to make the Premises conform to the Construction Drawings, including but not limited to, permit fees, sales tax and architectural and engineering fees.

(b) Additional Work must be paid for by Tenant.

(c) The provisions of this Section survive the expiration or termination of the Lease.

(d) For the purposes of all per-square-foot calculations, the Premises contain 10,840 square feet.

5. *Substantial Completion.* Within three days after written notice from Landlord to Tenant that Landlord's Work is substantially completed, Landlord and Tenant, or their representatives, must inspect the Premises. If, as a result of Tenant's inspection of the Premises, Tenant discovers deficiencies in Landlord's Work or deviations from the Final Plans, Tenant must deliver a list of such deficiencies and deviations ("punch list") to Landlord within three additional days. Tenant's failure to timely deliver a punch list is Tenant's acceptance of the work. If a punch list is delivered, that does not postpone the Lease Commencement Date. Landlord must correct or cure any punch list items within 30 days or such longer period as may be necessary, provided Landlord is proceeding with due diligence. Landlord may enter the Premises at any reasonable time to correct or cure punch list items.

6. *Early Access.* Landlord must permit Tenant and its agents, to enter the Premises before the Commencement Date to prepare the Premises for Tenant's use and occupancy, including testing and installation of Tenant's equipment. Any such entry into the Premises is under all of the terms of the Lease, except as to Rent.

7. *Counterparts.* This Work Letter may be executed in any number of counterparts and all of such counterparts shall be deemed to be one and the same instrument.

8. *Notices.* Any notices required to be sent hereunder shall be in writing and sent in the manner set forth in the Lease.

9. *Prevailing Wage.* If any Tenant money is used for any work under this Work Letter, pursuant to Chapter 2258 of the Texas Government Code and City of San Antonio Ordinance No. 71312, March 29, 1990, contractor and subcontractors doing work must pay prevailing wages to their laborers, workers, and mechanics, if any. "Prevailing Wages" are as defined by the United States Department of Labor for the purpose of the Davis-Bacon Act. Contractors and subcontractors must obtain from the City of San Antonio Public Works Department, Capital Improvements Division, Wage and Hour Office, Municipal Plaza Building, located at 114 W. Commerce all materials necessary to assure compliance.

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

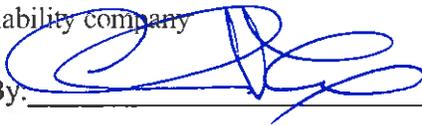
**Tenant**

**Landlord**

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

**CVC Properties, LLC**, a Texas limited liability company

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

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

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

Printed Name: CHRIS V COX

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

Title: GENERAL PARTNER

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

Date: 8/28/09

**Approved as to Form:**

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

**Exhibit E: Exterior Rendering**



**CHRIS V. COX**  
112-406-2788

**SOUTH TOWNE CENTER**  
S. Presa at Hwy 90 in San Antonio, Texas