

**LEASE AGREEMENT WITH
EMPOWER HOUSE SA**

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I. Basic Information, Definitions

Authorizing Ordinance:

XXXX-XX-XX-XXXX

Landlord: City of San Antonio, through Parks and Recreation Department (“CITY”)

Landlord’s Address: Attn: Director, Parks and Recreation Department
P.O. Box 839966, San Antonio, TX 78283-3966

Tenant: Empower House SA (“Tenant”)

Tenant Address: 200 Donaldson Ave., San Antonio, TX 78201

Premises: Lockwood Park Building, 801 N. Olive St., San Antonio, TX, 78202 as outlined in Exhibit A – Leased Premises Map

Permitted Use: Community programming, staff offices and meeting space. Other uses may be approved by the Director of Parks and Recreation. Notwithstanding anything to the contrary contained within this Lease Agreement, the Landlord acknowledges and agrees that the Tenant shall have the right, and Tenant agrees that it shall exercise such right, to utilize the Lockwood Park building.

Commencement Date: May 1, 2024

Term: 10-years; Expiring December 31, 2034.

Base Rent: See Section III. Rent and Consideration

II. Grant

2.1 Landlord leases the Premises to Tenant, and Tenant takes the Premises, from Landlord on the terms and conditions of this Lease.

2.2 Tenant’s rights of occupancy begin at the Occupancy Commencement Date.

III. Rent and Consideration

3.1 Tenant shall pay no rent to Landlord under the terms of this Lease.

3.2 Tenant shall be responsible for payment of all utility services used in the Premises. Tenant shall use its best efforts to ensure that its water usage shall occur in a manner, amount, and frequency that is consistent with efforts to conserve water resources, and in a manner which is in strict compliance with all state and local regulations of water usage.

IV. Term, Renewal

4.1 The term of this Lease will expire December 31, 2034, commencing on the Commencement Date shown above, unless sooner terminated as provided in this Lease.

4.2 Either party may terminate this lease within ninety (90) days written notice.

V. Tenant's Affirmative Promises

Tenant promises that it will:

5.1 Accept the Premises described in Exhibit A – Lease Premise map in their present condition “AS IS,” the Premise being currently suitable for the Permitted Use.

5.2 Obey (a) all applicable laws relating to the use, conditions, 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 surrounding land as adopted by Landlord.

5.3 Pay electric utilities associated with use of the leased premises. CITY may initiate a separate electric meter for the building and the park. At that time the Tenant will transfer the building meter into the Tenant's name. At the end of this Lease, Tenant will work cooperatively with Landlord to facilitate the transfer of all electric utility accounts back into Landlord's name.

5.4 Tenant shall comply with the City's Conservation ordinance, including year-round restrictions, drought restrictions, and charity car wash restrictions. If the Landlord or Tenant receives fines or penalties for Tenant's non-compliance with the City's Conservation ordinance or any watering restriction the Tenant shall be responsible the payment of the fines or penalties.

5.5 Allow Landlord to enter the Premise to perform Landlord's obligation and inspect the Premises.

5.6 Allow Landlord, CPS, and SAWS to enter the Premises to access utility infrastructure serving the Premises.

5.7 Repair, replace, and maintain in good condition all interior parts of the Premises, to include custodial and cleaning activities, and regular maintenance checks on mechanical units.

5.8 FIRE AND OTHER CASUALTY: In the event that the Leased Premises, or any portion thereof, shall be partially damaged by fire, the elements, civil disorder, or other casualty, Tenant shall give immediate notice thereof to the Landlord and the same shall be repaired at the expense of Landlord, without unreasonable delay, unless Landlord determines that the damage is so extensive that repair or rebuilding ("restoration") is not feasible since the damage has rendered the Leased Premises untenable. In the event that the damage should be so extensive as to render the Leased Premises untenable, in the judgment of Landlord, then, at the option of Landlord, and upon written notice to Tenant ("date of determination"), this Lease shall cease and come to an end, as of such date of determination.

5.9 Acknowledges that the Landlord will not be liable for any loss of Tenant's personal property and agrees to make no such claims for any losses or damages against Landlord.

5.10 Tenant agrees that no representations, respecting the condition of the leased Premises and no promises to decorate, alter, repair, or improve the Lease Premises, either before or after the execution hereof, have been made by Landlord or its agents to Tenant unless the same are contained herein or made a part of hereof by specific reference herein. Landlord expressly disclaims any warranty of suitability that may otherwise have arisen by operation of law. Landlord does not warrant that there are no latent defects in the facilities that are vital to the Tenant's use of the premises for their intended commercial purpose and that these essential facilities will remain in a suitable condition. In the event that a latent defect is discovered in the facilities after commencement of the lease which would materially prevent Tenant's intended use of the premises, Tenant shall have the right to terminate this lease as of the date of written notice to Landlord of the material latent defect. Such early termination will be Tenant's sole remedy.

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

5.12 On request, execute an estoppel certificate that states the Occupancy Commencement Date, and Termination Date of the Lease, identifies any amendments to the Lease, describes any rights to extend the Term or purchase rights, list defaults by Landlord, and provides any other information reasonably requested.

VI. Indemnity

6.1 **TENANT covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to TENANT'S activities under this AGREEMENT, including any acts or omissions of TENANT, any agent, officer, director, representative, employee, consultant or subcontractor of TENANT, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. TENANT shall promptly advise the CITY in writing of any claim or demand against the CITY or TENANT known to TENANT related to or arising out of TENANT'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at TENANT'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TENANT of any of its obligations under this paragraph.**

6.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by TENANT to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. TENANT further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

VII. Tenant's Negative Promises

Tenant promises that it will not:

7.1 Use the Premises for any purposes other than the Permitted Use.

7.2 Create a nuisance by storing supplies, equipment, nor place any furnishings in any areas other than inside the building.

7.3 Permit waste.

7.4 Use the Premises in any way that would increase insurance premiums or void insurance on the building.

7.5 Allow a lien to be placed on the Premises.

VIII. Landlord's Affirmative Promises

Landlord promises that it will:

8.1 Lease to Tenant the Premises for the entire Term beginning on the Occupancy Commencement Date.

8.2 Maintain the exterior of the Premises and the surrounding grounds.

8.3 May initiate a separate electric meter for the building and the park; at which time the Landlord and Tenant shall work cooperatively to transfer the building meter account to the Tenant's name.

8.4 Pay for all water and sewer fees.

8.5 Obey all applicable laws with respect to Landlord's operation of the building and surrounding land.

8.6 The building is property of the CITY. CITY shall provide insurance coverage for its property in conformance with its general property insurance program.

8.7 No provisions in this agreement shall be interpreted to obligate the Landlord to make any capital improvements or extraordinary repairs to any portions of the building. Tenant reserves the right to request such repairs subject to the Landlord's discretion. Landlord has the right, but not the obligation to choose to make capital improvements or extraordinary repairs as Landlord deems appropriate and subject to available funding.

8.8 Should the Landlord's decision not to make a capital improvement or extraordinary repair render the Premises untenable for the Tenant's use purposes, Tenant has an option to terminate this Lease by notifying the Landlord in writing within 10 days of when the request for repairs was denied.

IX. Landlord's Negative Promises

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

X. Alterations and Improvements

10.1 Tenant may not, without prior written approval of City, construct or allow to be constructed, any permanent improvements to the Premises or make or allow to be made any permanent alterations to the structures within the Premises without the prior written approval of: a) the Director of Parks and Recreation or his designee, b) any necessary departments, boards, and/or commissions of the City, including, but not limited to, Historic and Design Review Commission, and c) all other approvals required and necessary, including, but not limited to, the Texas Historic Commission. If approved by the City's Park and Recreation Department, the expansion would also be subject to the review and approval of the entities outlined in 10.1 b) and c) outlined above.

10.2 Tenant shall be responsible for securing, at its cost, all necessary and required permits for any activities or improvements.

10.3 The approval by the City of any plans and specifications refers only to the conformity of such plans and specifications to the general architectural plans. Such plans and specifications are not approved for architectural or engineering design and the City, by approving such plans and specifications, assumes no liability or responsibility therefore or for any defect in any structure constructed from such plans and specifications.

10.4 It is expressly understood and agreed that any and all machinery, equipment, and items of personal property of whatever nature owned by Tenant and at any time placed or maintained by Tenant on any part of the Premises shall be and remain the property of the Tenant; provided, however, that all Improvements constructed and all attached fixtures, alterations, additions, or improvements made upon the Premises shall become the property of the Landlord from and after the time that such improvements are made and shall remain the property of the Landlord after the termination of the Lease.

10.5 Landlord shall not be responsible or liable for, and Tenant covenants that it will not bind or attempt to bind, Landlord for payment of any money in connection with any Improvements to the Premises.

10.6 During any periods of time that Improvements are occurring within the Leased Premises, Tenant's contractors will be required to secure Builder's Risk Insurance, if requested by Landlord, and provide Landlord with a certificate of insurance evidencing such coverages.

10.7 Landlord shall not have any responsibility for making any capital repairs or capital improvements to the Premises.

XI. Insurance

11.1 No later than thirty (30) days prior to the start of this Lease, Tenant must provide a complete Certificate of Insurance to the City's Parks and Recreation Department. The certificate must be:

- Clearly labeled with the legal name of the lease agreement in the Description of Operations block, EMPOWER HOUSE SA; and
- Completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (City will not accept Memorandum of Insurance or Binders as proof of insurance); and
- Properly endorsed and have the agent's signature, and phone number,

Certificates may be mailed or sent via email, directly from the insurer's authorized representative. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Parks and Recreation Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

11.2 If the City does not receive copies of insurance endorsement, then by executing this Agreement, Tenant certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Lease.

11.3 The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Lease based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

11.4 Tenant shall obtain and maintain in full force and effect for the duration of this Lease, at Tenant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the Tenant claims to be self-insured, they must provide a copy of their declaration page so the City can review their deductibles:

TYPE:	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
4. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Sexual Abuse/ Molestation e. Independent Contractors* f. Damage to property rented by you*	For Bodily Injury and Property Damages of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella Liability Coverage *f.) \$300,000
*If Applicable	

11.5 Tenant must require, by written contract, that all subcontractors providing goods or services under this Lease obtain the same insurance coverages required of Tenant and provide a certificate of insurance and endorsement that names Tenant and City as additional insureds. Respondent shall provide City with subcontractor certificates and endorsements before the subcontractor starts work.

11.6 If a loss results in litigation, then the City is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. Tenant must comply with such requests within ten (10) days by submitting the requested insurance documents to the City at the following address:

City of San Antonio
Attn: Parks and Recreation Department
P.O. Box 839966
San Antonio, Texas 78283-3966

11.7 Tenant's insurance policies must contain or be endorsed to contain the following provisions:

- Name City and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respected operations and activities of, or on behalf of, the named insured performed under contract with City. The endorsement requirement is not applicable for Workers' Compensation and Professional Liability policies.
- Endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy. City's insurance is not applicable in the event of a claim.
- Tenant shall submit a waiver of subrogation to include, Worker's Compensation, Employers' Liability, General Liability, and Auto Liability policies in favor of City; and

- Provide thirty (30) days advance written notice directly to City of any suspension, cancellation, non-renewal, or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

11.8 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Tenant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Tenant's performance should there be a lapse in coverage at any time during this Lease. Failure to provide and to maintain the required insurance shall constitute a material breach of this Lease.

11.9 In addition to any other remedies City may have upon Tenant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City may order Tenant to stop work and/or withhold any payment(s) which become due to Tenant under this Lease until Tenant demonstrates compliance with requirements.

11.10 Nothing contained in this Lease shall be construed as limiting the extent to which Tenant may be held responsible for payments of damages to persons or property resulting from Tenant's or its subcontractors' performance of the work covered under this Lease.

11.11 Tenant's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Lease.

11.12 The insurance required is in addition to and separate from any other obligation contained in this Lease and no claim or action by or on behalf of City shall be limited to insurance coverage provided.

11.13 Tenant and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

XII. Release of Claims/Subrogation

12.1 **The insurance requirement of this Lease are a bargained-for allocations 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 extend allowable without causing cancellation or a required policy, will require their insurers to waive subrogation against each other for Covered Claims.**

XIII. Landlord's Municipal Powers

13.1 Landlord is a municipality as well as Landlord under this Lease. As a municipality, it may from time-to-time exercise municipal powers unrelated to the Lease that will nevertheless adversely affect Tenant. Such actions may include redirection or traffic, street closures, or other actions intended to facilitate public safety, the public interest, or the conduct of major events. No such action by Landlord as a municipality is a breach of Landlord's duties and landlord or entitles Tenant to any relief under this Lease. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Tenant has no more rights under this Lease than it would its ifs Landlord was a private entity.

XIV. Conflict of Interest

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

- A City officer or employee; his or her spouse, sibling, parent, child, or other family member(s) within the first degree of consanguinity or affinity;
- An entity in which the officer or employee, or his or her parent, child, or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- An entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary entity.

14.2 Pursuant to the subsection above, Tenant warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, Tenant does not cause a City employee or officer to have a prohibited financial interest in the Contract. Tenant further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XV. Non-Discrimination

15.1 As a party to this Lease, Tenant understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, or disability, unless exempted by Federal, State, or Local Laws, or as otherwise established herein.

XVI. Casualty/Total or Partial Destruction

16.1 If the Premises are damaged by casualty, Tenant may terminate this Lease.

XVII. Condemnation/Substantial or Partial Taking

17.1 If the Premise cannot be used for the purposes contemplated by this Lease because of condemnation or purchase in lieu of condemnation, Tenant may terminate this Lease.

XVIII. Default, Remedies for Default

18.1 *Events of Default.* If Tenant permits or fails to prevent any of the following occurrences, it is a Tenant event of default:

18.1.1 Tenant fails to comply with any term, provisions, or covenant of this Lease and does not cure such failure within thirty (30) days after written notice thereof to Tenant, or any representation or warranty by Tenant of this Lease is false or misleading in any material respect when given to Landlord.

18.1.2 This Lease or the Premises of any part thereof is taken upon execution or by other process of law directed against Tenant, or is taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not to be discharged or disposed of within thirty (30) days after the levy thereof.

18.1.3 Tenant deserts, vacates, or abandons all or any portion of the Premises, or ceases to physically occupy any substantial portion of the Premises and continuously operates its business on the Premises, or fails to commence business operations in the Premises on or before the Occupancy Commencement Date. If Tenant removes or makes preparations to remove its goods, equipment, inventory, and fixtures (other than in the normal course of business) in amounts sufficient to indicate a probable intent to vacate the Premise, Tenant's breach is established conclusively.

18.1.4 Tenant does or permits to be done anything which creates a lien upon the Premises which is not removed or released within thirty (30) days of its filing.

18.1.5 The business operated by the Tenant is closed for failure to pay any State Sales Tax as required or for any other reason, other than repairs, death of the principals of Tenants, or normal business holidays.

18.2 *Remedies for Default.* Upon the occurrences of any Tenants event of default, Landlord has the option to pursue any or more of the following:

18.2.1 In addition to, and without limiting any other remedies available to Landlord at law or in equity immediately terminate this Lease and all rights of Tenant hereunder. Upon termination, Tenant must immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy, enter and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages.

18.2.2 Enter upon and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefore without having terminated the Lease.

18.2.3 Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease. In such case, Tenant must reimburse Landlord on demand for expenses Landlord may incur in thus effecting compliance with Tenant's obligations. Landlord is not liable for any damages resulting to the Tenant from such action.

18.3 *Repossession and Alternation of Locks.* No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises is unauthorized or constitutes conversion. Tenant consents to Landlord's exercise of dominion over Tenant's property within the Premises in case of Tenant's default. Tenant waives (a) all claims for damages by reasons of such reentry, repossession, or alteration of locks or other security devices and (b) all claims for damages by reason of any distress warrants, forcible detainer proceedings, sequestration proceedings, or other legal process. Re-entry by Landlord may be pursuant to judgment obtained in forcible detainer proceeding or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect. Landlord is not liable in trespass or otherwise for such re-entry. Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

18.4 *Obligation to Reimburse.* If Tenant fails to timely make any payment or cure any default, Landlord, without an obligation to do so and without waiving default, may make the payment of remedy the other default for the account of Tenant (and enter the Premises for such purposes). Thereupon Tenant must pay

upon demand, all costs, expenses, and disbursements (including reasonable attorney's fees) incurred by Landlord in taking the remedial action.

18.5 *Default by Landlord.* If Landlord defaults, Tenant's exclusive remedy is termination of this Lease effective on written notice to Landlord (Tenant thereby waives the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Landlord has no further liability to Tenant for an act of default. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

18.6 *Cumulative Remedies.* Each right and remedy provided to Landlord in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord or another remedy. All cost incurred by Landlord in collecting any amounts and damages owed by Tenant under this Lease or to enforce any provisions of it, including reasonable attorneys' fee from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant.

XIX. Warranty Disclaimer

19.1 **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. Without limitations, this Lease contains no express or implied warranty that the Premises have no latent defects or that the Premises are or will remain suitable for Tenant's purposes.**

19.2 **Tenant acknowledges it has ample opportunity to perform due diligence regarding the Premises and accepts the Premises in their present condition, as-is.**

XX. Abandoned Property

20.1 Landlord may retain, destroy, dispose of any property left on the Premises at the end of the Term.

XXI. Appropriations

21.1 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.

XXII. Sublease, Assignment

22.1 Tenant cannot assign or sublease this Lease without the prior written approval of Landlord. Assignments include any transaction in which (a) a material part of Tenant's assets are sold outside the ordinary course of business or (b) a change in the identity of those owning, holding, or controlling the power to vote of 50% of the equity interest in Tenant.

XXIII. Dispute Resolution

23.1 Before bringing any action arising out of this Lease, including an action for declaratory relief but not an action specifically expected 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.

23.2 Filing suit on a claim that should be mediated 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.

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

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

23.5 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 (a) the copy of the Lease before the court is authentic and (b) the Lease was duly signed and delivered by all parties to be bound to mediate. If either of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

23.6 Mediator fees must be borne equally.

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

XXIV. Miscellaneous

24.1 *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' obligation under this Lease are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

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

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

24.4 *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.**

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

24.6 *Third Party Beneficiaries.* This Lease benefits the parties and their successors and permitted assigns only. It has not third-party beneficiaries.

24.7 *Notices.* Notices must be in writing and be certified mail, return receipt requested, addressed to the parties at their respective address set forth at the beginning. If the address is a corporation, notices must be addressed to the attention of its President. 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.

24.8 *Pronouns.* Plural constructions include the singular, and singular construction include the plural. Whether a pronoun is masculine, feminine, or neutral it does not affect meaning or application of the relevant term. The words “herein,” “hereof,” and other, similar compounds of the words “here” refer to the entire Lease, not just to a part of it.

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

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

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

24.12 *Administrative Actions and Agreements.* The Director of Parks and Recreation 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 Tenant defaults and pursue remedies for such defaults, including terminating this Lease. This paragraph does not authorize Lease amendments or renewals without Council consent.

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

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

XXV. Reporting and Records

25.1 *Annual Report to City* on or before April 1st of each year during the term of this Lease, Tenant shall provide a written report to the CITY (“Annual Report”) outlining and completed activities for the previous calendar year, including but not limited to:

- a) Fundraising, grants, and sponsorships
- b) Educational program, events, and other activities
- c) Officers and Board Members
- d) Changes in By-Laws or Articles of Incorporation
- e) Any other pertinent information regarding the action and/or activities of Tenant

25.2 *Use of the Premises:*

25.2.1 Tenant shall have the right to access the Premises for the purposed outlined in this Lease.

25.2.2 Tenant, its members, officers, and Board Members, shall ensure that their use of the Premises is in a manner that does not result in damage or modification of the Premises and its amenities.

25.3 *Financial Records.* Throughout the term of this Lease, Tenant shall maintain complete and accurate permanent financial records related to its rights and obligations under the terms of this Lease. Such records shall be preserved in Bexar County, Texas, for at least five (5) years and shall be open to City inspections, review, and audit following reasonable notification of intent to inspect.

XXVI. Public Information

26.1 Tenant 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.

LANDLORD:
CITY OF SAN ANTONIO
PARKS AND RECREATION DEPARTMENT

TENANT:
EMPOWER HOUSE SA

By: _____
Homer Garcia III, Director

By: _____
Jenny Castro, Executive Director

Date: _____

Date: _____

APPROVED AS TO FORM:

CITY ATTORNEY

Attachments:
Exhibit A – Leased Premises Map