

## COMMERCIAL LEASE

### Basic Information

**Date:** May 2, 2023

**Landlord:** JLFH Investments, LLC

**Landlord's Address:** 24 Hunters Hideaway, New Braunfels, TX 78132-4710

**Tenant:** CITY OF SAN MARCOS –  
Women, Infants & Children (WIC) supplemental nutrition program

**Tenant's Address:** 630 E Hopkins, San Marcos, TX 78666

### Leased Premises:

Square feet: 2,584 square feet (approximate)

Name of Building: Village Professional Building (a multi-tenant property)

Street address/suite: 705 Landa Street, Suite B New Braunfels, Texas 78130

**Term (months):** 120

**Commencement Date:** June 8, 2023 (First Month Prorated to Make Rents due on 1<sup>st</sup> of following Months)

**Expiration Date:** May 31, 2033

**Base Rent (annually):** Year 1: \$19.00/square foot (\$4,091.33 monthly)

Years 2-10: 3% annual base rent increase beginning of every June

**Additional Rent:** Tenant will pay its proportionate share of all annual Operating Expenses such as Taxes, Insurance and Common Area Expenses (NNN). NNN expenses are projected to be \$5.88/SF for 2023.

**Security Deposit:** \$6,604.42, equal to the last month of rent and NNN charges

**Tenant's Pro Rata Share:** Twenty Four point Twenty Four Percent (24.24%) (2,584 square feet of 10,659 total + share of common space)

**Permitted Use:** Provide WIC services and support to educate parents/caregivers on the proper nutrition for babies and young children, together with associated administrative, business and office support activities.

**Insurance:**

1. Tenant will carry a general liability policy with minimum coverage of \$1,000,000/\$2,000,000 and personal property/contents insurance in amounts the tenant determines reasonable and appropriate.
2. Landlord will carry property insurance to cover the building and the common area, for replacement and liability in amounts the landlord determines reasonable and appropriate.
3. Landlord will be responsible for interior buildout replacement excluding tenant's personal property in the case of a total or partial loss, according to Section D.5. of this Lease.

**A. Definitions**

- A1. "Agent" means agents, contractors, employees, licensees, and, to the extent under the control of the principal, invitees.
- A2. "Tenant's Operating Hours" means 7:00 A.M. to 9:00 P.M. Monday - Friday or such occasional extra hours of operation as Tenant determines is necessary to properly and efficiently carry out the Permitted Use activities.
- A3. "Common Areas" means all facilities and areas of the Building and the related land that are intended and designated by Landlord from time to time for the common, general, and nonexclusive use of all tenants of the Building. Landlord has the exclusive control over and right to manage the Common Areas.
- A4. "Essential Services" means the following services: (a) air-conditioning and heating to the Premises reasonable for the Permitted Use (exclusive of air-conditioning or heating for electronic data-processing or other specialized equipment) during Tenant's Operating Hours and Tenant may agree on; (b) hot and cold water for lavatory and drinking purposes; (c) janitorial service and periodic window washing of the common area; (d) electric current for normal office machines and the Building's standard lighting reasonable for the Permitted Use; and (e) lighting in Common Areas and fluorescent lights in the Building's standard light fixtures in the Premises; (f) permitting Tenant the quiet enjoyment of the Premises.
- A5. "Injury" means (a) harm to or impairment or loss of property or its use, (b) harm to or death of a person, or (c) "personal and advertising injury" as defined in the form of liability insurance Tenant is required to maintain.
- A6. "Lienholder" means the holder of a deed of trust covering the Premises.
- A7. "Operating Expenses" means all reasonable expenses, including real property taxes, that Landlord pays in connection with the ownership, operation, and maintenance of the Building, except principal and interest on any debt, expenditures classified as capital expenditures for federal income tax purposes, and expenses for which Tenant is required to reimburse Landlord such as

utilities, janitorial service, maintenance/repairs, property management, and insurance.

A& "Rent" means Base Rent plus any other amounts of money payable by Tenant to Landlord.

**B. Tenant's Obligations**

**B.1. Tenant agrees to -**

*B.1.a* Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*B.1.b* Accept the Premises in their present condition "AS IS," with the exception of one restroom which the Landlord has agreed to renovate by July 15, 2023 for ADA compliance (specifications as follows):

- >turning space of 60 by 60 inches*
- >door that is at least 32 inches wide and swings out*
- >has a handrail 33inches high and parallel to the floor, 1.5 inches in diameter, with 1.5 inches clearance between rail and wall*
- >sink: top no greater than 34" at the top (from the floor) and have a clearance underneath of 29"*

*Tenant will be solely responsible for all costs associated with any future renovations or improvements to the Premises required, due to changes or amendments to ADA or other federal or state law.*

*B.1.c* Obey (i) all laws relating to Tenant's use, maintenance of the condition, and occupancy of the Premises and Tenant's use of any Common Areas in the Building; (ii) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (iii) any rules and regulations for the Building and Common Areas adopted by Landlord that apply equally to all tenants in the Building, do not conflict with this Lease, and do not unreasonably interfere with Tenant's Permitted Use.

*B.1.d* Pay monthly, in advance, on the first day of the month, the Base Rent to Landlord at Landlord's Address.

*B.1.e* Pay a late charge of 10 percent of any Rent not received by Landlord by the tenth day after it is due.

*B.1.f* Obtain and pay for all utility services used by Tenant and not provided by Landlord.

*B.1.g* (i) Pay monthly, in advance, Tenant's Pro Rata Share of the estimated monthly Operating Expenses.

(ii) Pay annually any amount by which the actual Operating Expenses exceed the estimated Operating Expenses, within thirty days of receiving notice of such difference from the Landlord.

*B1h* Allow Landlord to enter the Premises during Tenant's Operating Hours and with reasonable advance notice to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants. Advance notice is not required by Landlord in the event of an emergency, in which case entry may be outside of Tenant's Operating Hours and simultaneous notice is sufficient.

*B1i* Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted. Premises must be kept in a clean and sanitary condition. Tenant is responsible for major systems repairs (HVAC, plumbing, electrical) up to \$1,000.

*B1j* Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.

*B1k* If requested, deliver to Landlord a financing statement perfecting the security interest created by this lease.

*B1l* Vacate the Premises and return all keys to the Premises on the last day of the Term.

*B1m* On request, execute an estoppel certificate that states the Commencement Date and Termination Date 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.

*B1n* Arrange with Landlord in advance for any heating, air-conditioning, or electrical needs in excess of the services provided by Landlord and pay for such additional services as billed by Landlord.

*B1o* RELEASE LANDLORD AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) CAUSED BY TENANT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OCCURRING IN ANY PORTION OF THE PREMISES.

***B2* Tenant agrees not to -**

*B2a* Use the Premises for any purpose other than the Permitted Use.

*B2b* Create a nuisance.

*B2c* Unreasonably interfere with any other tenant's normal business operations or Landlord's management of the Building.

*B2.d* Permit any waste.

*B2.e* Use the Premises in any way that would increase insurance premiums, or void insurance on the Building.

*B2.f* Change Landlord's lock system without prior approval of Landlord.

*B2.g* Alter the Premises without Landlord's consent.

*B2.h* Allow a lien to be placed on the Premises arising from work performed, materials furnished, or obligations incurred by tenant.

*B2.i* Assign this lease or sublease any portion of the Premises without Landlord's written consent.

*B2.j* Place any signs on the Premises or Building without Landlord's written consent.

### **C. Landlord's Obligations**

#### ***C.1. Landlord agrees to -***

*C.1.a* Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Expiration Date.

*C.1.b* Obey all laws relating to Landlord's operation of the Building and Common Areas.

*C.1.c* Provide the Essential Services.

*C.1.d* Repair, replace, and maintain the (i) roof, (ii) foundation, (iii) Common Areas, (iv) structural soundness of the exterior walls, doors, windows, and interior corridors (including walls/doors/glass/windows), (v) leasehold improvements within the tenant's leased premises only as required by Section D.5. of this Lease, and (vi) other structures or equipment serving the Premises outside of the Tenant's Suite. Landlord will pay for major systems repairs (HVAC, plumbing, electrical) over \$1,000.

*C.1.e* Provide Tenant promptly after receipt of a written request from Tenant with a reconciliation of Tenant's Pro Rata Share of the actual Operating Expenses incurred by Landlord during the preceding calendar year and the estimated Operating Expenses paid by Tenant for the same period and reimburse Tenant for the amount of any estimated Operating Expenses paid by Tenant in excess of Tenant's Pro Rata Share of actual Operating Expenses for the preceding calendar year.

*C.1.f* Provide Tenant with detailed invoices for all heating, air-conditioning, and electrical charges in excess of the Essential Services for which Landlord is entitled reimbursement.

*C1.g.* RELEASE TENANT AND ITS AGENTS AND CLIENTS, FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) CAUSED BY LANDLORD'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OCCURRING IN ANY PORTION OF THE PREMISES.

**C2. Landlord agrees not to -**

*C2.a.* Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

*C2.b.* Unreasonably withhold consent to a proposed assignment or sublease.

**D. General Provisions**

**Landlord and Tenant agree to the following:**

*D.1. 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.

*D.2. Abatement.* Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant will not be entitled to abate Rent for any reason.

*D.3. Insurance.* Tenant and Landlord will maintain the respective insurance coverages required in this Lease.

*D.4. Release of Claims/Subrogation.* LANDLORD AND TENANT RELEASE EACH OTHER AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE PREMISES OR BUILDING, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE BUILDING, AND LOSS OF BUSINESS OR REVENUES THAT ARE COVERED BY THE RELEASING PARTY'S PROPERTY INSURANCE OR THAT WOULD HAVE BEEN COVERED BY THE REQUIRED INSURANCE IF THE PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGES REQUIRED BY THIS LEASE. THE PARTY INCURRING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE. LANDLORD AND TENANT WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT

**APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY. THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY OR ITS AGENTS BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY OR ITS AGENTS.**

*D.5. Casualty/Total or Partial Destruction*

*D.5.a.* If the Premises are damaged by casualty and can be restored within one hundred twenty days, Landlord will, at its expense, restore the areas it is responsible for under section C.1.d and any leasehold improvements within the Premises that are not within Tenant's obligations under B.1.i to substantially the same condition that existed before the casualty and Tenant will, at its expense, be responsible for replacing any of its damaged furniture, equipment, and personal property and performing Tenant's obligations. If Landlord fails to complete the portion of the restoration for which Landlord is responsible, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

*D.5.b.* If the Premises cannot be restored within one hundred twenty 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 ten days. If Tenant does not terminate this lease, the lease will continue and Landlord will restore the Premises as provided in D.5.a. above.

*D.5.c.* To the extent the Premises are untenantable after the casualty, the Rent will be adjusted as may be fair and reasonable.

*D.6. Condemnation/Substantial or Partial Taking*

*D.6.a.* 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.

*D.6.b.* 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.

*D.6.c.* Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

*D.7. Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice and failing to provide Essential Services to Tenant within ten days after written notice.

*D.8 Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not provide an Essential Service within thirty days after default, terminate this lease.

*D.9 Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning the Premises 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).

*D.10 Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises and sue for Rent as it accrues; (b) 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, and Tenant agrees to reimburse Landlord for any expenditures made in order to relet; (c) enter the Premises and perform Tenant's obligations; and (d) terminate this lease by written notice and sue for damages. Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be occupying the Premises, until the default is cured, without being liable for damages.

*D.11 Default/Waiver.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of a remedy does not preclude pursuit of another remedy.

*D.12 Mitigation.* Landlord has mitigated the loss of rent if Landlord, within thirty days after Tenant's loss of possession, (a) places a "For Lease" sign at the Premises, (b) places the Premises on Landlord's inventory of properties for lease, (c) makes Landlord's inventory available to area brokers on a monthly basis, (d) advertises the Premises for lease in a suitable trade journal in the county in which the Premises are located, and (e) shows the Premises to prospective tenants who request to see it.

*D.13 Security Deposit.* If Tenant defaults, Landlord may use the Security Deposit to pay arrears of Rent, to repair any damage or injury, or to pay any expense or liability incurred by Landlord as a result of the default.

*D.14 Holdover.* If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term. If Tenant does not vacate on termination date then the tenant will pay the entire next month in full plus NNN charges without proration. If the tenant does not vacate by the second month base rent will be charged at 150%.

*D.15 Alternative Dispute Resolution.* Landlord and Tenant agree to mediate in good faith before filing a suit for damages.



*D.16. Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.

*D.17. Venue.* Exclusive venue is in Comal County, Texas.

*D.18. Entire Agreement.* This lease is the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the Premises or the lease of the Premises by Landlord to Tenant, and Tenant is not relying on any statements or representations of any agent of Landlord, that are not in this lease.

*D.19. Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

*D.20. Limitation of Warranties.* 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.

*D.21. Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

*D.22. Use of Common Areas and Parking.* Tenant and tenant's customers will have the nonexclusive right to use the Common Areas and Parking, subject to any reasonable rules and regulations that Landlord may prescribe.

*D.23. Abandoned Property.* Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

#### **E. Special Provisions**

**Notwithstanding any other provision in this lease to the contrary, Landlord and Tenant agree to the following:**

*E.1.* All obligations of the Tenant, including, but not limited to, any duty to indemnify, shall be enforceable against Tenant only to the extent permitted by law and with the limitation that Tenant, in no manner waives any limitations on liability or any immunity granted or allowed by applicable laws or the Texas Constitution, including comparative negligence or liability laws.

*E2.* Any limitation on liability of Landlord shall not extend to any liability, losses or damages caused in whole or in part by the negligent acts or omissions or willful misconduct of Landlord after applying comparative negligence or liability laws.

*E3.* Notwithstanding anything to the contrary, Landlord shall not assert or enforce a lien or security interest against any property of Tenant that is not permitted by applicable law to be asserted or enforced against a Texas municipality. Moreover any lawful lien or security interest shall be subordinate to any interest in property of the State of Texas or the United States of America arising by virtue of any funding agreements such entities may have with the Tenant.

*E4.* The obligations under this Lease are contingent upon the annual appropriation of funds by the San Marcos City Council based on funding from the Texas Health and Human Services Commission for the purposes of this lease. If such funding is not received and appropriated by the City Council in any fiscal year during the term of this lease, the Lease term will be adjusted to terminate concurrently with the end of the period for which funding has been appropriated. Alternatively, if such funding is awarded to Tenant for a specific fiscal year, but the actual Rent due for that fiscal year exceeds the amount of funding, Landlord agrees that Tenant shall be liable only for payment of the lesser amount of the fiscal year funds awarded to Tenant and appropriated by the City Council, provided however in no event will the Rent be less than 15% of the prior year. Tenant will have one year to make the rent back up; if Tenant does not pay full rent within one year of lack of funding, Landlord may terminate this lease.

LANDLORD  
JLFH INVESTMENTS, LLC

DocuSigned by:  
By: Frank Hampel  
097ADC24AC4473...  
Frank C. Hampel, Jr., MD

CITY OF SAN MARCOS (WIC Program)

By: \_\_\_\_\_  
Stephanie Reyes, City Manager