

**LEASE AGREEMENT BETWEEN THE CITY OF KILLEEN, TEXAS AND
KILLEEN SISTER CITIES - OSAN**

This Ground Lease Agreement (“**Lease**”) is entered into as of this ____ day of _____, 2017, (the “**Effective Date**”) between the City of Killeen, Texas, a municipal corporation and home-rule city located in Bell County, Texas, organized and operating under the provisions of its charter and the Constitution and laws of the State of Texas (“**City**”), and Killeen Sister Cities – Osan, a Texas non-profit corporation (“**Tenant**”).

**ARTICLE 1
LEASE OF PROPERTY**

Section 1.1 Premises Leased. City, in consideration of the covenants, agreements, and conditions herein set forth, which Tenant hereby agrees shall be kept and performed, does hereby lease unto Tenant, and Tenant does hereby lease from City, the real property described on Exhibit A (the “**Premises**”), together with all of City’s rights, interests, estates, and appurtenances thereto, all improvements thereon, all other rights, titles, interests, and estates, if any, of City in other portions of the Premises and together with free, uninterrupted and continuous access to and from the Premises, subject to the terms of this Lease, over and across such other portions of property owned or controlled by City as may be necessary for ingress and egress by Tenant, its employees, agents and contractors to and from the Premises.

Section 1.2 Habendum. TO HAVE AND TO HOLD the Premises, together with all and singular the rights, privileges, and appurtenances thereunto attaching or in anywise belonging, exclusively unto Tenant, its successors and assigns, for the term set forth in Article 2, subject to termination as herein provided, and subject to and upon the covenants, agreements, terms, provisions, and limitations herein set forth.

**ARTICLE 2
TERM OF LEASE**

Section 2.1 Term. The term of this Lease shall be for Ten (10) years commencing on the 15th day of September, 2017 (the “**Commencement Date**”). City reserves the right to terminate this Lease with not less than two (2) months’ notice prior to the last day of the expiration of the term if, upon majority vote of the City Council of the City of Killeen, the City finds that Tenant, during the term of this Lease, has: failed to materially comply with all applicable operating permits; adversely affected City operations or activities; or had a history of defaults, whether cured or uncured.

Section 2.2 Definitions. “**Lease Year**” shall mean any twelve (12) month period during the Term commencing on the anniversary date of the Commencement Date.

Section 2.3 Possession. Tenant shall be entitled to take possession of the Premises on the Commencement Date.

ARTICLE 3
CONSIDERATION/DEPOSIT

Section 3.1 **Consideration.** The consideration for this Lease shall be the: (a) payment and performance of all obligations by City and Tenant pursuant to the terms of the Lease; and (b) payment by Tenant to City of \$1.00 per lease year.

ARTICLE 4
IMPOSITIONS AND UTILITIES

Section 4.1 **Impositions Defined.** The term “**Impositions**” means, to the extent applicable, all taxes, assessments, use and occupancy taxes, charges for public utilities, excises, levies, license and permit fees, and other charges by any public authority, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which shall or may during the Term be assessed, levied, charged, confirmed or imposed by any public authority upon or accrued or become a lien on (a) the Premises or any part thereof; (b) the buildings or improvements now or hereafter comprising a part thereof; (c) the appurtenances thereto or the sidewalks or streets adjacent thereto; (d) such franchises, licenses, and permits as may be pertinent to the use of the Premises; or (e) any documents to which Tenant is a party creating or transferring an interest or estate in the Premises by any municipality, county, state, the United States of America, or any other governmental body, subdivision, agency, or authority (hereinafter all of the foregoing governmental bodies are collectively referred to as “**Governmental Authorities**”).

Section 4.2 **Tenant’s Obligation.** Tenant will pay as and when the same shall become due all Impositions. Impositions that are payable by Tenant for the fiscal year in which this Lease commences as well as during the year in which the Term ends shall be apportioned so that Tenant shall pay its proportionate share of the Impositions payable by Tenant for such periods of time. Where any Imposition that Tenant is obligated to pay may be paid pursuant to law in installments, Tenant may pay such Imposition in installments as and when such installments become due.

Section 4.3 **Contest of Imposition.** Tenant may, at its expense, contest the validity or amount of any Imposition for which it is responsible, in which event the payment thereof may be deferred, as permitted by law, during the pendency of such contest, if diligently prosecuted. Nothing herein contained, however, shall be construed to allow any Imposition to remain unpaid for such length of time as would permit the Premises, or any part thereof, to be sold or seized by any Governmental Authority for the nonpayment of the same.

Section 4.4 **Evidence Concerning Impositions.** Proof of payment by Tenant of any Imposition or the receipt, certificate, bill, statement issued or given by the appropriate officials authorized by law to issue the same or to receive payment of any Imposition of the existence, payment, nonpayment, or amount of such Imposition shall be prima facie evidence for all purposes of the existence, payment, nonpayment, or amount of such Imposition.

Section 4.5 **Rendition and Exemptions.** Tenant shall render the Premises for each Governmental Authority imposing Impositions thereon and may, if Tenant shall so desire,

endeavor at any time or times to obtain an exemption from Impositions or a reduction in Impositions thereon and, in such event, City will, at the request of Tenant, cooperate in effecting such a reduction or exemption, provided City shall not be required to incur any expense in connection therewith without its prior consent.

Section 4.6 **Utilities.** Tenant shall be wholly responsible for obtaining, constructing, extending and/or providing for necessary utilities and services to the Premises, including without limitation, water, sanitary septic, electricity and waste removal services. Tenant shall pay all charges for gas, electricity, light, heat, air conditioning, power, telephone and other communication services, and all other utilities and similar services rendered or supplied to the Premises, and all water service charges, sewer service charges, or other similar charges levied or charged against, or in connection with, the Premises.

ARTICLE 5 **IMPROVEMENTS**

Section 5.1 **Existing Conditions.** Tenant does hereby covenant and agree that it will, by September 30, 2018, at its own cost and expense, cause to be erected and completed on the Premises, a Korean pagoda as set forth in the plans and specifications attached hereto as Exhibit B.

It is further agreed that all buildings and improvements placed upon the Premises during the Term of this lease by Tenant, shall remain the exclusive property of the City, and shall be considered personally and not as part of the real estate.

It is further agreed that during the Term of this lease there shall be no mechanic's lien upon any buildings or improvement, without the written consent of the City, and that in the event of any mechanic's lien attaching thereto, Tenant shall pay and fully discharge the sum within thirty (30) days after written notice to do so by the City. The City shall have full and complete authority to discharge and pay off all liens, taxes, assessments or any form of encumbrance against the Premises, growing out of any default of payment by Tenant, and for such payment, if any by the City, the City shall be reimbursed on demand.

ARTICLE 6 **USE, MAINTENANCE, REPAIRS AND LIABILITY**

Section 6.1 **Use.**

(a) Subject to the terms and provisions hereof, Tenant may use and enjoy the Premises in a lawful manner for the promotion and presentation of the Korean arts and culture, (the "**Project**"), but for no other purpose without obtaining the prior written consent of the City. Such consent shall not be unreasonably withheld.

(b) Tenant shall not use or occupy, permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises in a manner which would

violate any applicable laws, regulations, ordinances, or requirements of any Governmental Authority having jurisdiction.

(c) Tenant shall be entitled to use the Premises at least once per month. Tenant shall provide the City with a schedule of its planned events/usage for the next twelve-month period on the Premises by October 1 each year. Thereafter, Tenant may be allowed to use the Premises when not otherwise scheduled by providing at least three (3) days' notice to the City in writing.

(d) The City reserves the right to use and schedule the Premises to others for those dates not scheduled in advance by as provided in this Article.

Section 6.2 **Maintenance and Repairs.**

(a) Tenant shall make all repairs to the Premises, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises and the sidewalks and curbs, if any, around the Premises in good order, repair, and condition at all times. This shall include but not be limited to replacement of any lighting fixtures and bulbs, roofing or unsafe conditions.

In the event of unsafe conditions observed by the City, the City shall provide written notice to Tenant. Tenant shall have ten (10) days from the date of receiving notice to correct any unsafe conditions. If repair cannot reasonably be completed within ten (10) days, Tenant shall notify the City in writing within ten (10) days of receiving notice and shall diligently make corrections as expeditiously as possible, keeping the City informed of the repair status.

(b) Tenant will not do, permit, or suffer any damages, disfigurement, or injury to or upon the Premises or any part thereof.

(c) Tenant shall be responsible for all landscaping of the Premises, except the City will mow the grass on the Premises routinely and on a schedule set for the greater areas owned by the City.

ARTICLE 7

INSURANCE/INDEMNITY

Section 7.1 **Insurance.** During the Term, Tenant, at its sole expense, shall obtain and maintain in full force and effect appropriate insurance from an insurer authorized to operate in Texas. Said insurance shall provide, at a minimum, general liability and property damage (\$1,000,000, occurrence basis). Throughout construction and upon completion of any Improvements, Tenant shall also obtain and maintain coverage against loss or damage to the same resulting from fire or other risks comparable to the insurance Tenant maintains on other similar facilities of Tenant's business. The City of Killeen shall be listed as an additional insured on all required policies, with a full waiver of subrogation. All required policies shall note on the certificates of coverage that the insurance policies shall not be cancelled except upon thirty (30) days' advance notice of such cancellation to be provided to the City. Tenant shall provide certificates of the above noted coverages, as applicable, prior to the Commencement Date and annually upon written request from the City.

Section 7.2 Indemnity. To the extent allowed by law, Tenant agrees to indemnify, save harmless, and defend the City from and against any and all demands, liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorneys' fees), which it may hereafter incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property including, but not being limited to, any applicable Federal or State of Texas acts or laws arising from the use of the Premises, or any violation of governmental laws, regulations, or orders to the extent caused, in whole or in part, by the negligent or willful acts or omissions of Tenant, its officers, employees, agents or contractors in the performance of this Lease or operation of the Project.

ARTICLE 8 CASUALTY LOSS

Tenant shall immediately notify City of any casualty loss, destruction or damage to the Premises.

ARTICLE 9 TRANSFERS

Tenant shall not assign its interest in this Lease or enter into any subleases without the prior written consent of the City. If City sells or transfers all or part of the Premises and as part of said sale assigns its interest in this Lease, then as of the effective date of the sale, assignment or transfer, City shall have no further liability to Tenant, except as provided herein.

ARTICLE 10 WARRANTY OF PEACEFUL POSSESSION

City warrants that it is the owner of the Premises in fee simple absolute. City further covenants that Tenant, on performing and observing the covenants and agreements herein contained and provided to be performed by Tenant, shall and may peaceably and quietly have, hold, occupy, use, and enjoy the Premises during the Term, and may exercise all of its rights hereunder, subject only to the provisions of this Lease and applicable governmental laws, rules, and regulations; and City agrees to warrant and forever defend Tenant's right to such occupancy, use, and enjoyment and the title to the Premises against the claims of any and all persons whomsoever lawfully claiming the same, or any part thereof, by, through or under City, but not otherwise, subject only to provisions of this Lease and all applicable governmental laws, rules, and regulations.

ARTICLE 11 DEFAULT AND REMEDIES

Section 11.1 Default. In the event of an alleged default by Tenant of any condition or provision herein, or in the event Tenant fails to maintain its 501(c)(3) status, the City shall first give Tenant written notice of the alleged default. Upon receipt of notice, Tenant shall have thirty (30) days to cure and correct any alleged default, except for repair of unsafe conditions

provided in section 6.2. If such default is not corrected within said thirty (30) days, but such correction reasonably requires more than thirty (30) days to cure, Tenant will not be in breach of this Lease if the cure is commenced within the thirty (30) day period and the cure is diligently pursued until completion by Tenant.

(b) In the event of an alleged default by City, Tenant shall first give City written notice of the alleged default. Upon receipt of such notice, City shall have thirty (30) days to cure and correct any alleged default. If such default is not corrected within said thirty (30) days, but such correction reasonably requires more than thirty (30) days to cure, City will not be in breach of this Lease if the cure is commenced within the thirty (30) day period and is diligently pursued to completion by City.

Section 11.2 Remedies. If a Default occurs, then City or Tenant, as applicable, may pursue their respective rights and remedies as follows:

(a) City's remedies upon Tenant's default are to: (1) enter and take possession of the Premises, after which City may relet the Premises on behalf of Tenant and receive rent directly by reason of the reletting, and Tenant agrees to reimburse City for all reasonable expenditures made in order to relet; (2) enter the Premises and perform Tenant's obligations under this Lease; and/or (3) terminate this Lease by written notice and pursue any remedies available under applicable law. Upon default, City may enter and take possession of the Premises by self-help methods and may lock out Tenant or any other person who may be occupying the Premises, until the default is cured, without being liable for any damages.

(b) Tenant's remedies upon City's default are to pursue any remedies available under applicable law.

ARTICLE 12
MISCELLANEOUS PROVISIONS

Section 12.1 Notices. Any written notice provided for or permitted to be given hereunder may be given by (a) depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, addressed as set forth in this Section 13.1; (b) delivering the same to the party to be notified; or (c) sending a prepaid courier delivery of any notice, so addressed. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee, as evidenced by the executed postal receipt or other receipt for delivery. For purposes of notice the addresses of the parties hereto shall, until changed, be as follows:

City: City of Killeen, Texas
Attn: Ronald L. Olson, City Manager
P.O. Box 1329
Killeen, Texas 76540-1329

Tenant: Tenant
Attn.: _____

The parties hereto may from time to time change their respective addresses for purposes of notice hereunder to any other location within the United States by giving a notice to such effect in accordance with the provisions of this Section 12.1.

Section 12.2 **Performance of Other Party's Obligations** If either party hereto fails to perform or observe any of its covenants, agreements, or obligations hereunder, then the other party may, at its sole election (but not as its exclusive remedy), perform or observe the covenants, agreements, or obligations which are asserted to have not been performed or observed by the other party. Notwithstanding the foregoing, if either party determines, in its or his reasonable good faith judgment that an emergency, involving imminent danger of injury or death to persons or damage to property, exists due to the other party's failure to observe or perform its or his covenants, agreements, and obligations hereunder, then such party may immediately perform or observe the covenants, agreements and obligations which give rise to such emergency. Any performance or observance by a party pursuant to this Section 12.2 shall not constitute a waiver of the other party's failure to perform or observe.

Section 12.3 **Modification and Non-Waiver**. No variations, modifications, or changes herein or hereof shall be binding upon any party hereto unless set forth in a writing executed by it or by a duly authorized officer or agent. No waiver by either party of any breach or default of any term, condition, or provision hereof shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character, or description under any circumstance. No waiver of any breach or default of any term, condition, or provision hereof shall be implied from any action of any party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving party.

Section 12.4 **Governing Law**. This Lease shall be construed and enforced in accordance with the laws of the State of Texas and venue for any claim or controversy arising hereunder shall be in Bell County, Texas.

Section 12.5 **Number and Gender; Captions; References**. Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Article and Section headings in this Lease are for convenience of reference and shall not affect the construction or interpretation of this Lease. Whenever the terms "hereof," "hereby," "herein," or words of similar import are used in this Lease they shall be construed as referring to this Lease in its entirety rather than to a particular Section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "Article" or "Section" shall be construed as referring to the indicated Article or Section of this Lease.

Section 12.6 **Severability**. If any provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provision to persons or

circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

Section 12.7 **Attorney Fees.** If litigation is ever instituted by either party hereto to enforce, or to seek damages for the breach of, any provision hereof, the prevailing party therein shall be promptly reimbursed by the other party for all attorneys' fees reasonably incurred by the prevailing party in connection with such litigation.

Section 12.8 **Surrender of Premises; Holding Over** Upon termination or the expiration of this Lease, Tenant shall peaceably quit, deliver up, and surrender the Premises to City free of equipment owned by Tenant and rubbish and debris generated by Tenant. Upon such termination or expiration, City may, without further notice, enter upon, reenter, possess, and repossess itself of the Premises by force, summary proceedings, ejectment, or otherwise, and may dispossess and remove Tenant from the Premises and may have, hold, and enjoy the Premises free of any claim by Tenant with respect thereto. If Tenant does not surrender possession of the Premises at the end of the Term, such action shall not extend the Term, Tenant shall be a tenant at sufferance. City shall not be deemed to have accepted a surrender of the Premises by Tenant, or to have extended the Term, other than by execution of a written agreement specifically so stating.

Section 12.9 **Relation of Parties.** It is the intention of City and Tenant to hereby create the relationship of lessor (City) and lessee (Tenant), and no other relationship whatsoever is hereby created. Nothing in this Lease shall be construed to infer that City and Tenant are partners or joint venturers or to render either party hereto liable for any obligation of the other. It is expressly agreed that nothing in this Lease shall be construed in any manner to abridge the right of the City to pass or enforce necessary police and health regulations for the protection of its inhabitants. It is further agreed and understood that, if the City calls the attention of Tenant to any such violation on the part of Tenant, its officers, employees, contractors, or subcontractors, Tenant shall immediately desist from such activity and correct such violation.

Section 12.10 **Force Majeure.** As used herein "**Force Majeure**" means the occurrence of any event which prevents or delays the performance by City or Tenant of any obligation imposed upon it hereunder and the prevention or cessation of which event is beyond the actual control of the obligor. If Tenant or City shall be delayed, hindered, or prevented from performance of any of their respective obligations by reason of Force Majeure (and Tenant or City shall not otherwise be in default hereunder) the time for performance of such obligation shall be extended for the period of such delay, provided that the following requirements are complied with by Tenant or City:

- (a) Tenant or City shall give prompt written notice of such occurrence, and
- (b) Tenant or City shall diligently attempt to remove, resolve, or otherwise eliminate such event, keep City or Tenant advised with respect thereto, and shall commence performance of its obligations hereunder immediately upon such removal, resolution, or elimination.

Section 12.11 **Non-Merger.** Notwithstanding the fact that fee title to the Premises and to the leasehold estate hereby created may, at any time, be held by the same party, there shall be no merger of the leasehold estate hereby created unless the owner thereof executes and files for record in the Office of the County Clerk of Bell County, Texas a document expressly providing for the merger of such estates.

Section 12.12 **Entire Agreement.** This Lease constitutes the entire agreement of the parties hereto with respect to its subject matter, and all prior agreements with respect thereto are merged herein.

Section 12.13 **Recordation.** Simultaneously with the execution of this Lease, City and Tenant may execute an instrument in recordable form constituting a short form or memorandum of this Lease, which shall be filed for record in the Office of the County Clerk of Bell County, Texas.

Section 12.14 **Successors and Assigns.** This Lease shall constitute a real right and covenant running with the Premises, and, subject to the provisions hereof pertaining to Tenant's right to encumber and assign, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

Section 12.15 **Entry and Inspection.** City may enter upon the Premises at all reasonable times to inspect the same, or for any other reasonable purpose.

Section 12.16 **City's Joinder.** City agrees to join with Tenant, subject to the terms of the Agreements, in the execution of such applications for permits and licenses from any Governmental Authority as may be reasonably necessary or appropriate to effectuate the intents and purposes of this Lease, provided that no such application shall constitute an encumbrance of or with respect to the Premises, and City shall not incur or become liable for any obligation as a result thereof.

Section 12.17 **No Third Parties Benefited.** Except as herein specifically and expressly otherwise provided with regard to notices, opportunities to cure defaults, and certain other enumerated rights granted to Permitted Mortgagees, the terms and provisions of this Lease are for the sole benefit of City and Tenant, and no third party whatsoever, is intended to benefit herefrom.

Section 12.18 **Survival.** Any provision contained in this Lease providing for indemnity or a duty that necessarily will not be completed until after the expiration or termination of this Lease shall continue in full force and effect until such a time as all duties have been fully performed.

Section 12.19 **Use of City's Name.** Tenant shall not use the City's name, logo, or any other related symbol or information in any advertising or promotional material relating to the Premises without City's prior written consent, but Tenant may make reference to the Lease and to City in legally operative documents, as Tenant shall deem reasonably necessary.

Section 13.21 Bankruptcy. Abandonment of the Premises or the filing of a bankruptcy petition without reaffirming this Lease are, in addition to other potential breaches of this Lease, considered to be breaches of this Lease.

Section 13.22 Time. Time is of the essence in this Lease. Whenever referred to herein, "days" shall mean calendar days unless specifically indicated otherwise.

EXECUTED this ____ day of _____, 2017.

CITY:

CITY OF KILLEEN

By: _____

Name: Ronald L. Olson

Title: City Manager, City of Killeen, Texas

Attest:

City Secretary, City of Killeen, Texas

TENANT:

TENANT

By: _____

Name: _____

Title: _____

Attest:

Secretary

EXHIBIT A

DRAFT