

LEASE

STATE OF TEXAS

COUNTY OF BELL

This Lease is made and entered into this 13TH day of DECEMBER ²⁰⁰⁵ by and between KILLEEN INDEPENDENT SCHOOL DISTRICT, referred to in this lease as Lessor, and CITY OF KILLEEN, a Municipal Corporation, referred to in this lease as Lessee.

ARTICLE 1. DEMISE OF LEASED PREMISES

In consideration of the mutual covenants and agreements set forth in this lease, and other good and valuable consideration, Lessor does hereby demise and lease to Lessee, and Lessee does hereby lease from Lessor, the premises situated on Michale Drive, Vahrenkamp Drive, and Pennington Avenue Killeen, Bell County, Texas, being 6 acres more or less and adjacent to the Killeen Independent School District's Iduma Elementary School and more particularly described in Exhibit A attached hereto and incorporated herein for all intents and purposes. These premises are referred to in this lease as "the premises" or "the leased premises."

Lessee is to have and to hold the leased premises, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way appertaining to the leased premises, including, but not limited to, any and all easements, rights, title, and privileges of Lessor, existing now or in existence at any time during the lease term, in, to, or under adjacent streets, sidewalks, alleys, party walls, and reversions which may later accrue to Lessor as owner of the leased premises by reason of the closing of any street, sidewalk, or alley.

Lessee agrees to furnish to Lessor a survey of said property with 60 days of the execution of this agreement which shall thereafter describe "the leased premises" as provided herein.

ARTICLE 2. LEASED TERM

2.01. Fixed Commencement and Termination Date. The lease shall be for a term of twenty (20) years, referred to as the lease term, commencing on January 1, 2006 and ending on January 1, 2026, subject, however, to earlier termination as provided in this lease.

2.02. Special Termination Rights of Lessor. Lessee acknowledges that Lessor is leasing public property that has been determined not to be presently needed for school purposes, but that determination may be changed solely within the discretion of the Lessor. Lessee hereby agrees that should the Lessor determine that the leased property is needed for school purposes, Lessee will vacate the premises within sixty (60) days of receiving written notice from Lessor of such determination, in spite of the remaining term of the Lease and the fact that Lessee may not be in any default on said Lease.

2.03. No Holding Over. This lease shall terminate and become null and void without further notice on the expiration of the term specified in 2.01, and any holding over by Lessee after the expiration of that term shall not constitute a renewal of the lease or give Lessee any rights under

the lease in or to the leased premises.

ARTICLE 3. RENT

Lessee agrees to pay to Lessor the sum of \$200.00 for the use and occupancy of the lease premises during the leased term. Said rent shall be paid by lessee to Lessor by December 31, 2005.

ARTICLE 4. TAXES

In addition to the rent specified in Article 3, Lessee shall pay and discharge all taxes, general and special assessments and other charges of every description which are levied on or assessed against the leased premises, if any, and all interests in the leased premises and all improvements and other property on the leased premises during the term of this lease, whether belonging to Lessor or to Lessee.

ARTICLE 5. UTILITIES

Lessee shall pay or cause to be paid all charges for water, heat, gas, electricity, sewers, and all other utilities used on the leased premises throughout the term of this lease, including any connection fees.

ARTICLE 6. USE OF PREMISES

Lessor shall have the right to exclusive use of the lease premises for a school playground and physical education facility during normal school hours on school days as determined by Lessor's calendar. Lessee shall have the right to use the lease premises for a public park/playground at all other times. Said park/playground shall be specifically designed for children 12 years of age and younger. Lessee agrees that said facility shall be completed and open for use by Lessor and the public on or before January 1, 2006.

ARTICLE 7. CONSTRUCTION BY LESSEE

7.01. General Conditions. Lessee shall have the right to erect, maintain, alter, remodel, reconstruct, rebuild, replace and remove buildings and other improvements on the leased premises and correct and change the contour of the leased premises, subject to the following general conditions:

- a. Such work is done solely to ensure the use of the property as a public park.
- b. The cost of any such work shall be borne and paid for by Lessee.
- c. The leased premises shall at all times be kept free of mechanics' and material men's liens.
- d. Lessor shall be notified of the time of commencement and the general nature of any such work, other than routine maintenance of buildings or improvements, at the time of commencement.

7.02. Ownership of Building, Improvements, and Fixtures. Any and all buildings, improvement, additions, alternations, and fixtures placed and/or constructed on the leased premises

shall remain the property of the Lessee and may be removed by the Lessee, or his designated agent, upon termination of this lease agreement. If Lessee chooses to remove any building, improvement, addition, alteration and/or fixture, Lessee shall leave the leased premises in the same and/or better condition as leased premises were prior to the building, improvement, addition, alteration and/or fixture.

7.03. Right to Remove Improvements. Lessee shall have the right at any time during Lessee's occupancy of the leased premises, or within a reasonable time thereafter, to remove any and all furniture, machinery, equipment, or other trade fixtures, owned or placed by Lessee, in, under, or on the leased premises, or acquired by Lessee, whether before or during the lease term, but prior to the termination of the lease. Lessee must repair any damage to any building or improvements on the premises resulting from their removal. Any such items that are not removed by the termination date of the lease shall become the property of Lessor as of that date.

ARTICLE 8. REPAIRS, MAINTENANCE, AND RESTORATION

8.01. Lessee's Duty to Maintain and Repair. At all time during the term of this lease, Lessee will keep and maintain, or cause to be kept and maintained, all buildings and improvements which may be erected on the leased premises in a good state of appearance and repair, reasonable wear and tear excepted, at Lessee's own expense.

8.02. Damage or Destruction. In the event any building or improvement constructed on the lease premises is damaged or destroyed by fire, vandalism, or any other casualty, regardless of the extent of such damage or destruction, Lessee shall begin to repair, reconstruct, or replace the damaged or destroyed building or improvement as soon as practical but in no event more than three (3) months from the date of such damage or destruction. Lessee shall pursue the repair, reconstruction or replacement with reasonable diligence so that the improvements shall be restored to substantially the condition it was in prior to the happening of the casualty; provided, however, that if commencement of completion of this restoration is prevented or delayed by reason of war, civil commotion, acts of God, strikes, government restrictions or regulations, or interferences, fire or other casualty, or any other reason beyond the control of Lessee, whether similar to any of those enumerated or not, the time for commencing or completing, or both, of the restoration will automatically be extended for the period of each such delay.

ARTICLE 9. INSURANCE AND INDEMNIFICATION

9.01. Insurance of Buildings and Improvements. At all times during the term of this lease, Lessee shall keep all buildings and other improvements located or being constructed on the leased premises insured against loss or damage by fire, with extended coverage endorsement or its equivalent. This insurance shall be carried by insurance companies authorized to transact business in Texas, selected by Lessee and approved by Lessor. The insurance shall be paid for by Lessee and shall be in amounts not less than the value of improvements. Such policy or policies of insurance shall name both Lessor and Lessee as loss payees and shall provide that any loss less than the value of the improvements shall be payable solely to Lessee, which sum Lessee shall use for repair and restoration purposes.

9.02. General Conditions. Lessee shall provide general liability insurance for its operations conducted on leased premises, complying with the limits of liability indicated elsewhere in this article. Lessee agrees to provide Lessor with a Certificate of Insurance, evidencing the

required limits of liability, to comply with the requirements of Lessor's umbrella liability insurance. Such insurance shall be written through an insurance company licensed to transact business within the State of Texas as an "admitted carrier". Killeen Independent School District shall be included as an additional named insured for all policies and certificates submitted. Lessee is encouraged to maintain fire and extended coverage insurance on the business personal property located within the leased space, since District insurance will not extend to the property of others. In the event that the lessee undertakes physical modifications to the premises, certificates of insurance, indicating limits of liability equal to or exceeding those required of the lessee, shall be obtained and retained by the lessee from all independent contractors performing on-site services. Said certificates shall be available for inspection, on request, to the Lessor.

9.03. Comprehensive General Liability. Lessee shall carry liability insurance with the following limits of liability:

- \$ 1,000,000 aggregate
- \$ 1,000,000 aggregate products and completed operations
- \$ 500,000 personal injury and advertising liability
- \$ 500,000 per occurrence
- \$ 100,000 fire legal liability
- \$ 10,000 medical expense

Any limitation, exclusions, or modifications to the standard general liability insurance form shall be noted clearly on the Certificate of Insurance provided to the Lessor.

9.04. Certificates of Insurance. Lessee shall furnish Lessor with certificates of all insurance required by this article. Lessee agrees that if it does not keep this insurance in full force and effect, Lessor may notify Lessee of this failure, and if Lessee does not deliver to Lessor certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, Lessor may, at its option, take out and/or pay the premiums on the insurance needed to fulfill Lessee's obligations under the provisions of this article. Upon demand from Lessor, Lessee shall reimburse Lessor the full, amount of any insurance premiums paid by Lessor pursuant to this section.

9.05. Indemnification of Lessor. Lessor shall not be liable for any loss, damage, or injury of any kind or character to any persons or property arising from any use of the leased premises, or any part of the leased premises, or caused by any defect in any building, structure, improvement, equipment, or facility on the leased premises or caused by or arising from any act or omission of Lessee, or of any of its agents, employees, licensees, or invitees, or by or from any accident, fire, or other casualty on the land, or occasioned by the failure of Lessee to maintain the premises in safe condition. Lessee waives all claims and demands on its behalf against Lessor for any such loss, damage, or injury, and agrees to indemnify and hold Lessor entirely free and harmless from any liability for any such loss, damage, or injury of other persons, and from all costs and expenses arising from any claims or demands of other persons concerning any such loss, damages, or injury.

ARTICLE 10. DEFAULT AND REMEDIES

10.01. Termination on Default. Should Lessee default in the performance of any covenant, condition, or agreement in this lease, and not correct the default within ten (10) days after receipt of

written notice from Lessor to Lessee, Lessor may declare this lease, and all rights and interest created by it, to be terminated. Upon Lessor's electing to terminate, this lease shall cease and come to an end as if the day of Lessor's election were the day originally fixed in the lease for its expiration. Lessor or Lessor's agent or attorney may resume possession of the premises.

10.02. Other Remedies. Any termination of this lease as provided in this article shall not relieve Lessee from the payment of any sum or sums that are due and payable to Lessor under the lease at the time of termination, or any claim for damages then or previously accruing against Lessee under this lease, and any such termination shall not prevent lessor from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from Lessee for any default under the lease. All rights, options, and remedies of Lessor contained in. this lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Lessor shall have the right to pursue any one or all of such remedies or any other remedy or relief, which may be provided by law, whether or not stated in this lease. No waiver by Lessor of a breach of any of the covenants, conditions, or restriction of this lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this lease.

ARTICLE 11. LESSOR'S WARRANTIES AND COVENANTS

Lessor covenants and agrees that as long as Lessee pays the rent and other charges as provided in this lease and observes and keeps the covenants, conditions, and terms of this lease, Lessee shall lawfully and quietly hold, occupy, and enjoy the leased premises during the term of this lease without hindrance or molestation by Lessor or any person claiming under Lessor, except such portion of the lease premises, if any, as shall be taken under the power of eminent domain, and specifically subject to right of Lessor to terminate this lease pursuant to the provisions of paragraph 2.02.

ARTICLE 12. GENERAL PROTECTIVE PROVISIONS

12.01. Right of Entry and Inspection. Lessee shall permit Lessor or Lessor's agents, representatives, or employees to enter on the leased premises for the purposes of inspection, determining whether Lessee is in compliance with the terms of this lease, maintaining, repairing, or altering the premises, or showing the leased premises.

12.02. Force Majeure. It is expressly understood and agreed that if the construction, maintenance, or repair of the facilities provided for in Section 7.03 of this lease or the curing of any default (other than failure to pay rent or insurance premiums) or the performance of any other covenant, agreement, obligation, or undertaking contained in this lease is delayed by reason of war, civil commotion, act of God, governmental restrictions, regulations, or interference, fire or other casualty, or any other circumstances beyond Lessee's control or beyond the control of the party obligation or permitted under the terms of this lease to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, each party so delayed shall be excused from doing or performing the same during the period of delay.

12.03. No Waiver. No waiver by either party of any default or breach of any covenant, condition, or stipulation contained in this lease shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation of this lease.

12.04. Release of Lessor. If Lessor sells or transfers all or part of the leased premises and as a part of the transaction assigns its interest as Lessor in and to this lease, then from and after the effective date of the sale, assignment, or transfer, Lessor shall have no further liability under this lease to Lessee.

ARTICLE 13. NON-DISCRIMINATION

The further covenant, consideration and condition is that the following restrictions shall in all things be observed, followed and complied with:

(a) The above-described realty, or any part thereof, shall not be used in the operation of, or in conjunction with, any school or other institution of learning, study or instruction which discriminates against any person because of his race, color or national origin, regardless of whether such discrimination be effected by design or otherwise.

(b) The above described realty, or any part thereof, shall not be used in the operation of, or in conjunction with, any school or other institution of learning, study or instruction which creates, maintains reinforces, renews, or encourages or which tends to create, maintain, reinforce, renew or encourage a dual school system.

These restrictions and conditions shall be binding upon Lessee, the City of Killeen, its successors and assigns, for a period of fifty (50) years from the date hereof; and in case of a violation of either or both of the above restrictions, the estate herein granted shall, without entry or suit, immediately revert to and vest in the Lessor herein and its successors, this instrument shall be null and void, and grantor and its successors shall be entitled to immediate possession of such premises and the improvements thereon; and no act or omission upon the part of the Lessor herein and its successors shall be a waiver of the operation or enforcement of such condition.

The restrictions set out in (a) above shall be construed to be for the benefit of any person prejudiced by its violation. The restriction specified in (b) above shall be construed to be for the benefit of any public school district or any person prejudiced by its violation.

ARTICLE 14. MISCELLANEOUS

14.01 Delivery of Rents and Notices. All rents or other sums, notices, demands, or requests from one party to another may be personally delivered or sent by mail, certified or registered, postage prepaid, to the addresses stated in this section and shall be deemed to have been given at the time of personal delivery or at the time of mailing.

All payments, notices, demands, or requests from Lessee to Lessor shall be given or mailed to Lessor at 200 North W.S. Young Drive, Killeen, Texas, 76543, or at such other address as requested by Lessor in writing.

All payments, notices, demands, or requests from Lessor to Lessee shall be given or mailed to Lessee at P.O. Box 1329, Killeen, TX 76540, or at such other address as requested by Lessee in writing.

14.02 Parties Bound. This agreement shall be binding upon and inure to the benefit of the parties to the lease and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

14.03. Texas Law to Apply. This agreement shall be construed under and in accordance with the laws of the State Texas, and all obligations of the parties created by this lease are performable in Bell County, Texas.

14.04. Legal Construction. In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the lease, and this agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the lease.

14.05. Prior Agreements Superseded. This agreement constitutes the sole and only agreement of the parties to the lease and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of the lease.

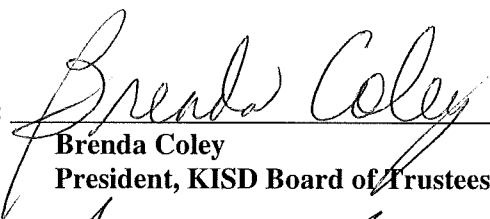
14.06. Amendment. No amendment, modification, or alteration of the terms of this lease shall be binding unless it is in writing, dated subsequent to the date of this lease, and duly executed by the parties to this lease.

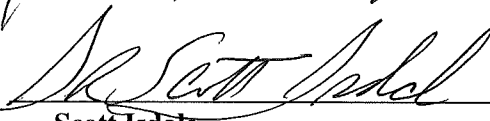
14.07. Rights and Remedies Cumulative. The rights and remedies provided by this lease agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. The rights and remedies in this lease are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

14.03. Attorney's Fees and Costs. If, as a result of a breach of this agreement by either party, the other party employs an attorney or attorneys to enforce it rights under this lease, then the breaching party agrees to pay the other party the reasonable attorney's fees and costs incurred to enforce the lease.

THIS LEASE has been executed by the parties on the date and year first above written.

LESSOR
KILLEEN INDEPENDENT SCHOOL DISTRICT

By: 
Brenda Coley
President, KISD Board of Trustees

By: 
Scott Isdale
Secretary, KISD Board of Trustees

LESSEE
CITY OF KILLEEN

By: Connie J. Greer
City Manager JB

FOSTER LANE
(70' RIGHT OF WAY)

PENNINGTON AVENUE
(60' RIGHT OF WAY)

BOOTS DRIVE
(60' RIGHT OF WAY)

MULTI
PURPOSE
FIELD

PAVILION

COURT

PLAYGROUND

EXHIBIT A

1. ASST
2. BASE
3. CONE
4. ASD

LEASE

STATE OF TEXAS

COUNTY OF BELL

This Lease is made and entered into this 14th day of November, 2000 by and between KILLEEN INDEPENDENT SCHOOL DISTRICT, referred to in this lease as Lessor, and CITY OF KILLEEN, a Municipal Corporation, referred to in this lease as Lessee.

ARTICLE 1. DEMISE OF LEASED PREMISES

In consideration of the mutual covenants and agreements set forth in this lease, and other good and valuable consideration, Lessor does hereby demise and lease to Lessee, and Lessee does hereby lease from Lessor, the premises situated on Westwood Drive and Southhill Drive, Killeen, Bell County, Texas, being 6 acres more or less and adjacent to the Killeen Independent School District's Maxdale Elementary School and more particularly described in Exhibit A attached hereto and incorporated herein for all intents and purposes. These premises are referred to in this lease as "the premises" or "the leased premises."

Lessee is to have and to hold the leased premises, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way appertaining to the leased premises, including, but not limited to, any and all easements, rights, title, and privileges of Lessor, existing now or in existence at any time during the lease term, in, to, or under adjacent streets, sidewalks, alleys, party walls, and reversions which may later accrue to Lessor as owner of the leased premises by reason of the closing of any street, sidewalk, or alley.

Lessee agrees to furnish to Lessor a survey of said property with 60 days of the execution of this agreement which shall thereafter describe "the leased premises" as provided herein.

ARTICLE 2. LEASED TERM

2.01. Fixed Commencement and Termination Date. The lease shall be for a term of twenty (20) years, referred to as the lease term, commencing on November 14, 2000 and ending on November 13, 2020, subject, however, to earlier termination as provided in this lease.

2.02. Special Termination Rights of Lessor. Lessee acknowledges that Lessor is leasing public property that has been determined not to be presently needed for school purposes, but that determination may be changed solely within the discretion of the Lessor. Lessee hereby agrees that should the Lessor determine that the leased property is needed for school purposes, Lessee will vacate the premises within sixty (60) days of receiving written notice from Lessor of such determination, in spite of the remaining term of the Lease and the fact that Lessee may not be in any default on said

Lease.

2.03. No Holding Over. This lease shall terminate and, become null and void without further notice on the expiration of the term specified in 2.01, and any holding over by Lessee after the expiration of that term shall not constitute a renewal of the lease or give Lessee any rights under the lease in or to the lease premises.

ARTICLE 3. RENT

Lessee agrees to pay to Lessor the sum of \$200.00 for the use and occupancy of the lease premises during the leased term. Said rent shall be paid by lessee to lessor by December 31, 2000.

ARTICLE 4. TAXES

In addition to the rent specified in Article 3, Lessee shall pay and discharge all taxes, general and special assessments and other charges of every description which are levied on or assessed against the leased premises, if any, and all interests in the leased premises and all improvements and other property on the leased premises during the term of this lease, whether belonging to Lessor or to Lessee.

ARTICLE 5. UTILITIES

Lessee shall pay or cause to be paid all charges for water, heat, gas, electricity, sewers, and all other utilities used on the leased premises throughout the term of this lease, including any connection fees.

ARTICLE 6. USE OF PREMISES

Lessor shall have the right to exclusive use of the lease premises for a school playground and physical education facility during normal school hours on school days as determined by Lessor's calendar. Lessee shall have the right to use the lease premises for a public park/playground at all other times. Said park/playground shall be specifically designed for children 12 years of age and younger. Lessee agrees that said facility shall be completed and open for use by Lessor and the public on or before July 1, 2001.

ARTICLE 7. CONSTRUCTION BY LESSEE

7.01. General Conditions. Lessee shall have the right to erect, maintain, alter, remodel, reconstruct, rebuild, replace and remove buildings and other improvements on the leased premises, and correct and change the contour of the leased premises, subject to the following general conditions:

- a. Such work is done solely to ensure the use of the property as a public park.
- b. The cost of any such work shall be borne and paid for by Lessee.
- c. The leased premises shall at all times be kept free of mechanics' and

materialmen's liens.

- d. Lessor shall be notified of the time of commencement and the general nature of any such work, other than routine maintenance of buildings or improvements, at the time of commencement.

7.02. Ownership of Building, Improvements, and Fixtures. Any and all buildings, improvement, additions, alternations, and fixtures placed and/or constructed on the leased premises shall remain the property of the Lessee and may be removed by the Lessee, or his designated agent, upon termination of this lease agreement. If Lessee chooses to remove any building, improvement, addition, alteration and/or fixture, Lessee shall leave the leased premises in the same and/or better condition as leased premises were prior to the building, improvement, addition, alteration and/or fixture.

7.03. Right to Remove Improvements. Lessee shall have the right at any time during Lessee's occupancy of the leased premises, or within a reasonable time thereafter, to remove any and all furniture, machinery, equipment, or other trade fixtures, owned or placed by Lessee, in, under, or on the leased premises, or acquired by Lessee, whether before or during the lease term, but prior to the termination of the lease. Lessee must repair any damage to any building or improvements on the premises resulting from their removal. Any such items that are not removed by the termination date of the lease shall become the property of Lessor as of that date.

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9.01. Insurance of Buildings and Improvements. At all times during the term of this lease, Lessee shall keep all buildings and other improvements located or being

constructed on the leased premises insured against loss or damage by fire, with extended coverage endorsement or its equivalent. This insurance shall be carried by insurance companies authorized to transact business in Texas, selected by Lessee and approved by Lessor. The insurance shall be paid for by Lessee and shall be in amounts not less than the value of improvements. Such policy or policies of insurance shall name both Lessor and Lessee as loss payees and shall provide that any loss less than the value of the improvements shall be payable solely to Lessee, which sum Lessee shall use for repair and restoration purposes.

9.02. General Conditions. Lessee shall provide general liability insurance for its operations conducted on leased premises, complying with the limits of liability indicated elsewhere in this article. Lessee agrees to provide Lessor with a Certificate of Insurance, evidencing the required limits of liability, to comply with the requirements of Lessor's umbrella liability insurance. Such insurance shall be written through an insurance company licensed to transact business within the State of Texas as an "admitted carrier". Killeen Independent School District shall be included as an additional named insured for all policies and certificates submitted. Lessee is encouraged to maintain fire and extended coverage insurance on the business personal property located within the leased space, since District insurance will not extend to the property of others. In the event that the lessee undertakes physical modifications to the premises, certificates of insurance, indicating limits of liability equal to or exceeding those required of the lessee, shall be obtained and retained by the lessee from all independent contractors performing on-site services. Said certificates shall be available for inspection, on request, to the Lessor.

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- \$ 1,000,000 aggregate
- \$ 1,000,000 aggregate products and completed operations
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- \$ 500,000 per occurrence
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Any limitation, exclusions, or modifications to the standard general liability insurance form shall be noted clearly on the Certificate of Insurance provided to the Lessor.

9.04. Certificates of Insurance. Lessee shall furnish Lessor with certificates of all insurance required by this article. Lessee agrees that if it does not keep this insurance in full force and effect, Lessor may notify Lessee of this failure, and if Lessee does not deliver to Lessor certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, Lessor may, at its option, take out and/or pay the premiums on the insurance needed to fulfill Lessee's obligations under the provisions of this article. Upon demand from Lessor, Lessee shall reimburse Lessor the full, amount of any insurance premiums paid by Lessor pursuant to this section.

9.05. Indemnification of Lessor. Lessor shall not be liable for any loss, damage, or injury of any kind or character to any persons or property arising from any use of the leased premises, or any part of the leased premises, or caused by any defect in any building, structure, improvement, equipment, or facility on the leased premises or caused by or arising from any act or omission of Lessee, or of any of its agents, employees, licensees, or invitees, or by or from any accident, fire, or other casualty on the land, or occasioned by the failure of Lessee to maintain the premises in safe condition. Lessee waives all claims and demands on its behalf against Lessor for any such loss, damage, or injury, and agrees to indemnify and hold Lessor entirely free and harmless from any liability for any such loss, damage, or injury of other persons, and from all costs and expenses arising from any claims or demands of other persons concerning any such loss, damages, or injury.

ARTICLE 10. DEFAULT AND REMEDIES

10.01. Termination on Default. Should Lessee default in the performance of any covenant, condition, or agreement in this lease, and not correct the default within ten (10) days after receipt of written notice from Lessor to Lessee, Lessor may declare this lease, and all rights and interest created by it, to be terminated. Upon Lessor's electing to terminate, this lease shall cease and come to an end as if the day of Lessor's election were the day originally fixed in the lease for its expiration. Lessor or Lessor's agent or attorney may resume possession of the premises.

10.02. Other Remedies. Any termination of this lease as provided in this article shall not relieve Lessee from the payment of any sum or sums that are due and payable to Lessor under the lease at the time of termination, or any claim for damages then or previously accruing against Lessee under this lease, and any such termination shall not prevent lessor from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from Lessee for any default under the lease. All rights, options, and remedies of Lessor contained in. this lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Lessor shall have the right to pursue any one or all of such remedies or any other remedy or relief, which may be provided by law, whether or not stated in this lease. No waiver by Lessor of a breach of any of the covenants, conditions, or restriction of this lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this lease.

ARTICLE 11. LESSOR'S WARRANTIES AND COVENANTS

Lessor covenants and agrees that as long as Lessee pays the rent and other charges as provided in this lease and observes and keeps the covenants, conditions, and terms of this lease, Lessee shall lawfully and quietly hold, occupy, and enjoy the leased premises during the term of this lease without hindrance or molestation by Lessor or any person claiming under Lessor, except such portion of the lease premises, if any, as shall be taken under the power of eminent domain, and specifically subject to right of Lessor to terminate this lease pursuant to the provisions of paragraph 2.02.

ARTICLE 12. GENERAL PROTECTIVE PROVISIONS

12.01. Right of Entry and Inspection. Lessee shall permit Lessor or Lessor's agents, representatives, or employees to enter on the leased premises for the purposes of inspection, determining whether Lessee is in compliance with the terms of this lease, maintaining, repairing, or altering the premises, or showing the leased premises.

12.02. Force Majeure. It is expressly understood and agreed that if the construction, maintenance, or repair of the facilities provided for in Section 7.03 of this lease or the curing of any default (other than failure to pay rent or insurance premiums) or the performance of any other covenant, agreement, obligation, or undertaking contained in this lease is delayed by reason of war, civil commotion, act of God, governmental restrictions, regulations, or interference, fire or other casualty, or any other circumstances beyond Lessee's control or beyond the control of the party obligation or permitted under the terms of this lease to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, each party so delayed shall be excused from doing or performing the same during the period of delay.

12.03. No Waiver. No waiver by either party of any default or breach of any covenant, condition, or stipulation contained in this lease shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation of this lease.

12.04. Release of Lessor. If Lessor sells or transfers all or part of the leased premises and as a part of the transaction assigns its interest as Lessor in and to this lease, then from and after the effective date of the sale, assignment, or transfer, Lessor shall have no further liability under this lease to Lessee.

ARTICLE 13. NON-DISCRIMINATION

The further covenant, consideration and condition is that the following restrictions shall in all things be observed, followed and complied with:

(a) The above-described realty, or any part thereof, shall not be used in the operation of, or in conjunction with, any school or other institution of learning, study or instruction which discriminates against any person because of his race, color or national origin, regardless of whether such discrimination be effected by design or otherwise.

(b) The above described realty, or any part thereof, shall not be used in the operation of, or in conjunction with, any school or other institution of learning, study or instruction which creates, maintains reinforces, renews, or encourages or which tends to create, maintain, reinforce, renew or encourage a dual school system.

These restrictions and conditions shall be binding upon Lessee, the City of Killeen, its successors and assigns, for a period of fifty (50) years from the date hereof; and in case of a violation of either or both of the above restrictions, the estate herein granted shall, without entry or suit, immediately revert to and vest in the Lessor herein

and its successors, this instrument shall be null and void, and grantor and its successors shall be entitled to immediate possession of such premises and the improvements thereon; and no act or omission upon the part of the Lessor herein and its successors shall be a waiver of the operation or enforcement of such condition.

The restrictions set out in (a) above shall be construed to be for the benefit of any person prejudiced by its violation. The restriction specified in (b) above shall be construed to be for the benefit of any public school district or any person prejudiced by its violation.

ARTICLE 14. MISCELLANEOUS

14.01 Delivery of Rents and Notices. All rents or other sums, notices, demands, or requests from one party to another may be personally delivered or sent by mail, certified or registered, postage prepaid, to the addresses stated in this section and shall be deemed to have been given at the time of personal delivery or at the time of mailing.

All payments, notices, demands, or requests from Lessee to Lessor shall be given or mailed to Lessor at 200 North W.S. Young Drive, Killeen, Texas, 76543, or at such other address as requested by Lessor in writing.

All payments, notices, demands, or requests from Lessor to Lessee shall be given or mailed to Lessee at P.O. Box 1329, Killeen, TX 76540, or at such other address as requested by Lessee in writing.

14.02 Parties Bound. This agreement shall be binding upon and inure to the benefit of the parties to the lease and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

14.03. Texas Law to Apply. This agreement shall be construed under and in accordance with the laws of the State Texas, and all obligations of the parties created by this lease are performable in Bell County, Texas.

14.04. Legal Construction. In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the lease, and this agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the lease.

14.05. Prior Agreements Superseded. This agreement constitutes the sole and only agreement of the parties to the lease and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of the lease.

14.06. Amendment. No amendment, modification, or alteration of the terms of this lease shall be binding unless it is in writing, dated subsequent to the date of this lease, and duly executed by the parties to this lease.

14.07. Rights and Remedies Cumulative. The rights and remedies provided by

party shall not preclude or waive its right to use any or all other remedies. The rights and remedies in this lease are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

14.08. Attorney's Fees and Costs. If, as a result of a breach of this agreement by either party, the other party employs an attorney or attorneys to enforce its rights under this lease, then the breaching party agrees to pay the other party the reasonable attorney's fees and costs incurred to enforce the lease.

THIS LEASE has been executed by the parties on the date and year first above written.

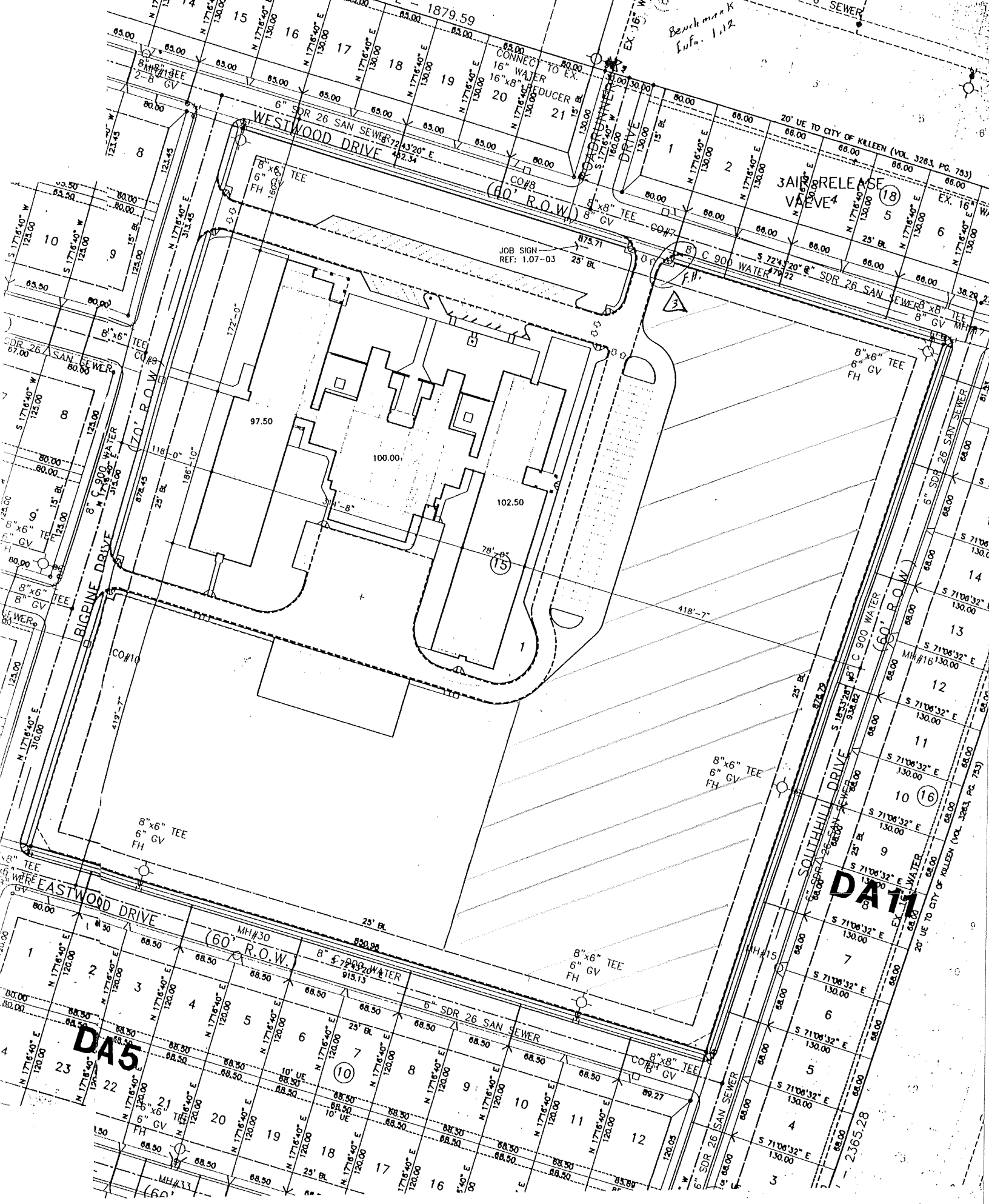
LESSOR
KILLEEN INDEPENDENT SCHOOL DISTRICT

By: John Hoover
John Hoover
President, KISD Board of Trustees

By: Brenda Coley
Brenda Coley
Secretary, KISD Board of Trustees

LESSEE
CITY OF KILLEEN

By: Bill Furr for David A. Blackman



OUT PLAN

LEASE

STATE OF TEXAS

COUNTY OF BELL

This Lease is made and entered into this 26th day of September 2006 by and between KILLEEN INDEPENDENT SCHOOL DISTRICT, referred to in this lease as Lessor, and CITY OF KILLEEN, a Municipal Corporation, referred to in this lease as Lessee.

ARTICLE 1. DEMISE OF LEASED PREMISES

In consideration of the mutual covenants and agreements set forth in this lease, and other good and valuable consideration, Lessor does hereby demise and lease to Lessee, and Lessee does hereby lease from Lessor, the premises bounded by Whiterock Drive, Colorado Drive, and Hunters Ridge Trail Killeen, Bell County, Texas, being 5 acres more or less and adjacent to the Killeen Independent School District's Timber Ridge Elementary School and more particularly described in Exhibit A attached hereto and incorporated herein for all intents and purposes. These premises are referred to in this lease as "the premises" or "the leased premises."

Lessee is to have and to hold the leased premises, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way appertaining to the leased premises, including, but not limited to, any and all easements, rights, title, and privileges of Lessor, existing now or in existence at any time during the lease term, in, to, or under adjacent streets, sidewalks, alleys, party walls, and reversions which may later accrue to Lessor as owner of the leased premises by reason of the closing of any street, sidewalk, or alley.

Lessee agrees to furnish to Lessor a survey of said property within 60 days of the execution of this agreement which shall thereafter describe "the leased premises" as provided herein.

ARTICLE 2. LEASED TERM

2.01. Fixed Commencement and Termination Date. The lease shall be for a term of twenty (20) years, referred to as the lease term, commencing on January 1, 2007 and ending on January 1, 2027, subject, however, to earlier termination as provided in this lease.

2.02. Special Termination Rights of Lessor. Lessee acknowledges that Lessor is leasing public property that has been determined not to be presently needed for school purposes, but that determination may be changed solely within the discretion of the Lessor. Lessee hereby agrees that should the Lessor determine that the leased property is needed for school purposes, Lessee will vacate the premises within sixty (60) days of receiving written notice from Lessor of such determination, in spite of the remaining term of the Lease and the fact that Lessee may not be in any default on said Lease.

2.03. No Holding Over. This lease shall terminate and become null and void without further notice on the expiration of the term specified in 2.01, and any holding over by Lessee after the expiration of that term shall not constitute a renewal of the lease or give Lessee any rights under the lease in or to the

(KISD/City of Killeen joint-use park @ Timber Ridge ES)

leased premises.

ARTICLE 3. RENT

Lessee agrees to pay to Lessor the sum of \$200.00 for the use and occupancy of the lease premises during the leased term. Said rent shall be paid by lessee to Lessor by December 31, 2006.

ARTICLE 4. TAXES

In addition to the rent specified in Article 3, Lessee shall pay and discharge all taxes, general and special assessments and other charges of every description which are levied on or assessed against the leased premises, if any, and all interests in the leased premises and all improvements and other property on the leased premises during the term of this lease, whether belonging to Lessor or to Lessee.

ARTICLE 5. UTILITIES

Lessee shall pay or cause to be paid all charges for water, heat, gas, electricity, sewers, and all other utilities used on the leased premises throughout the term of this lease, including any connection fees.

ARTICLE 6. USE OF PREMISES

Lessor shall have the right to exclusive use of the lease premises for a school playground and physical education facility during normal school hours on school days as determined by Lessor's calendar. Lessee shall have the right to use the lease premises for a public park/playground at all other times. Said park/playground shall be specifically designed for children 12 years of age and younger. Lessee agrees that said facility shall be completed and open for use by Lessor and the public on or before March 1, 2007.

ARTICLE 7. CONSTRUCTION BY LESSEE

7.01. General Conditions. Lessee shall have the right to erect, maintain, alter, remodel, reconstruct, rebuild, replace and remove buildings and other improvements on the leased premises and correct and change the contour of the leased premises, subject to the following general conditions:

- a. Such work is done solely to ensure the use of the property as a public park.
- b. The cost of any such work shall be borne and paid for by Lessee.
- c. The leased premises shall at all times be kept free of mechanics' and material men's liens.
- d. Lessor shall be notified of the time of commencement and the general nature of any such work, other than routine maintenance of buildings or improvements, at the time of commencement.

7.02. Ownership of Building, Improvements, and Fixtures. Any and all buildings, improvement, additions, alternations, and fixtures placed and/or constructed on the leased premises shall remain the property of the Lessee and may be removed by the Lessee, or his designated agent, upon termination of this lease agreement. If Lessee chooses to remove any building, improvement, addition, alteration and/or fixture, Lessee shall leave the leased premises in the same and/or better condition as leased premises were prior to the building, improvement, addition, alteration and/or fixture.

7.03. Right to Remove Improvements. Lessee shall have the right at any time during Lessee's occupancy of the leased premises, or within a reasonable time thereafter, to remove any and all furniture, machinery, equipment, or other trade fixtures, owned or placed by Lessee, in, under, or on the leased premises, or acquired by Lessee, whether before or during the lease term, but prior to the termination of the lease. Lessee must repair any damage to any building or improvements on the premises resulting from their removal. Any such items that are not removed by the termination date of the lease shall become the property of Lessor as of that date.

ARTICLE 8. REPAIRS, MAINTENANCE, AND RESTORATION

8.01. Lessee's Duty to Maintain and Repair. At all time during the term of this lease, Lessee will keep and maintain, or cause to be kept and maintained, all buildings and improvements which may be erected on the leased premises in a good state of appearance and repair, reasonable wear and tear excepted, at Lessee's own expense.

8.02. Damage or Destruction. In the event any building or improvement constructed on the lease premises is damaged or destroyed by fire, vandalism, or any other casualty, regardless of the extent of such damage or destruction, Lessee shall begin to repair, reconstruct, or replace the damaged or destroyed building or improvement as soon as practical but in no event more than three (3) months from the date of such damage or destruction. Lessee shall pursue the repair, reconstruction or replacement with reasonable diligence so that the improvements shall be restored to substantially the condition it was in prior to the happening of the casualty; provided, however, that if commencement of completion of this restoration is prevented or delayed by reason of war, civil commotion, acts of God, strikes, government restrictions or regulations, or interferences, fire or other casualty, or any other reason beyond the control of Lessee, whether similar to any of those enumerated or not, the time for commencing or completing, or both, of the restoration will automatically be extended for the period of each such delay.

ARTICLE 9. INSURANCE AND INDEMNIFICATION

9.01. Insurance of Buildings and Improvements. At all times during the term of this lease, Lessee shall keep all buildings and other improvements located or being constructed on the leased premises insured against loss or damage by fire, with extended coverage endorsement or its equivalent. This insurance shall be carried by insurance companies authorized to transact business in Texas, selected by Lessee and approved by Lessor. The insurance shall be paid for by Lessee and shall be in amounts not less than the value of improvements. Such policy or policies of insurance shall name both Lessor and Lessee as loss payees and shall provide that any loss less than the value of the improvements shall be payable solely to Lessee, which sum Lessee shall use for repair and restoration purposes.

9.02. General Conditions. Lessee shall provide general liability insurance for its operations conducted on leased premises, complying with the limits of liability indicated elsewhere in this article. Lessee agrees to provide Lessor with a Certificate of Insurance, evidencing the required limits of liability, to comply with the requirements of Lessor's umbrella liability insurance. Such insurance shall be written through an insurance company licensed to transact business within the State of Texas as an "admitted carrier". Killeen Independent School District shall be included as an additional named insured for all policies and certificates submitted. Lessee is encouraged to maintain fire and extended coverage insurance on the business personal property located within the leased space, since District insurance will not extend to the property of others. In the event that the lessee undertakes physical modifications to the premises, certificates of insurance, indicating limits of liability equal to or exceeding those required of the lessee, shall be obtained and retained by the lessee from all independent contractors performing on-site services.

Said certificates shall be available for inspection, on request, to the Lessor.

9.03. Comprehensive General Liability. Lessee shall carry liability insurance with the following limits of liability:

- \$ 1,000,000 aggregate
- \$ 1,000,000 aggregate products and completed operations
- \$ 500,000 personal injury and advertising liability
- \$ 500,000 per occurrence
- \$ 100,000 fire legal liability
- \$ 10,000 medical expense

Any limitation, exclusions, or modifications to the standard general liability insurance form shall be noted clearly on the Certificate of Insurance provided to the Lessor.

9.04. Certificates of Insurance. Lessee shall furnish Lessor with certificates of all insurance required by this article. Lessee agrees that if it does not keep this insurance in full force and effect, Lessor may notify Lessee of this failure, and if Lessee does not deliver to Lessor certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, Lessor may, at its option, take out and/or pay the premiums on the insurance needed to fulfill Lessee's obligations under the provisions of this article. Upon demand from Lessor, Lessee shall reimburse Lessor the full amount of any insurance premiums paid by Lessor pursuant to this section.

9.05. Indemnification of Lessor. Lessor shall not be liable for any loss, damage, or injury of any kind or character to any persons or property arising from any use of the leased premises, or any part of the leased premises, or caused by any defect in any building, structure, improvement, equipment, or facility on the leased premises or caused by or arising from any act or omission of Lessee, or of any of its agents, employees, licensees, or invitees, or by or from any accident, fire, or other casualty on the land, or occasioned by the failure of Lessee to maintain the premises in safe condition. Lessee waives all claims and demands on its behalf against Lessor for any such loss, damage, or injury, and agrees to indemnify and hold Lessor entirely free and harmless from any liability for any such loss, damage, or injury of other persons, and from all costs and expenses arising from any claims or demands of other persons concerning any such loss, damages, or injury.

ARTICLE 10. DEFAULT AND REMEDIES

10.01. Termination on Default. Should Lessee default in the performance of any covenant, condition, or agreement in this lease, and not correct the default within ten (10) days after receipt of written notice from Lessor to Lessee, Lessor may declare this lease, and all rights and interest created by it, to be terminated. Upon Lessor's electing to terminate, this lease shall cease and come to an end as if the day of Lessor's election were the day originally fixed in the lease for its expiration. Lessor or Lessor's agent or attorney may resume possession of the premises.

10.02. Other Remedies. Any termination of this lease as provided in this article shall not relieve Lessee from the payment of any sum or sums that are due and payable to Lessor under the lease at the time of termination, or any claim for damages then or previously accruing against Lessee under this lease, and any such termination shall not prevent lessor from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from Lessee for any default

under the lease. All rights, options, and remedies of Lessor contained in this lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Lessor shall have the right to pursue any one or all of such remedies or any other remedy or relief, which may be provided by law, whether or not stated in this lease. No waiver by Lessor of a breach of any of the covenants, conditions, or restriction of this lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this lease.

ARTICLE 11. LESSOR'S WARRANTIES AND COVENANTS

Lessor covenants and agrees that as long as Lessee pays the rent and other charges as provided in this lease and observes and keeps the covenants, conditions, and terms of this lease, Lessee shall lawfully and quietly hold, occupy, and enjoy the leased premises during the term of this lease without hindrance or molestation by Lessor or any person claiming under Lessor, except such portion of the lease premises, if any, as shall be taken under the power of eminent domain, and specifically subject to right of Lessor to terminate this lease pursuant to the provisions of paragraph 2.02.

ARTICLE 12. GENERAL PROTECTIVE PROVISIONS

12.01. Right of Entry and Inspection. Lessee shall permit Lessor or Lessor's agents, representatives, or employees to enter on the leased premises for the purposes of inspection, determining whether Lessee is in compliance with the terms of this lease, maintaining, repairing, or altering the premises, or showing the leased premises.

12.02. Force Majeure. It is expressly understood and agreed that if the construction, maintenance, or repair of the facilities provided for in Section 7.03 of this lease or the curing of any default (other than failure to pay rent or insurance premiums) or the performance of any other covenant, agreement, obligation, or undertaking contained in this lease is delayed by reason of war, civil commotion, act of God, governmental restrictions, regulations, or interference, fire or other casualty, or any other circumstances beyond Lessee's control or beyond the control of the party obligation or permitted under the terms of this lease to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, each party so delayed shall be excused from doing or performing the same during the period of delay.

12.03. No Waiver. No waiver by either party of any default or breach of any covenant, condition, or stipulation contained in this lease shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation of this lease.

12.04. Release of Lessor. If Lessor sells or transfers all or part of the leased premises and as a part of the transaction assigns its interest as Lessor in and to this lease, then from and after the effective date of the sale, assignment, or transfer, Lessor shall have no further liability under this lease to Lessee.

ARTICLE 13. NON-DISCRIMINATION

The further covenant, consideration and condition is that the following restrictions shall in all things be observed, followed and complied with:

(a) The above-described realty, or any part thereof, shall not be used in the operation of, or in conjunction with, any school or other institution of learning, study or instruction which discriminates against any person because of his race, color or national origin, regardless of whether such discrimination be effected by design or otherwise.

(KISD/City of Killeen joint-use park @ Timber Ridge ES)

(b) The above described realty, or any part thereof, shall not be used in the operation of, or in conjunction with, any school or other institution of learning, study or instruction which creates, maintains reinforces, renews, or encourages or which tends to create, maintain, reinforce, renew or encourage a dual school system.

These restrictions and conditions shall be binding upon Lessee, the City of Killeen, its successors and assigns, for a period of fifty (50) years from the date hereof; and in case of a violation of either or both of the above restrictions, the estate herein granted shall, without entry or suit, immediately revert to and vest in the Lessor herein and its successors, this instrument shall be null and void, and grantor and its successors shall be entitled to immediate possession of such premises and the improvements thereon; and no act or omission upon the part of the Lessor herein and its successors shall be a waiver of the operation or enforcement of such condition.

The restrictions set out in (a) above shall be construed to be for the benefit of any person prejudiced by its violation. The restriction specified in (b) above shall be construed to be for the benefit of any public school district or any person prejudiced by its violation.

ARTICLE 14. MISCELLANEOUS

14.01 Delivery of Rents and Notices. All rents or other sums, notices, demands, or requests from one party to another may be personally delivered or sent by mail, certified or registered, postage prepaid, to the addresses stated in this section and shall be deemed to have been given at the time of personal delivery or at the time of mailing.

All payments, notices, demands, or requests from Lessee to Lessor shall be given or mailed to Lessor at 200 North W.S. Young Drive, Killeen, Texas, 76543, or at such other address as requested by Lessor in writing.

All payments, notices, demands, or requests from Lessor to Lessee shall be given or mailed to Lessee at P.O. Box 1329, Killeen, TX 76540, or at such other address as requested by Lessee in writing.

14.02 Parties Bound. This agreement shall be binding upon and inure to the benefit of the parties to the lease and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

14.03. Texas Law to Apply. This agreement shall be construed under and in accordance with the laws of the State Texas, and all obligations of the parties created by this lease are performable in Bell County, Texas.

14.04. Legal Construction. In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the lease, and this agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the lease.

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14.06. Amendment. No amendment, modification, or alteration of the terms of this lease shall be

(KISD/City of Killeen joint-use park @ Timber Ridge ES)

binding unless it is in writing, dated subsequent to the date of this lease, and duly executed by the parties to this lease.

14.07. Rights and Remedies Cumulative. The rights and remedies provided by this lease agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. The rights and remedies in this lease are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

14.03. Attorney's Fees and Costs. If, as a result of a breach of this agreement by either party, the other party employs an attorney or attorneys to enforce it rights under this lease, then the breaching party agrees to pay the other party the reasonable attorney's fees and costs incurred to enforce the lease.

THIS LEASE has been executed by the parties on the date and year first above written.

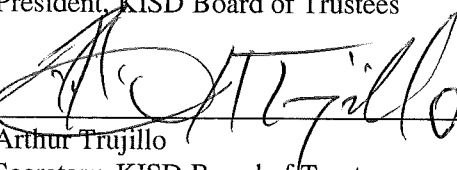
LESSOR

KILLEEN INDEPENDENT SCHOOL DISTRICT

By:


Brenda Coley
President, KISD Board of Trustees

By:


Arthur Trujillo
Secretary, KISD Board of Trustees

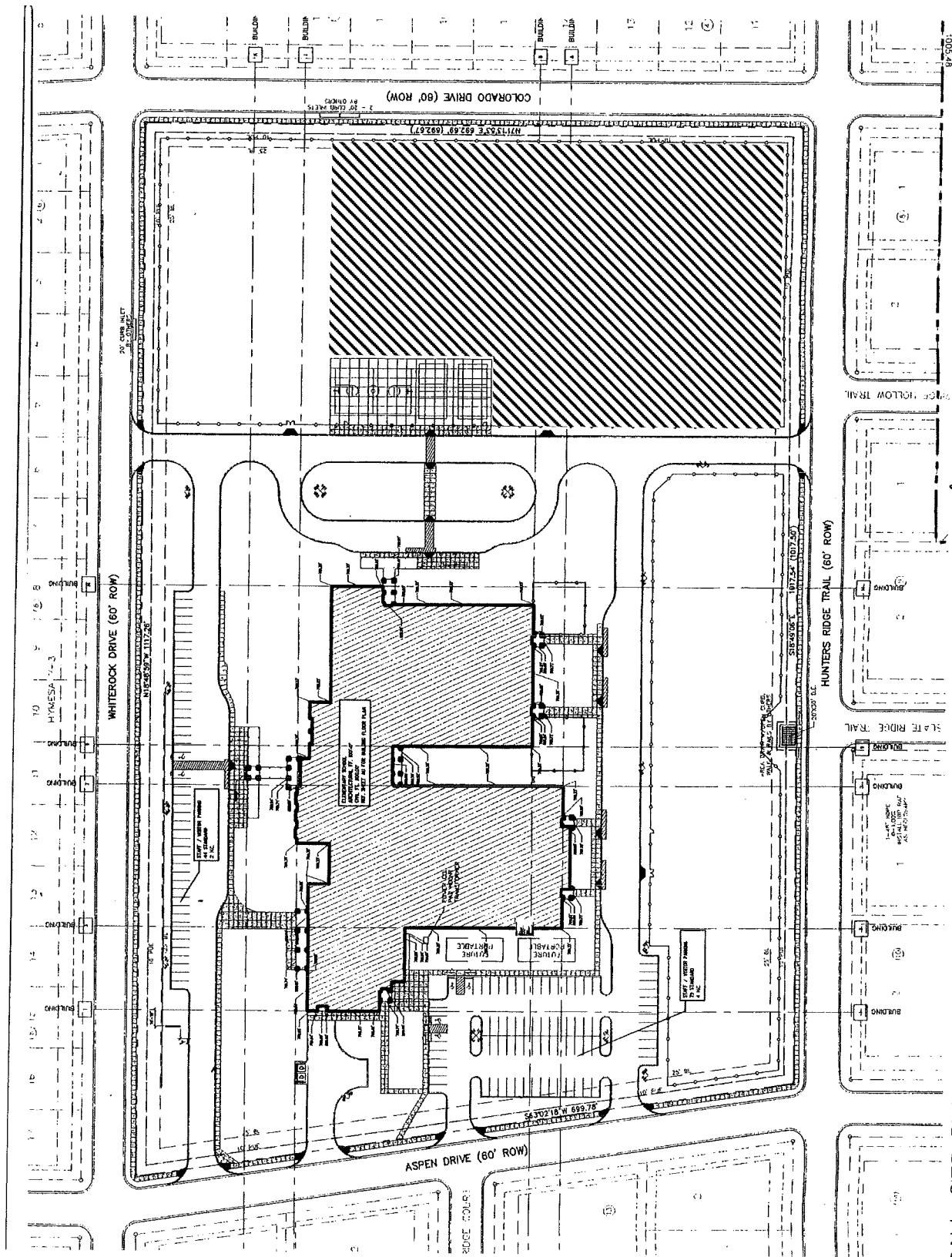
LESSEE

CITY OF KILLEEN

By:


JB

(KISD/City of Killeen joint-use park @ Timber Ridge ES)



(KISD/City of Killeen joint-use park @ Timber Ridge ES)