

Prepared by and  
Should Be Returned to:  
City Attorney  
City of Lake Worth  
7 North Dixie Highway  
Lake Worth, FL 33460

PC №.38-43-44-34-00-000-3020

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## LEASE AND DEVELOPMENT AGREEMENT

**THIS LEASE AND DEVELOPMENT AGREEMENT** ("this Agreement") was made as of the 26 day of July, 2010 (the "Effective Date"), by and between the **CITY OF LAKE WORTH**, a municipal corporation of the State of Florida (the "City"), whose principal administrative offices are located at 7 North Dixie Highway, Lake Worth, Florida 33460-3787, and **FOR THE CHILDREN, INC.**, a Florida corporation not for profit ("FTC"), whose address is 1718 South Douglas Street, Lake Worth, Florida 33460.

**WHEREAS**, the City and FTC (together the "parties" and individually a "party") entered into an agreement on October 8, 2002 (the "2002 Agreement"), in which the City allowed FTC to lease the Old Osborne School building located at 1718 South Douglas Street, Lake Worth, Florida; and

**WHEREAS**, both parties have agreed to and do hereby supersede the 2002 Agreement in its entirety by the execution of this Agreement covering the premises described below in paragraph 1 hereof (the "Premises"), and the 2002 Agreement shall be of no further force or effect, and

**WHEREAS**, the purpose of this Agreement is to provide FTC the following rights:

To develop the Premises, and to operate the use thereof, as a educational and recreational center, possibly including, but not limited to, a multi-use building that would include such facilities as a satellite library, a childcare center, a computer lab, a music/drama production studio, an art room, auditorium, a cafeteria, and a wellness center with fitness equipment. The recreational areas would include such facilities as a multi-purpose sport field and track, basketball courts, a handicapped access playground, and landscaping. Designated facilities will be available for use by members of the nearby communities and the public in general.

and

**WHEREAS**, Ordinance 2008-17 provides authorization for a 99 year lease of the Premises to FTC subject to referendum approval pursuant to Art. 2, Sec. 5 of the Charter of the City of Lake Worth, which referendum was approved by the electors on November 4, 2008.

**NOW, THEREFORE**, in consideration of One Dollar (\$1.00) and other good and valuable considerations paid by the parties, receipt of which is hereby acknowledged, the parties agree as hereinafter provided:

1. **Premises and Term.**

a. The City does hereby allow FTC to use on an exclusive basis the Premises described as:

The South 1/2 of the Southeast 1/4 of the Southwest 1/4 of the Northwest 1/4 of Section 34, Township 44 South, Range 43 East, Palm Beach County, Florida, and Lot 31, PARKVIEW HEIGHTS, according to the Plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, in Plat Book 21, page 22 (LESS the property described in Official Record Book 839, Page 332, recorded in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida), a/k/a 1718 South Douglas Street, Lake Worth, Florida,

for a "term" of ninety-nine (99) years, beginning on the Effective Date specified above, unless sooner terminated as provided herein.

b. If FTC holds over and remains in possession of the Premises after the expiration of the term or any renewals of such term, FTC's use of the Premises shall thereafter be considered a tenancy at sufferance, subject to the same terms and conditions as contained in this Agreement.

c. This Agreement shall be construed as an agreement of only the interest, if any, of the City, and no warranty of title shall be deemed to be given herewith.

d. This Agreement is subject to all utilities in place and to the maintenance thereof as well as any other covenants, easements or restrictions of record.

2. **Use.** The Premises shall be used solely for the purpose of educational, recreational, counseling, and family support services, and the vacant portions of the Premises shall be developed by FTC's construction and operation of the improvements as hereinafter provided. FTC acknowledges and agrees that such use of the Premises

for these purposes and services shall be community based, accessible, affordable and offered at low cost by FTC, its successors and assigns, if any.

3. **Improvements.** FTC, at its sole cost, shall cause the construction of the improvements shown on **Exhibit A**, attached hereto and incorporated herein, which shall be performed in a good and efficient manner. The Comprehensive Development Plan for this work or any changes to it, shall be promptly submitted by FTC to, and shall be subject to the approval of the City (which shall not be unreasonably withheld), in the manner herein provided.

a. **Comprehensive Site Analysis.** Before commencing construction of the improvements, FTC, at its sole cost, shall cause the performance of a comprehensive site analysis study (the "Study") by a professional and licensed entity to determine whether the Premises may be used for the improvements contemplated under this Agreement and the construction methods that are required to be used to construct the improvements. FTC shall affirm the date of completion in writing to the City, which date shall be no later than 2 years from the Effective Date of this Agreement. In the event that FTC does not anticipate completion of the Study by that date, FTC shall provide written notice to the City not less than ninety (90) days prior to that date requesting a meeting with the City to re-negotiate an extension of the Study completion date. In the event that the City and FTC do not reach an agreement within 90 days following the expiration of the initial 2 year period, this Agreement shall terminate at the option of the City, which shall provide written notice of such termination to FTC.

b. **Comprehensive Development Plan.**

(1) After completion of the Study, FTC, at its sole cost, shall engage professional and licensed entity(ies) to prepare a comprehensive development plan ("Development Plan") for the Premises, including detailed studies, plans, and specifications relating to uses, access, improvements, and facilities. FTC shall affirm the date of completion of the Development Plan in writing to the City, which date shall be no later than one (1) year from the date of completion of the Study. In the event that FTC does not anticipate completion of the Development Plan within such one (1)-year period, FTC shall provide written notice to the City not less than ninety (90) days prior to the end of such one-year period requesting a meeting with the City to re-negotiate an extension of the Development Plan completion date. In the event that the City and FTC do not reach an agreement within 90 days following the expiration of the one (1) year period, this Agreement shall terminate at the option of the City Commission, which shall provide written notice of such termination to FTC.

(2) The Development Plan, upon written approval by the City, shall be the master Development Plan for the Premises. The Development Plan may be amended or modified in writing from time to time for the reasons and according to the same procedures provided herein. FTC shall generally verify the execution and

implementation of the approved Development Plan and shall periodically certify to the City in writing that: (a) the work is being done and the improvements are being installed substantially in compliance with the Development Plan; and (b) the development of each phase has been completed in compliance with the approved Development Plan. FTC shall provide such certifications to the City Manager as each phase is completed or on at least an annual basis as the Annual Installment of rent is paid, as provided in Section 12, below.

c. **Phase 1 Improvements.**

(1) The improvements to the Premises as set forth in the Development Plan shall be constructed in phases in accordance with the schedule shown on **Exhibits "A" and "B"**, which are attached and incorporated herein. FTC shall demonstrate to the City that it has acquired sufficient funds for the construction of the Phase 1 improvements no later than three (3) years following the Effective Date of this Agreement. In the event that FTC has not acquired sufficient funds for the construction of the Phase 1 improvements within such three (3) year period, then FTC shall provide written notice to the City not less than ninety (90) days prior to the end of such three (3) year period requesting a meeting with the City to re-negotiate an extension of the time to acquire the Phase 1 funds. In the event that the City and FTC do not reach an agreement within 75 days, this Agreement shall terminate at the option of the City Commission, which shall provide written notice of such termination to FTC.

(2) FTC shall complete the Phase 1 improvements no later than five (5) years following the Effective Date of this Agreement. In the event that FTC has not completed the Phase 1 improvements within such period, then FTC shall provide written notice to the City not less than ninety (90) days prior to the end of such period requesting a meeting with the City to re-negotiate an extension of the time to complete the Phase 1 improvements. In the event that the City and FTC do not reach an agreement within 90 days, this Agreement shall terminate at the option of the City Commission, which shall provide written notice of such termination to FTC.

d. **Phase 2 Improvements.**

(1) FTC shall demonstrate to the City that it has acquired sufficient funds for the construction of the Phase 2 improvements no later than two (2) years from the completion of Phase 1. In the event that FTC has not acquired sufficient funds for the construction of the Phase 2 improvements by the end of such two (2) year period, then FTC shall provide written notice to the City not less than ninety (90) days prior to the end of such two (2) year period requesting a meeting with the City to re-negotiate an extension of the time to acquire the phase 2 funds. In the event that the City and FTC do not reach an agreement within 90 days, this Agreement shall terminate, with respect to that phase, at the option of the City Commission, which shall provide written notice of such termination to FTC.

(2) FTC shall complete the Phase 2 improvements no later than three (3) years from the completion of the Phase 1 improvements. In the event that FTC has not completed the Phase 2 improvements within such period, then FTC shall provide written notice to the City not less than ninety (90) days prior to the end of such period requesting a meeting with the City to re-negotiate an extension of the time to complete the Phase 2 improvements. In the event that the City and FTC do not reach an agreement within 90 days, this Agreement shall terminate, with respect to Phase 2, at the option of the City Commission, which shall provide written notice of such termination to FTC.

e. **Phase 3 Improvements.**

(1) FTC shall demonstrate to the City that it has acquired sufficient funds for the construction of the Phase 3 improvements no later than two (2) years from the completion of Phase 2. In the event that FTC has not acquired sufficient funds for the construction of the Phase 3 improvements by the end of such two (2) year period, then FTC shall provide written notice to the City not less than ninety (90) days prior to the end of such two (2) year period requesting a meeting with the City to re-negotiate an extension of the time to acquire the Phase 3 funds. In the event that the City and FTC do not reach an agreement within 90 days, this Agreement shall terminate, with respect to Phase 3, at the option of the City Commission, which shall provide written notice of such termination to FTC.

(2) FTC shall complete the Phase 3 improvements no later than three (3) years from the completion of the Phase 2 improvements. In the event that FTC has not completed the Phase 3 improvements within such period, then FTC shall provide written notice to the City not less than ninety (90) days prior to the end of such period requesting a meeting with the City to re-negotiate an extension of the time to complete the Phase 3 improvements. In the event that the City and FTC do not reach an agreement within 90 days, this Agreement shall terminate, with respect to Phase 3, at the option of the City Commission, which shall provide written notice of such termination to FTC.

f. **Phase 4 Improvements**

(1) FTC shall demonstrate to the City that it has acquired sufficient funds for the construction of the Phase 4 improvements no later than two (2) years from completion of Phase 3. In the event that FTC has not acquired sufficient funds for the construction of the improvements described in Phase 4 by the agreed upon date, then FTC shall provide written notice to the City not less than ninety (90) days prior to the above date requesting a meeting with the City to re-negotiate an extension of the time to acquire the Phase 4 funds. In the event that the City and FTC do not reach an agreement within 90 days, this Agreement shall terminate, with respect to Phase 4 at

the option of the City Commission, which shall provide written notice of such termination to FTC.

(2) FTC shall complete the Phase 4 improvements no later than three (3) years from the completion of the Phase 3 improvements. In the event that FTC has not completed the Phase 4 improvements within such period, then FTC shall provide written notice to the City not less than ninety (90) days prior to the end of such period requesting a meeting with the City to re-negotiate an extension of the time to complete the Phase 4 improvements. In the event that the City and FTC do not reach an agreement within 90 days, this Agreement shall terminate, with respect to Phase 4, at the option of the City Commission, which shall provide written notice of such termination to FTC.

g. **Phase 5 Improvements.**

(1) FTC shall demonstrate to the City that it has acquired sufficient funds for the construction of the Phase 5 improvements no later than two (2) years from completion of Phase 4. In the event that FTC has not acquired sufficient funds for the construction of the improvements described in Phase 5 by the agreed upon date, then FTC shall provide written notice to the City not less than ninety (90) days prior to the above date requesting a meeting with the City to re-negotiate an extension of the time to acquire the Phase 5 funds. In the event that the City and FTC do not reach an agreement within 90 days, this Agreement shall terminate, with respect to Phase 5 at the option of the City Commission, which shall provide written notice of such termination to FTC.

(2) FTC shall complete the Phase 5 improvements no later than three (3) years from the completion of the Phase 4 improvements. In the event that FTC has not completed the phase 5 improvements within such period, then FTC shall provide written notice to the City not less than ninety (90) days prior to the end of such period requesting a meeting with the City to re-negotiate an extension of the time to complete the Phase 5 improvements. In the event that the City and FTC do not reach an agreement within 75 days, this Agreement shall terminate, with respect to Phase 5, at the option of the City Commission, which shall provide written notice of such termination to FTC.

h. **Amended or Modified Development Plan or improvements.**

(1) Notwithstanding anything provided above in this Agreement, in the event that FTC is unable to acquire sufficient funds for the construction of the improvements for any one or more of the phases, or any part or component thereof, as provided in this Section 3, then FTC will have the option of substituting an alternative improvement for any such unfunded improvement, subject to the City's prior written approval. FTC shall be responsible for obtaining any additional permits needed for such

changes in operations. Written approval of such changes by the City shall not be construed as approval for any required permits.

(2) If any phase of the improvements, or any part or component thereof, is or becomes financially unfeasible for FTC, then with the approval of the City, FTC may suspend the operation thereof and may replace it with a new phase in conformity with the procedures set forth in this Section 3, subject to prior written approval by the City. FTC shall be responsible for obtaining any additional permits needed for such changes in operations. Written approval of such changes by the City shall not be construed as approval for any required permits.

#### **4. Completion and Acceptance of Improvements.**

a. After the commencement of the work provided for in Paragraph 3 hereof, FTC shall do everything reasonably necessary to insure completion of the work as speedily as practicable and in accordance with the provisions set forth herein. In the event FTC shall fail or refuse to perform or carry out the work required to be done by it under the terms hereof, and in the manner provided, or should fail to prosecute the work diligently and expeditiously, or should unnecessarily delay that work, the City shall have the right to take such action against FTC or against the surety on its bond(s), or against both of them, to insure completion of the work in accordance with the provisions hereof. The City may at its option, by written notice from the City's Manager to FTC, declare FTC in default. If default is declared, then, unless it is cured by FTC's taking such action as mentioned, within ninety (90) days after the giving of notice, this Agreement shall then terminate and the term thereof shall expire on the day after the giving of notice of default, and then this Agreement shall become null, void, and of no effect. In the event this Agreement is terminated in accordance with the provisions of this Section 4, the surety shall assume and complete or procure the completion of the work provided for, subject to and with the benefits of the terms of this Agreement and shall then be subrogated to all of the rights and privileges enjoyed by FTC prior to default as shall be evidenced by a lease to be entered into by and between the City and the surety or its nominee, upon the same terms, conditions, and agreements as set forth in this Agreement.

b. FTC shall take all reasonable action so that all improvements shown on **Exhibits "A" and "B"** (and any agreed and approved modifications to or substitutions thereof) (hereinafter "Improvements") are completed in a reasonable time. The Improvements are subject to the approval of and acceptance by the City. In the event that the Improvements, or any portion of them, are not installed and constructed in accordance with this Agreement and with the approved plans to the reasonable satisfaction of the City, the City may reasonably require that FTC reinstall, reconstruct, repair or replace the Improvements or portion thereof at FTC's sole cost and expense.

c. Prior to approval and acceptance of the Improvements, FTC shall be responsible for the cleanup and restoration of the construction areas and all adjacent areas to the extent they are altered or disturbed by FTC or its contractors or subcontractors.

5. **Indemnification.** In addition to any other indemnities provided in this Agreement, FTC shall, at its sole cost and expense, indemnify and save harmless the City, its agents, officers and employees against and from all claims asserted against them by reason of any work or thing done or not done in, on or about the Improvements, the project site or any part of it in connection with FTC's construction or installation obligations under this Agreement.

6. **Construction Surety.** FTC shall cause each of its contractors performing the work required under this Agreement to provide construction surety in the form of payment and performance bonds in the amount of each construction contract price and of a type acceptable to the City, identifying the City as an obligee thereunder.

7. **Contractor Insurance Requirements.** FTC shall cause each of its contractors and subcontractors performing the work required by this Agreement to comply with the insurance requirements set forth in this Section. Each contractor or subcontractor shall be known as "Company." During the period of construction and until the approval and acceptance of each Company's work, each Company shall maintain or cause to be maintained, at its cost, policies of insurance as follows:

a. **Worker's Compensation and Occupational Disease Insurance.** Worker's Compensation and Occupational Disease Insurance, in statutory amounts, covering all employees of the Company. Employer's liability coverage with limits of not less than \$500,000 for each accident or illness.

b. **Commercial Liability Insurance.** Commercial Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence, combined single limit, for bodily injury and/or property damage liability. Products/completed operation, independent contractors, and contractual liability coverages are to be included.

d. **Automobile Liability Insurance.** When any motor vehicles are used in connection with the work to be performed, the contractor or sub-contractor shall maintain Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence, combined single limit, for bodily injury and property damage.

e. **All Risk Builder's Risk Insurance.** FTC shall cause its contractors or subcontractors to provide All Risk Builder's Risk Insurance during the installation or construction work in sufficient amounts to cover the labor and materials for the Improvements.

f. **Professional Liability Insurance.** When any architects, engineers, or consulting firms perform work in connection with this Agreement, such entity shall maintain Professional Liability Insurance with limits of \$1,000,000.

g. The insurance specified above shall be carried until all work required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to carry or keep this insurance in force may constitute a violation of this agreement, and the City maintains the right to stop work by the Company until proper evidence of insurance is provided.

h. The insurance policy shall provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, cancelled, or nonrenewed.

i. FTC shall require all subcontractors to carry the insurance required, or the contractor may provide the coverage for any or all subcontractors, and, if so, the evidence of insurance submitted shall so stipulate.

j. FTC agrees that any insurance coverages and limits furnished by its contractors or sub-contractors shall in no way limit FTC's liabilities and responsibilities specified in this Agreement or by law. Each policy of insurance required by this Agreement shall contain waiver of subrogation reflecting the following provision:

"The [contractors] expressly waive all rights of recovery which they might otherwise have against the City and its Indemnitees for loss or damage to person, property or business to the extent that the loss or damage is covered by valid and collectible insurance policies, notwithstanding that the loss or damage may be caused by the negligent act or omission of the City."

k. In the event that the insurance provided by FTC's contractors or subcontractors does not cover the acts or conduct of the FTC's agents, employees or officers with the coverages and limits stated in this Section, FTC shall provide this insurance.

8. **Compliance with Laws and Fire Underwriters.** FTC shall comply, and shall cause each of its respective contractors or sub-contractors to comply, promptly and in all material respects, with any and all present and future laws, rules, orders, ordinances, regulations, statutes and requirements, irrespective of the nature of the work required to be done, extraordinary as well as ordinary, of federal, state, city, county, or other applicable governmental, public or quasi-public authorities now existing or later created, and of any and all of their departments and bureaus, and of any applicable Fire Rating Bureau, or other body exercising similar functions, to or affecting the Improvements or the condition, equipment, maintenance, use or occupation of the Premises or the Improvements, whether or not involving or requiring any change or additions in or to the

Improvements, and irrespective of whether or not these changes or additions be required on account of any particular use to which the Premises or the Improvements, or any part of them, may be put; and shall also comply with any and all provisions and requirements of any fire, liability or other insurance policy carried by any Party or contractor or sub-contractor under the provisions of this Agreement.

b. As provided in Sections 287.132 and 289.133, Florida Statutes, by entering into this Agreement or performing any work in furtherance thereof, the FTC certifies that it, its affiliates, suppliers, subcontractors and contractors who will perform under the terms and conditions of this Agreement have not been placed on the convicted vendor list maintained by the Florida Department of Management Services within the 36 months immediately preceding the date of this Agreement.

9. **Construction Liens.** Neither FTC nor any contractor or subcontractor shall create or permit to be created or to remain, and shall discharge as provided in this paragraph, any lien, encumbrance or charge levied on account of any mechanic's, laborer's or materialman's lien, conditional sale, title retention agreement or chattel mortgage, or otherwise (collectively, a "Lien") which might be or become a lien, encumbrance or charge upon the Premises or the Improvements or any part of them. If any Lien shall at any time be filed, within sixty (60) days after notice of the filing, FTC or the contractor or sub-contractor alleged to have authorized the action creating the Lien shall either promptly begin and continuously prosecute a good faith contest of that Lien or otherwise cause it to be discharged which may be accomplished by release of record, or by deposit, bonding proceedings or obtaining title insurance over the Lien. If FTC or the contractor or sub-contractor shall fail to cause the Lien to be discharged or contested, then the City may, but shall not be obligated to, discharge it either by paying the amount claimed to be due by procuring the discharge of the Lien by deposit or by bonding proceedings, or by obtaining title insurance and in any event the City shall be entitled if it so elects to compel the prosecution of any action for the foreclosure of the Lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by the City and all costs and expenses incurred by the City in connection with it, together with interest at the maximum legal rate, shall be paid by FTC or contractor or sub-contractor to the City on demand.

10. **Equal Employment and Affirmative Action.** FTC shall comply, and shall ensure that each of its contractors/sub-contractors shall comply with the requirements stated in **Exhibit "C"**, which is attached and incorporated herein.

11. **Use of Improvements.** FTC shall use and occupy said Premises in a careful and proper manner and shall not commit any waste thereon. FTC shall not cause, or allow to be caused, any nuisance or objectionable activity of any nature on the Premises. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws

or regulations or as those terms are understood in common usage, are specifically prohibited. FTC shall not use or occupy said Premises for any unlawful purpose and shall, at FTC's sole cost and expense, conform to and obey any present or future ordinances and/or rules, regulations, requirements and orders of governmental authorities or agencies respecting the use and occupation of said Premises.

FTC agrees that the Improvements shall be open and available to the use of the public at designated hours established by FTC to provide for the primary safety of the children.

12. **Payment of Rent.** FTC shall pay annual rent in advance to the City in the amount of \$1.00 for each month during each year this Agreement is effective (the "Annual Installment"). The first Annual Installment in the amount of **TWELVE (12) and No/100 dollars (\$12.00)** shall be due and payable upon execution of this Agreement. Thereafter, the Annual Installment shall be due upon the anniversary of the Effective Date of this Agreement (the "Due Date"). If this Agreement is terminated prior to its Expiration Date, the unused portion of any payment, less any other amounts that may be owed to City, shall be refunded to FTC. FTC shall pay any and all applicable state, county, city and local taxes that may be due during the term hereof, including any real property taxes. Payments shall be made payable to the "City of Lake Worth" and shall be sent to City of Lake Worth, Finance Department, 7 North Dixie Highway, Lake Worth, Florida 33460-3787. Any Annual Installment not received within ten (10) days after the Due Date shall bear interest at the highest rate allowed by law from the Due Date thereof. This provision shall not obligate City to accept late payments or provide FTC a grace period.

13. **Existing Improvements.** FTC does hereby accept the Premises in its present condition. No structures or improvements of any kind other than as authorized in this Agreement shall be placed upon the Premises by FTC.

14. **Maintenance.** FTC shall keep and maintain the land and any building or other structure, now or hereafter erected thereon, in good and safe condition and repair at FTC's own expense during the existence of this Agreement, and shall keep the same free and clear of any and all grass, weeds, brush and debris of any kind, so as to prevent the same from becoming dangerous, inflammable or objectionable. In addition, FTC recognizes the historical importance of the existing structure on the Premises, the Old Osborn School, and expressly agrees to protect and maintain the historic integrity and structure of this historic building.

City shall have the right, without notice to FTC, to enter the Premises for the purposes of inspection, including, but not limited to conducting an environmental assessment. Such assessment may include but would not be limited to: surveying; sampling of building materials, soil and groundwater; monitoring well installations; soil excavation; groundwater remediation; emergency asbestos abatement; operation and

maintenance inspections; and, any other action which might be reasonable and necessary. City's right of entry shall not obligate inspection of the property by City, nor shall it relieve the FTC of its duty to maintain the Premises. In the event of emergency due to a release or suspected release of hazardous waste on the Premises, City shall have the right of immediate inspection, and the right, but not the obligation, to engage in remedial action, without notice.

15. **Indemnification.** FTC covenants and agrees to save the City and City's agents and employees from all loss, damage, liability or expense of any kind, including without limitation, attorneys' fees or court costs incurred, suffered or claimed by any person or entity whatsoever, or for any cause whatsoever, by reason of the use or occupancy by FTC, its agents, employees, invitees or visitors of the Premises, or of the project unless caused solely by the negligence of the City.

City shall give notice to FTC by registered or certified mail of FTC's obligation to indemnify, defend and pay for the defense, or at FTC's option, to participate and associate with the City in the defense and trial of any claim and any related settlement negotiations. Such notice shall be deemed given when deposited in the U. S. mail, postage prepaid, and addressed to FTC at the address shown in paragraph 19.h below. FTC's inability to evaluate liability or its evaluation of liability shall not excuse FTC's duty to defend and indemnify within seven (7) days after such notice by the City is given. FTC shall pay all costs and fees, including reasonable attorney's fees (including paralegal fees) related to this obligation and its enforcement by the City. City's failure to notify FTC of a claim shall not release FTC of the above duty to defend.

16. **Insurance.** FTC at its expense, shall maintain at all times during the term of this Agreement, public liability insurance protecting City and FTC against any and all claims for injury and damage to persons or property or for the loss of life or property occurring in, on or about the Premises arising out of the act, negligence, omission, nonfeasance or malfeasance of FTC, its employees, agents, contractors, customers, licensees and invitees, in the amounts of coverage shown below. All such policies shall be issued by companies of recognized responsibility licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified unless City is given at least sixty (60) days prior written notice of such cancellation or modification. FTC shall provide City with certificates showing such insurance to be in place and showing City as additional named insured under the policies.

City may require the amount of any public liability insurance to be maintained by FTC be increased so that the amount thereof adequately protects City's interest. FTC further agrees that it shall during the full term of this Agreement and at its own expense keep the Premises and any improvements on the Premises fully insured against loss or damage by fire and/or any other casualty. FTC also agrees that it shall during the full term of this Agreement and at its own expense keep its contents and personal property

located on the Premises fully insured against loss or damage by fire and/or any other casualty and does hereby release and waive on behalf of itself and its insurer, by subrogation or otherwise, all claims against City arising out of any fire and/or any other casualty whether or not such fire and/or any other casualty shall have resulted in whole or in part from the negligence of City.

The City shall be named by FTC as Additional Insured on FTC's Commercial/General/Liability insurance policy in the amounts of One Million Dollars general aggregate, One Million Dollars per occurrence, One Million Dollars automobile, combined single limit.

Additionally, FTC shall maintain child care operation liability regarding sexual abuse and/or molestation, products/completed operations and personal and advertising injury and participant accident coverage, accidental death, dismemberment and excess medical expense benefits with a principal benefit of not less than Ten Thousand Dollars (\$10,000.00) (death, loss of hands, feet, eyes) or combination and medical expense per person aggregate. Program descriptions, as described to the funding agent of FTC should be made available to the City.

17. **Eminent Domain.** In the event that the Premises or any part thereof is taken by eminent domain or other law providing for a right of the owner to compensation for the taking, then FTC will be entitled to receive the amount of such compensation allocable to the value of the improvements for the period of time from the taking of the Premises or part thereof until the termination of the specified term of this Agreement.

Except as provided in the preceding paragraph of this Section 17, FTC hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including but not limited to special damages, severance damages, removal costs or loss of business profits resulting from its loss of occupancy of the Premises specified in this Agreement, or adjacent properties owned or leased by it, when any or all such properties are taken by eminent domain proceedings or sold under threat thereof. This waiver and relinquishment applies whether (i) this Agreement is still in existence on the date of taking or sale; or, (ii) has been terminated prior thereto.

18. **Effect of Termination.** If this lease is terminated, FTC shall continue in possession for a one (1) year period from the date of written notice of termination upon the same terms and conditions set forth herein, subject to payment of annual rent in the amount of twelve dollars (\$12.00), payable in a single installment due and payable within ten (10) working days from the date of termination. The purpose of this conversion to an annual lease is to provide FTC with sufficient opportunity to find alternative space to relocate its programs and activities and to reflect the minimum lease terms required by FTC's granting agencies.

19. **Miscellaneous.**

a. This Agreement may be terminated by the City upon ninety (90) days written notice upon default by FTC hereunder, provided that the City may terminate this Agreement only on the basis of FTC's default or defaults hereunder. FTC shall have sixty (60) days to cure any such default. FTC acknowledges that the remaining useful life of the building at the Premises may be less than the term of this Agreement. City shall not be obligated to replace the building.

b. In the case of litigation arising out of the enforcement of any terms, covenants or provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees (including paralegal fees) and costs from the non-prevailing party.

c. FTC acknowledges that it has reviewed this Agreement, is familiar with its terms and was given an adequate opportunity to review this Agreement with legal counsel of FTC's choosing. FTC has entered into this Agreement freely and voluntarily. This Agreement contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties are merged in this Agreement, which alone, fully and completely expresses the Agreement between City and FTC with respect to the subject matter hereof. No modification, waiver or amendment of this Agreement or any of its conditions or provisions shall be binding upon City and FTC unless in writing and signed by both such parties.

d. Except as otherwise provided herein, FTC shall not sublet the property or any part thereof, nor assign this Agreement, without the prior consent in writing of City, this Agreement being executed by City upon the credit and reputation of FTC. Acceptance by City of rental from a third party shall not be considered as an assignment or sublease. FTC, however, shall have the right to rent space on the Premises, or otherwise allow the use of such space, to other not-for-profit organizations for the purpose of educational, recreational, counseling and family support services, any income from which shall be the property of FTC.

e. FTC shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, telegraph services, waste removal and/or any other utility or service used on the Premises.

f. This Agreement shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America. Venue for disputes is Palm Beach County, Florida.

g. This Agreement is non-transferable and shall be deemed voided if FTC transfers any interest in the subject property, including but not limited to, any transfer to a successor person or entity, except as authorized by this Agreement.

h. All notices to City shall be sent to the City Manager, 7 North Dixie Highway, Lake Worth, Florida 33460-3787 and all notices to FTC shall be sent to 1718 South Douglas Street, Lake Worth, Florida 33460.

i. Each of the Parties shall have all remedies available at law or in equity, including specific performance, to enforce any obligation of either party to this Agreement.

j. No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy consequent upon any breach shall constitute a waiver of any breach or of a covenant, agreement, term or condition.

k. The captions of this Agreement are for convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect this Agreement.

l. This Agreement, including the Exhibits, contains all the promises, agreements, conditions, inducements and understandings between the Parties relative to the Premises Site, and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them other than as set forth.

m. It is contemplated by the parties that FTC will finance the total development and construction cost of the project by means of a mortgage or mortgage deed of trust of the leasehold estate created by this Agreement and of FTC's entire interest in the demised Premises, but it is also contemplated that the mortgage or mortgage deed of trust will be subordinate to the City's interest as lessor under this Agreement. FTC shall also have the right from time to time during the term of this Agreement to place any substitute or additional mortgage or mortgage deed of trust on the estate created by this Agreement and on FTC's interest in the Premises, but all such mortgages or mortgage deeds of trust shall be subordinate to the City's interest as lessor under this Agreement.

n. In the event that at any time during the term of this Agreement the interest of FTC is subject to a mortgage or mortgage deed of trust in accordance with the above provisions of this Agreement, then so long as the mortgage or mortgage deed of trust is outstanding and unreleased a copy of any notices at any time required or permitted under the terms of this Agreement to be given by the City to FTC shall at the same time

be sent by the City to the mortgagee or trustee under the mortgage deed of trust provided that FTC previously shall have given written notice to the City Manager of the existence of the mortgage or mortgage deed of trust and have stated in that notice the address of the mortgagee or trustee under the mortgage deed of trust to which copies of all notices under this Agreement shall be delivered or made.

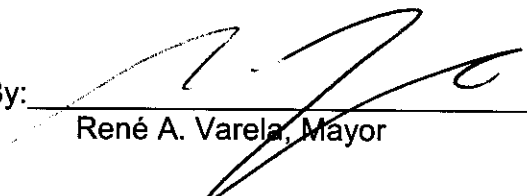
**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be executed on the day and year first above written.

EXECUTED BY THE CITY THIS 26 DAY OF July, 2010:

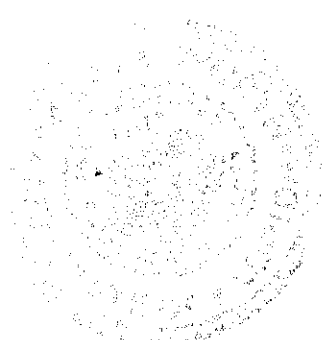
APPROVED AS TO FORM:

**CITY OF LAKE WORTH, FLORIDA**, a Florida municipal corporation

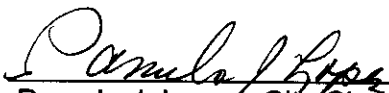
  
Elaine A. Humphreys, City Attorney

By:   
René A. Varela, Mayor

[CITY SEAL]



**ATTEST:**

  
Pamela J. Lopez, City Clerk

EXECUTED BY FTC THIS 20th DAY OF July, 2010:

[CORPORATE SEAL]

FOR THE CHILDREN, INC., a Florida Corporation Not-for-Profit

By: Reginale Durandisse  
Reginale Durandisse  
(Name Printed)

Title: President

ATTEST:

By: Theresa Deveau  
THERESA DEVEAUX  
(Name Printed)

Title: Secretary

STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

The foregoing instrument was acknowledged before me this 20th day of July, 2010 by Reginale Durandisse as President and attested by \_\_\_\_\_ as Secretary, respectively, of FOR THE CHILDREN, INC., a Florida Corporation Not-for-Profit, on behalf of the Corporation. They are \_\_\_\_\_ as personally known to me or have produced \_\_\_\_\_ as identification.

{NOTARIAL STAMP}

Notary Public  
My Commission Number:  
My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA  
Emmanuel Vincent  
Commission #DD862184  
Expires: APR. 04, 2013  
BONDED THRU ATLANTIC BONDING CO., INC.

EXHIBIT "A"

SCHEMATIC DEVELOPMENT PLAN

NOTE: THE SCHEMATIC DEVELOPMENT PLAN ATTACHED HERETO IS INTENDED ONLY AS A GENERAL GUIDELINE FOR FUTURE DEVELOPMENT OF THE PROPERTY. THE MASTER PLAN OF DEVELOPMENT AND MIX OF USES THEREIN WILL BE THE PLAN APPROVED BY THE CITY PLANNING AND ZONING BOARD (OR ITS SUCCESSORS IN INTEREST), WHICH PLAN MAY BE CHANGED OR MODIFIED FROM TIME TO TIME IN THE MANNER PROVIDED HEREIN.



## EXHIBIT "B"

### DEVELOPMENT PLAN: PROJECT PHASING

*It is the intent of FTC to develop the Osborne project by a "Design Built" process. This process gives the Design Built Contractor of choice full responsibility of design, engineering and construction of the proposed site. This process will limit the liability for all parties involved.*

*Detailed specifications of Phases will be provided by the Contractor once the Development Plan has been completed and approval of plans by the City is sought.*

*Development Plan:*

*Performance of a comprehensive site analysis study, by a professional and licensed entity to determine whether the premises may be used for the improvements contemplated under this Agreement, and the construction methods that are required to be used to construct the improvements.*

*Engage a professional and licensed entity to prepare a comprehensive development plan for the premises, including detailed studies, plans, and specifications relating to uses, access, improvements, and facilities.*

*Once this Development Plan receives approval in writing by the City, permitting will commence.*

*The improvements to the premises as set forth in the Development Plan shall be constructed in phases in accordance with the schedule provided by the Contractor:*

*Phase One: Recreational Fields and Parking*

*These areas may include, but not be limited to, a multi-purpose sports field, basketball courts, handicapped access playground.*

*Phase Two: Construction of Educational Building*

*A multi-use building that would include a satellite library, a childcare center, a computer lab, a music/drama production studio, an art room, auditorium, a cafeteria, and a wellness center with fitness equipment.*

*Phase Three: Interior Educational Building*

*Completion of interior as stated in Phase Two.*

*Phase Four: Landscaping*

*Under the guidance of the City's horticulturalist, and with the assistance of FTC's garden club, our landscaping will include native shade trees and plants with attention to xeroscaping and butterfly gardens.*

*Phase Five: Restoration of Historical Building*

*Under the guidance of a Historical Board member, restoration and structural improvements shall be mad to the existing historical building.*

*\*Phases may alter or overlap due to grant specifications. Multiple design built contractors may be utilized according to costs and specialties*

**EXHIBIT "C"**

**EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION  
GUIDELINES**

**FOR THE CHILDREN, INC.**

**NON-DISCRIMINATION POLICY**

The BOARD OF DIRECTORS OF FOR THE CHILDREN, INC. adapted a policy of promoting inclusiveness and non-discrimination in all aspects of our organization's staffing, programs and services and operations. To implement this non-discrimination policy, the Board and staff of FTC are committed to taking meaningful steps to promote inclusiveness in hiring, retention, and promotion of staff; in Board recruitment; and, in direct client services, our Agency will ensure non-discrimination against any individual or on the basis of race, gender, ethnicity, religion, national origin or sexual orientation.