

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF LAS VEGAS REDEVELOPMENT AGENCY
AND THE CITY OF LAS VEGAS CULTURAL AFFAIRS DIVISION
FOR PROPERTY AT FIFTH STREET SCHOOL**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), made and entered into this 16TH day of July, 2008 by and between the CITY OF LAS VEGAS REDEVELOPMENT AGENCY , a public entity, corporate and politic in the State of Nevada (hereinafter referred to as “RDA” or “Lessor”), and the City of Las Vegas Cultural Affairs Division (hereinafter referred to as “Lessee”)

WITNESSETH:

WHEREAS, Lessor owns the real property and improvements located on certain real property commonly known as the Fifth Street School, and located commonly at 401 South Fourth Street, Las Vegas, Nevada 89101; and

WHEREAS, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, subject to certain terms and conditions set forth in this MOU, certain premises at the Fifth Street School, as more fully described hereafter in the MOU (the “Premises”), for the purpose of providing office space to Lessee; and

WHEREAS, one of the goals of the Lessor is to provide access needed to services to the central core of downtown Las Vegas; and

WHEREAS, Lessee, by utilizing the Premises, will contribute to Lessor in its efforts to revitalize the central core of downtown Las Vegas; and

WHEREAS, Lessor determines that the lease of the Premises to Lessee for the purposes as hereinafter set forth in the Lease will provide a substantial benefit to the inhabitants of the City of Las Vegas.

NOW, THEREFORE, for and in consideration of the foregoing and the covenants, terms and conditions herein contained, the parties agree as follows:

1. **LEASE OF PREMISES.** Subject to the provisions of this MOU, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises at Fifth Street School consisting of approximately 1783 square feet. The location and approximate dimensions of the Premises are shown more particularly on the Site Map, attached hereto as Exhibit "A".

2. **TERM OF LEASE.** Unless earlier terminated in accordance with section 39 hereof, this MOU shall be for a period commencing on August 1, 2008 and expiring on June 30, 2009 (the "Initial Term"). If Lessee is not then in default of this MOU, Lessee may request to renew this MOU for additional one year periods commencing on July 1st through June 30th of each fiscal year ("Extended One Year Periods") by giving a written request to renew at least ninety (90) days prior to the expiration of the Initial Term or the applicable Extended One Year Period and upon receiving such request Lessor must provide written approval within 30 days prior to the expiration of the Initial Term or applicable Extended One Year Period.

3. **EFFECTIVE DATE AND COMMENCEMENT DATE.** This MOU shall be effective on the date both parties have signed this MOU. The Commencement Date of this MOU shall be AUGUST 1, 2008 ("Commencement Date").

4. **RENT.** Commencing on the Commencement Date, Lessee agrees to pay One Dollar (\$1.00) per month as rent (the "Rent") to Lessor. The Rent shall be due and payable twelve (12) months in advance and shall be due on the Commencement Date and each anniversary of the Commencement Date.

5. **UTILITIES AND SERVICES.** Lessor shall pay for Lessee's use of water, sewer, electricity and gas utilities, solid waste disposal, janitorial and landscape maintenance (collectively the "Common Area Maintenance" or "CAM" charges) at the Premises. The parties acknowledge that Lessee's

proportionate share of the CAM charges amount to 6.86% of the total CAM charges at Fifth Street School. In consideration of Lessor's payment of Lessee's proportionate CAM charges, the parties agree that Lessee shall provide ongoing in-kind support services to Lessor which cost of such services will be the equivalent to the Lessee's projected CAM charge. The Lessor and Lessee agree memorialize the agreed upon support services and to document the in-kind support services through the Finance Department of the City of Las Vegas. Lessee shall be responsible for all costs of the Lessee's telephone, cable and other telecommunication services at the Premises.

6. **REPAIRS AND MAINTENANCE.**

A. **Lessor's Obligations.**

(1) Lessor shall keep the Premises, interior and exterior walls, roof and common areas and the equipment whether used exclusively for the Premises or in common with the other premises, in good condition and repair; provided, however, Lessor shall not be obligated to paint, repair or replace wall coverings or to repair or replace any improvements that are not ordinarily a part of the Premises.

(2) If the Lessor provides furniture, fixtures, equipment, finishes or other items of personal property ("Lessor's FFE") to the Premises for use by Lessee, the Lessor's FFE shall remain the property of the Lessor upon the termination and surrender of the Premises by Lessee.

B. **Lessee's Obligations.**

(1) Notwithstanding Lessor's obligation to keep the Premises in good condition and repair, Lessee shall be responsible for payment of the cost thereof to Lessor as additional rent for that portion of the cost of any maintenance and repair of the Premises, or any equipment (wherever located) that serves only Lessee of the Premises, to the extent such cost is attributable to causes beyond normal wear and tear. Lessee shall be responsible for the cost of painting, repairing or replacing wall coverings, and to repair or replace any Premises improvements that are not ordinarily a part of the Premises. Lessor may, at its option, upon reasonable notice, elect to have Lessee perform any particular such maintenance or repairs, the cost of which is otherwise Lessee's responsibility hereunder.

(2) On the last day of the term hereof, or on any sooner termination, Lessee shall surrender the Premises and Lessor's FFE to Lessor in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Premises and Lessor's FFE shall not be deemed ordinary wear and tear if the same could have been prevented by good maintenance practices by Lessee. Lessee shall repair any damage to the Premises or Lessor's FFE occasioned by the installation or removal of Lessee's trade fixtures, alterations, furnishings and equipment. Except as otherwise stated in this MOU, Lessee shall leave the HVAC, power panels, electrical distribution systems, lighting fixtures, air conditioning, window coverings, wall coverings, carpets, wall paneling, ceilings and plumbing on the Premises and in good operating condition.

(3) Any furniture, fixtures, equipment or items of personal Property furnished by Lessee to the Premises shall be of a minimum standard and design compatibility with the historic structure of the Fifth Street School and shall be approved by the Lessor prior to installation and/or delivery to the Premises.

7. **USE OF PREMISES AND COMMON AREAS.** Lessee agrees to use the Premises solely for staff offices for the City of Las Vegas Cultural Affairs Division. Lessee shall not use or permit the Premises to be used for any other purpose, except with the prior written consent of Lessor. The Lessee will have use privileges to the “Common Areas” consisting of the multi-purpose “Gymnasium” space, gallery space and courtyard open spaces. Usage of all or a portion of these spaces must be scheduled with and approved by the resident or designated representative of the Lessor. Priority of use of all or a part of the Common Area shall first be given to the RDA, then to the other lessees of Fifth Street School and finally to outside third party users. If more than one lessee desires to use a specific Common Area, priority shall be given to the lessee with the larger area/premises under lease with Lessor. Lessee shall be responsible for all costs incurred for its use, including, but not limited to, special events, of the Premises and Common Areas, specifically, all permits, additional security, trash removal, ancillary fees, and special event permits, among other costs. If the Lessee conducts fundraising or for profit activities utilizing the Common Areas, the Lessor retains the right to charge either a percentage fee or flat rate usage fee for the use of said Common Areas.

8. **CONDITION OF PREMISES.** The Premises are leased to Lessee on an “as-is” basis. Lessor makes no other warranty concerning the Premises and shall have no obligation to construct any improvements other than those that exist at the Commencement Date.

9. **USE OF PARKING AND OTHER AREAS.** In connection with its use of the Premises pursuant to this MOU, Lessee is entitled to Three (3) parking passes for spaces which are not designated as “Visitor Parking” located in the main parking lot at the Fifth Street School and depicted on the Parking Site Map attached hereto as Exhibit “B”. RDA will provide at its reasonable discretion an additional ten (10) parking passes to meet the stated needs of the Lessee, on a case by case basis. The Lessee shall direct all other parking users to use the metered spaces in the parking structure located at 400 4th Street, which is

west of the Gymnasium across Fourth Street. All facilities in or about the Fifth Street School shall be subject to the exclusive control and management of Lessor. Lessor shall have the right to construct, maintain and operate lighting and other facilities on all said areas and improvements; to police the same; to change the area, level, location and arrangements of the parking area and other common facilities; to close all or any portion of said area of facilities to such extent as may be legally sufficient to prevent a dedication thereof or the accrual of any right to any person or the public therein; and to close temporarily all or any portion of the parking areas or facilities. Lessor shall operate and maintain the parking area in such manner as Lessor in its discretion shall determine. Lessor shall have full right and authority to employ and discharge all its personnel with respect thereto, and shall have the right, through reasonable rules, regulations and/or restrictive covenants promulgated by it from time to time, to control use and operation of the parking area in order that the same may occur in proper and orderly fashion.

10. **LAWS, WASTE, NUISANCE.** Lessee covenants that it:

- A. Will not use or suffer or permit any person or persons to use the Premises or any part thereof for conducting thereon any activity not authorized in this MOU;
- B. Will comply with all laws, ordinances, regulations and requirements, now in force or which hereafter may be in force, of any lawful governmental body or authority having jurisdiction over the Premises;
- C. Will keep the Premises and every part thereof in a clean, neat and orderly condition, and will in all respects and at all times fully comply with all health and police regulations; and
- D. Will not suffer, permit or commit any nuisance or waste on the Premises.

11. **ALTERATIONS, ADDITIONS AND IMPROVEMENTS.** At any time during the Term, Lessee, subject to the prior written approval of Lessor and at the expense of Lessee, may make alterations, additions or improvements in and to the interior of the Premises. No alterations, additions or improvements

shall be authorized for the exterior of the Premises. Any such alteration, addition or improvement shall be performed in a workmanlike manner, in accordance with all applicable governmental regulations and requirements, and shall not weaken or impair the structural strength or lessen the value of the Premises.

All alterations, additions or improvements that may be erected or installed in or on the interior of the Premises shall become part thereof and the sole property of Lessor, except that all moveable fixtures that may be installed by the Lessee shall be and remain its property and shall not become the property of Lessor if it is removed in a timely manner after abandonment or surrender of the Premises.

12. **SIGNAGE.** Lessee shall have the right to place, construct and maintain one or more signs identifying its name at the Premises. All signage shall conform to the Lessor's standard for design of signs at Fifth Street School and shall be approved by Lessor prior to the sign's placement at the Premises.

13. **CHANGES TO COMPLEX.** Lessor reserves the right at all times to exercise reasonable control over, and from time to time make changes, alterations or additions to, the Fifth Street School. Lessor shall endeavor to do so with a minimum of disruption to the Lessee's rights under this Lease.

14. **ACCESS TO PREMISES.** Lessor shall have the right to place, maintain and repair utility equipment of any kind in, upon and under the Premises as may be necessary for the servicing of the Premises and other portions of the Fifth Street School and which are the Lessor's responsibility. Lessor shall also have the right to enter the Premises upon reasonable notice to inspect or to exhibit the same to prospective purchasers and to make such repairs, additions, alterations or improvements as Lessor may deem desirable.

Lessor may enter the Premises at any time, without notice, in the event of an actual emergency. Lessor shall at all times have and retain a key with which to unlock all of the doors of the Premises, and Lessor shall have the right to use any and all means which Lessor may deem proper to open said doors in an emergency in order to obtain entry to the Premises. Any entry to the Premises by any of said means, or

otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of the Premises, or an eviction of Lessee from the Premises or any portion thereof.

15. **PAYMENT OF TAXES.** The parties acknowledge that Lessor and Lessee are each public entities in the State of Nevada and, therefore, not subject to taxation. Lessor shall not be responsible for any real property taxes on, or real property-related assessments to, the Premises. Lessor shall have no responsibility or liability to pay any personal property taxes because of any personal property brought upon or used by Lessee in connection with the Premises.

16. **COMPLIANCE WITH THE LAW.** The Lessee shall promptly execute and comply with all applicable statutes, rules, orders, building codes, ordinances, requirements, and regulations of the city, county, state and federal governments, including OSHA, the Americans with Disabilities Act of 1990 (42 USC Sections 12101 through 12213 and 47 USC Section 225.611) and their underlying regulations and rules, which are applicable to the Premises. Nothing herein contained shall be construed to restrict the Lessee for contesting the validity of any such regulation, rule or ordinance, provided the Lessee indemnifies the Lessor to its reasonable satisfaction against the consequences of noncompliance during the period of dispute.

17. **INDEMNIFICATION.** To the extent limited by NRS Chapter 41, each party will be responsible for, and will indemnify, defend and hold the other party and its agents and employees harmless from and against, any loss, damage, liability, cost or expense to the extent of the party's liability provided by law that results from Lessor's ownership or Lessee's use of the Premises and that is caused by the actions or non-actions of Lessor or Lessee, or any of their employees, servants or agency of either.

18. **INSURANCE.** The parties acknowledge that each party maintains self insurance in compliance with the requirements of NRS.

19. **WAIVER OF SUBROGATION.** Lessor hereby waives, and Lessee hereby waives, any rights each may have against the other for loss or damage to its property or property in which it may have an interest, where such loss is caused by a peril of the type generally covered by fire or hazard insurance with extended coverage or arising from any cause which the claiming party was obligated to insure against under this MOU, and the Lessor and Lessee each waives any right of subrogation that it might otherwise have against the other party.

20. **SURRENDER OF PREMISES.** Upon expiration or other authorized termination of this MOU, Lessee shall and surrender the Premises in the same condition as they were in at the commencement of this Lease, except for additions, alterations or changes specifically authorized by Lessor and reasonable wear and tear, and shall deliver all keys to Lessor. Before surrendering the Premises, Lessee shall remove all of its personal property and trade fixtures and such alterations or additions to the Premises made by Lessee as may be specified for removal by Lessor, and shall repair any damage caused by such property or the removal thereof. If Lessee fails to remove such personal property and fixtures upon the expiration or other authorized termination of this Lease, the same shall be deemed abandoned and shall become the property of Lessor.

21. **HOLDING OVER.** Any holding over by the Lessee, with the Lessor's consent, after the expiration of the term hereof or of any renewal term shall be construed to be a tenancy from month to month, terminable on one month's written notice.

22. **SALE OF PREMISES.** Lessor reserves the right at any time to sell, convey or otherwise transfer its interest in the Premises or any portion thereof.

23. **INTENTIONALLY OMITTED.**

24. **DAMAGE OR DESTRUCTION.** Lessee shall give prompt notice to Lessor in case of fire or accidents in or near the Premises or in any common area.

A. If the Premises are partially damaged by fire or other casualty, Lessor shall repair such damage at its cost, subject to Lessor's option contained in subsection C of this Section.

B. If the Premises or common areas are substantially or totally destroyed, or if the Premises are damaged so extensively that they cannot, in Lessor's opinion, be repaired within sixty (60) days after commencement of such repairs, or if Lessor shall decide to rebuild the Premises or common areas so that they will be substantially different structurally or architecturally, then Lessor may, at its option, within thirty (30) days after such damage or destruction, give Lessee written notice thereof and this MOU shall thereupon be canceled effective as of the date of the occurrence of such damage or destruction.

C. If any damage referred to in this Section is due in whole or in part to the act, neglect, fault or omission of Lessee, there shall be no abatement of rent.

25. **LIENS AND ENCUMBRANCES.** Lessee agrees to keep the Premises and its interest therein free from liens and encumbrances.

26. **ASSIGNMENT AND SUBLETTING.** Lessee shall not transfer, assign, delegate, mortgage or hypothecate this MOU, in whole or in part, or permit the use of the Premises by any person or persons other than Lessee, or sublet the Premises, or any part thereof, without the prior written consent of Lessor in each instance. The prohibition against transfer or assignment contained in this Section includes any transfer or assignment by operation of law.

27. **BREACH, DEFAULT AND REMEDIES.** If Lessor or Lessee fails to perform or comply with any covenant, term or condition that this Lease requires said party to perform or comply with, the defaulting party shall have thirty (30) days after it receives written notice of such default or breach within which to remove or cure said default or breach..

The remedies provided for in this MOU shall be cumulative, and the exercise of any remedy by a party shall not be to the exclusion of any other remedy.

28. **INTENTIONALLY OMITTED.**

29. **FORCE MAJEURE.** Lessor and Lessee shall each be excused for the period of any delay in the performance of any obligation hereunder when prevented from doing so by cause or causes beyond that party's control, including labor disputes, civil commotion, war, governmental regulations or controls, fire or other casualty, inability to obtain any material or services, or acts of God.

30. **NO WAIVER.** Failure of either the Lessor or Lessee to insist upon the strict performance of any provision or to exercise any option hereunder in any one or more instances shall not be deemed a waiver or relinquishment of its right to do so in the future. No provision of this Lease shall be deemed to have been waived by Lessor/Lessee unless such waiver is in writing.

31. **INTENTIONALLY OMITTED.**

32. **PROVISIONS BINDING.** Except as otherwise provided, all provisions herein shall be binding upon and shall inure to the benefit of the parties, their legal representatives, heirs, successors and assigns.


33. **NON-DISCRIMINATION.** Lessee agrees that the Premises will not be segregated with respect to race, color, religion or national origin; that it will not segregate or discriminate on such grounds with respect to public utilization of or access to the Premises; and that it will comply with all applicable federal laws and regulations that prohibit discrimination in connection with federally-funded programs.

34. **ENTIRE AGREEMENT.** This MOU, including any exhibits attached hereto, sets forth the entire agreement between the parties. Any prior conversations or writings concerning the lease of the Premises are merged herein and extinguished.

35. **AMENDMENT OR MODIFICATION.** No amendment to or modification of this MOU shall be binding upon Lessor or Lessee unless it has been reduced to writing.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the day and year first above written.

CITY OF LAS VEGAS REDEVELOPMENT AGENCY

By 
OSCAR B. GOODMAN, Chairman
"Lessor"


ATTEST:


BEVERLY K. BRIDGES, CMO
Secretary

APPROVED AS TO FORM:

 6/13/08
DEPUTY CITY ATTORNEY/DATE

City of Las Vegas Cultural Affairs Division

By: 
Its: DIRECTOR

"Lessee"

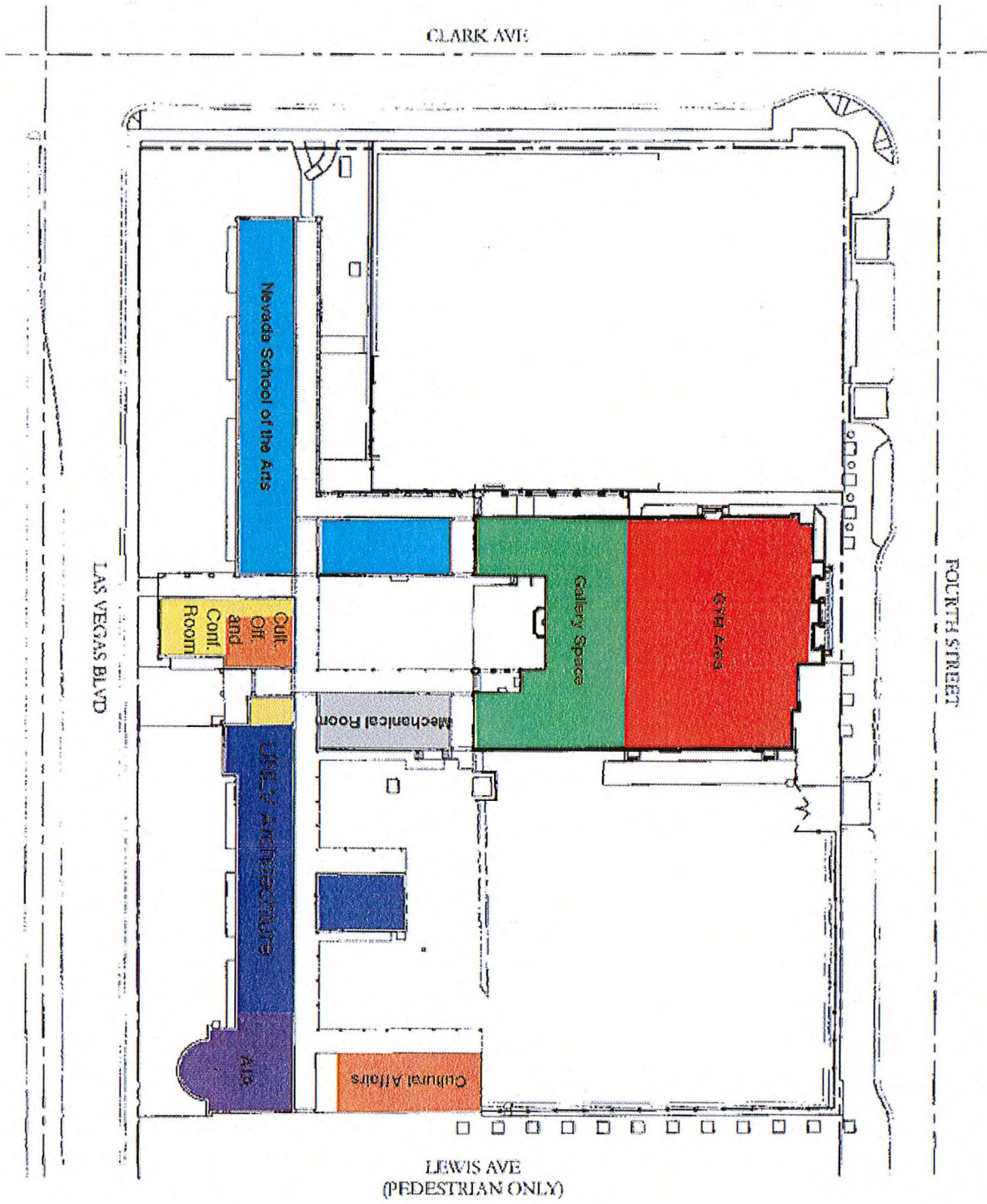


EXHIBIT A

EXHIBIT B

