

THE STATE OF TEXAS §

COUNTY OF HIDALGO §

**COVID 19 TEMPORARY LEASE OF PORTABLE BILDINGS TO HOSPITAL**

THIS LEASE is made and entered into by and between McAllen Independent School District, referred to in this Lease as “Lessor”, and the DHR Health, referred to in this Lease as “Lessee.”

The Board of Trustees of Lessor makes and adopts the following findings (“Findings”) with respect to this COVID 19 Temporary Lease of Portable Buildings:

**FINDINGS**

1. Lessor has twelve portable buildings (the “Portables”) which earlier in the 2020 calendar year the District contemplated declaring as surplus and was negotiating the sale of the Portables to South Texas College;

2. The District finds the Portables are unnecessary for operations of District;

3. Section 11.151(c) of the Texas Education Code provides the Board of Trustees may, in any appropriate manner dispose of property that is no longer necessary for the operations of the school district;

4. Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that Covid 19 poses an imminent threat of disaster for all Counties in the State of Texas and in each subsequent month Governor Abbott has renewed the disaster proclamation;

5. Three hospitals located in or adjacent to the City of McAllen have requested use of the Portables for hospital bed space due to the rising number of Covid 19 cares presenting at all of such hospitals;

6. The Board of Trustees of Lessor finds that the predominant purpose of the temporary lease of the Portables to each of the hospitals is to accomplish a critical public purpose to treat Covid 19 patients; (2) the District will retain public control over the Portales and following the use by the hospitals, the Portables will be returned to the District after being cleaned, disinfected and sanitized by the hospitals and (3) the District finds the District receives a benefit in that faculty, staff, students and the community will benefit from the extra bed space available by the hospital's use of the Portables.

In consideration of the Findings and the mutual covenants and agreements set forth in this Lease, and other good and valuable consideration, Lessor demises and leases to Lessee, and Lessee leases from Lessor, those certain Portables more specifically described on Exhibit A attached hereto.

**ARTICLE 1. TERM**  
**Term of Lease**

1.1 Except as otherwise herein provided, the term of this Lease shall commence on \_\_\_\_\_ (the "Commencement Date") and terminate on September 1, 2020, unless extended or sooner terminated based on the need by Lessee of continued bed space by Lessee. In furthermore thereof, Lessor shall certify to Lessee at least monthly during the term of this Lease the continued need for bed space provided by the Portables.

**Termination**

1.2 Lessee and/or Lessor may declare this Lease, and all rights and interest created by it, to be terminated without cause upon giving the other ten (10) days written notice. Upon either party electing to terminate, this Lease shall cease and come to an end as if the day of the termination party's election were the day originally fixed in the Lease for its expiration. On termination of

this lease for whatever reason, Lessee shall clean, disinfect and sanitize the Portables using hospital grade disinfectants and sanitizers prior to returning the Portables to Lessor.

### **Lessor's Warranty of Quiet Enjoyment**

1.3. Lessor covenants and agrees that Lessee on paying the rent and other charges herein provided for and observing and keeping the covenants, conditions, and terms of this Lease on Lessee's part to be kept or performed, shall lawfully and quietly hold, occupy, and enjoy the Portables during the term of this Lease without hindrance or molestation by Lessor or any person claiming under Lessor.

## **ARTICLE 2. RENT**

2.1 Lessee agrees to pay to Lessor, during the term hereof, a monthly rental equal to the sum of \_\_\_\_\_ (\$\_\_\_\_\_) Dollars per month (the "Base Rent"). Lessee agrees to pay as additional rent all utilities that become due for use of the Portables including but not limited to water and sewage and electricity.

### **Time and Manner of Payment**

2.2 All rent due under this article shall be paid by Lessee on a monthly basis and in advance, on the first business day of each month commencing on the Commencement Date. All installments of rent shall be paid in lawful money of the United States to the Lessor at the address of Lessor specified in Article 13.1 or such other location or locations as Lessor shall from time to time designate by written notice to Lessee. Any rent due for any partial month at the beginning or the end of the term hereof shall be prorated on the basis of a thirty (30) day month.

### **Taxes**

2.3 Lessor shall pay all taxes, special assessments, and government charges of every character imposed during the Term of this Lease upon the Portables. If there is presently in effect

or hereafter adopted any nature of sales tax or use tax or other tax on rents or other sums received by Lessor under this Lease (herein referred to as "Rent Sales Tax"), then in addition to all rent and other payments to be made by Lessee as provided above, Lessee will also pay Lessor a sum equal to the amount of such Rent Sales Tax. The term "Rent Sales Tax" shall not include any income taxes applicable to Lessor.

### **ARTICLE 3. USE OF PREMISES**

#### **Permitted Use**

3.1 Lessee may use the premises for hospital purposes and for any other lawful purpose.

#### **Waste, Nuisance, or Illegal Use**

3.2 Lessee shall not use, or permit the use of, the Portables in any manner that results in waste of the Portables or constitutes a nuisance or violates any statute, ordinance, rule or regulation applicable to the Portables or for any illegal purpose.

### **ARTICLE 4. REPAIRS AND MAINTENANCE**

4.1 Lessee shall be responsible for providing all repairs and construction needed for Lessee's purpose of the use of the Portables. Lessee shall be responsible for all repairs, construction and maintenance in connection with damage to the Portables caused by Lessee's negligent use of the Portables, and damage to fixtures and improvements resulting from negligent or willful acts of the Lessee, or the Lessee's employees, agents, licensees or invitees. In addition, Lessee shall repair all injury or damage to the Portables caused by the installation or removal of furniture, fixtures or property permitted under this Lease to be removed from the Portables. All such repairs shall be made in a good, workmanlike manner using high quality materials.

#### **LESSOR'S AND LESSEE'S DUTIES TO REPAIR**

4.2 Lessee shall maintain the foundation, roof, plumbing, heating, ventilation and air conditioning systems HVAC (to the extent included in the Portables) and structural integrity of the

Portables and shall make all such necessary repairs to the foundation, roof, plumbing, HVAC and structural integrity of the Portables, and those repairs occasioned by Lessee's negligent use of the Portables.

#### **ACCEPTANCE OF PORTABLES IN PRESENT CONDITIONS**

**4.3 THE PORTABLES SO LEASED AND ACCEPTED BY LESSEE ARE LEASED IN THEIR PRESENT CONDITION, AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, AND LESSEE EXPRESSLY ACKNOWLEDGES THAT THE RENTAL REFLECTS SUCH CONDITION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE RENTAL OF THE PORTABLES IS WITHOUT ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION, AGREEMENT, STATEMENT OR EXPRESSION OF OPINION (OR LACK THEREOF) OF OR WITH RESPECT TO: (I) THE CONDITION OF THE PORTABLES OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE; (II) AREA, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, QUANTITY, QUALITY, VALUE, CONDITION OR COMPOSITION OF THE PORTABLES; (III) ANY ASBESTOS AND ALSO ENVIRONMENTAL, STRUCTURAL OR OTHER CONDITION OR HAZARD OR THE ABSENCE THEREOF HERETOFORE, NOW OR HEREAFTER AFFECTING IN ANY MANNER ANY OF THE PORTABLES; AND (IV) ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES BY LESSOR WHATSOEVER. LESSEE HAS MADE ITS OWN PHYSICAL INSPECTION OF THE PORTABLES AND HAS SATISFIED ITSELF AS TO THE CONDITION OF THE PORTABLES FOR LESSEE'S INTENDED USE. LESSOR AFTER THE COMMENCEMENT DATE, AS BETWEEN LESSEE AND LESSOR,**

**THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE COMMENCEMENT DATE, WILL BE THE SOLE RESPONSIBILITY OF LESSEE, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT COMMENCEMENT DATE. LESSEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES LESSOR FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PORTABLES, INCLUDING TO THE EXTENT APPLICABLE LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. LESSEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES LESSOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PORTABLES ARISING AS THE RESULT OF LESSOR'S OWN NEGLIGENCE OR THE NEGLIGENCE OF LESSOR'S REPRESENTATIVES. LESSEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES LESSOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PORTABLES ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE COMMENCEMENT DATE THAT WOULD OTHERWISE IMPOSE ON LESSOR IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PORTABLES. LESSEE FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, AND ON BEHALF OF LESSOR AND IN THE NAME OF LESSOR, ANY CLAIM OR LITIGATION BROUGHT**

**IN CONNECTION WITH ANY SUCH ENVIRONMENTAL PROBLEMS AFFECTING THE PORTABLES.**

**ARTICLE 5. RELOCATION OF PORTABLES TO PREMISES OF LESSEE**

5.1 Lessee shall be solely responsible for transporting the Portables at Lessee sole cost and expense from their current location to the premises of Lessee, Lessee shall use a bonded, experienced portable building or house mover approved by Lessor to relocate the Portables to Lessee's premises.

Lessee shall furnish certificate(s) of insurance in amounts designated by and acceptable by Lessor of any such portable building or house mover to Lessor naming Lessor as an additional insured.

Within fourteen (14) days following the termination of this Lease (during such fourteen (14) days Lessee should have cleaned, disinfected and sanitized the Portables in accordance with the provision in Article 1.2) Lessee shall be solely responsible for transporting the Portables at Lessee sole cost and expense to a location within the boundaries of the McAllen Independent School District designated by Lessor. Lessee shall use a bonded, experienced portable building or house mover approved by Lessor to relocate the Portables to such location designated by District and furnish certificate(s) of insurance in amounts designated by and acceptable by Lessor of such portable building or house mover to Lessor naming Lessor as an additional insured.

**ARTICLE 6. LESSOR'S RENOVATIONS  
Consent of Lessor**

6.1 Lessee shall not make any alterations, additions, or improvements to the Portables without the prior written consent of Lessor. Consent for nonstructural alterations, additions, or improvements shall not be unreasonably withheld by Lessor.

## **Property of Lessor**

6.2 All alterations, additions, or improvements made by Lessee shall at the option of Lessor become the property of Lessor at the termination of this Lease.

## **ARTICLE 7. SIGNS**

### **Signs**

7.1 Subject to the written approval of Lessor, and further subject to applicable laws, ordinances and regulations, Lessee shall have the right to install signs on the Portables. Lessee must remove all signs at the termination of this Lease and repair any damage resulting from the erection or removal of the signs.

## **ARTICLE 8. MECHANIC'S LIEN**

Lessee will not permit any mechanic's lien or liens to be placed upon the Portables, and if such lien is claimed as a result of the acts of Lessee, Lessee will promptly pay the lien. If default in payment of the lien continues for twenty (20) days after written notice from Lessor, Lessor may, at its option, pay the lien or any portion of it without inquiry as to its validity. Any amounts paid by the Lessor to remove a mechanic's lien caused to be filed against the Portables, including expenses and interest, shall be due from Lessee to Lessor and shall be repaid to Lessor immediately on rendition of notice, together with interest at ten percent (10%) per annum until repaid.

## **ARTICLE 9. INSURANCE AND INDEMNITY**

### **Property Insurance**

9.1 At all times during the Term of the Lease, Lessee shall keep the Portables insured against loss or damage by fire, vandalism and malicious mischief, with extended coverage endorsement or its equivalent as additional rent. Such property insurance shall be in amounts not less than one hundred percent (100%) of the full replacement value of the Portables, which may be provided under a blanket policy. Such policy or policies of insurance shall name both Lessor



and Lessee as a named insured and all proceeds payable thereunder shall be paid to Lessor and held by Lessor in trust, and shall be made available for reconstruction or repair, as the case may be, of any damage to or destruction of the Portables, or any portion thereof, and shall be paid out by Lessor from time-to time subject to the provisions hereof for the reasonable cost of such reconstruction or repair. Any excess proceeds of insurance remaining after the completion of the restoration or reconstruction of the Portables (or in the event neither Lessor nor Lessee is required or elects to repair or restore) shall be retained by Lessor free and clear upon completion of any such repair and restoration. All salvage resulting from any risk covered by such insurance shall belong to Lessor except that any salvage relating to Lessee's personal property shall belong to Lessee.

#### **General Liability Insurance**

9.2 Lessee, at its own expense, shall provide and maintain in force during the term of this Lease, liability insurance with limits of at least Five Million Dollars and no one hundredths (\$5,000,000.00), naming Lessor as additional insured. Prior to occupancy of the Portables, Lessee shall provide Lessor with evidence of such insurance. Lessee shall provide Lessor with a certificate of insurance evidencing same.

#### **Remedy for Failure to Provide Insurance**

9.3 Lessee shall furnish Lessor with the original of all insurance policies required by this Article. If Lessee does not provide such policies or proof of such insurance within ten (10) days of the execution of this Lease, or if Lessee allows any insurance required under this Article to lapse after receipt of notice of cancellation or of non-renewal, or if Lessee fails to deliver proof of insurance showing coverages to Lessor prior to the effective date of such insurance and the original insurance policy within thirty (30) days thereafter, such failure shall be a default of Lessee

under this Lease; or Lessor may, but shall not be required, to take out such insurance and pay the premiums on the necessary insurance to comply with Lessee's obligations under the provisions of this Article. Lessee agrees to reimburse Lessor all amounts spent by Lessor to procure and maintain such insurance within fifteen (15) days after demand from Lessor. Failure to pay such amount when due shall be a default of Lessee under this Lease.

**ARTICLE 10. DAMAGE OR DESTRUCTION OF PORTABLES**  
**Notice to Lessor**

10.1 If the Portables, should be damaged or destroyed by fire, tornado, or other casualty, Lessee shall give immediate written notice of the damage or destruction to Lessor, including a description of the damage and, as far as known to Lessee, the cause of the damage.

**ARTICLE 11. DEFAULT**  
**Default by Lessee**

11.1 If Lessee shall allow the rent to be in arrears more than ten (10) days after written notice of such delinquency, or shall remain in default under any other condition of this Lease for a period of fifteen (15) days after written notice from Lessor, Lessor may at its option, without notice to Lessee, terminate this Lease or, in the alternative, Lessor may re-enter and take possession of the Portables and remove all persons and property without being deemed guilty of any manner of trespass and Lessee shall pay Lessor the cost of relocating the Portables to premises chosen by Lessor.

**Cumulative Remedies**

11.2 All rights and remedies of Lessor and Lessee under this Article shall be cumulative, and none shall exclude any other right or remedy provided by law or by any other provision of this Lease. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.

### **Waiver of Breach**

11.3 A waiver by either Lessor or Lessee of a breach of this Lease by the other party does not constitute a continuing waiver or a waiver of any subsequent breach of the Lease.

### **ARTICLE 12. ASSIGNMENT AND SUBLETTING** **Assignment and Subletting by Lessee**

12.1 Lessee may not sublet, assign, encumber, or otherwise transfer this Lease, or any right or interest in this Lease or in the Portables, without the written consent of Lessor. If Lessee sublets, assigns, encumbers, or otherwise transfers its rights or interest in this Lease or in the Portables, other than as specified herein, without the written consent of Lessor, Lessor may, at its option, declare this Lease terminated and Lessee and Lessor shall have no further obligation to each other under this Lease other than Lessee cleaning, disinfecting and sanitizing the Portables in accordance with Article 1.2, and paying all costs and expenses to relocate all Portables to a site designated by Lessor. In the event Lessor consents in writing to an assignment, sublease or other transfer of all or any of Lessee's rights under this Lease, the assignee or sublessee, must assume all of Lessee's obligations under this Lease, and Lessee shall remain liable for every obligation under the Lease. Lessor's consent under this section may be arbitrarily or unreasonably withheld.

### **Assignment by Lessor**

12.2 Lessor may assign or transfer any or all of its interests under the terms of this Lease.

### **ARTICLE 13. MISCELLANEOUS** **Notices and Addresses**

13.1 All notices required under this Lease will be deemed delivered when deposited in certified or registered mail, addressed to the proper party, at the following addresses:

Lessor:

McAllen Independent School District  
2000 N. 23<sup>rd</sup> Street  
McAllen, Texas 78501

Lessee:

DHR Health  
5501 S. McColl Rd.  
Edinburg, Texas 78539

Either party may change the address to which notices are to be sent it by giving the other party written notice of the new address in the manner provided in this section.

### **Parties Bound**

13.2 This Lease Agreement shall be binding upon, and inure to the benefit of, the parties to the Lease and their respective successors and assigns when permitted by this Lease Agreement.

### **Texas Law to Apply**

13.3 This Lease shall be construed under, and in accordance with, the laws of the State of Texas, and all obligations of the parties created by this Lease are performable in Hidalgo County, Texas.

### **Legal Construction**

13.4 In case any one or more of the provisions contained in this Lease shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of the Lease, and this Lease shall be construed as if the invalid, illegal, or unenforceable provision had never been included in the Lease.

### **Prior Agreements Superseded**

13.5 This Lease constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Lease.

### **Amendment**

13.6 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.

### **Rights and Remedies Cumulative**

13.7 The rights and remedies provided by this Lease are cumulative, and the use of any one right or remedy by either party shall not preclude or waive that party's right to use any or all other remedies. The rights and remedies provided in this Lease are in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

### **Attorneys' Fees and Costs**

13.8 If, as a result of a breach of this Lease by either party, the other party employs an attorney or attorneys to enforce its rights under this Lease, then the breaching or defaulting party agrees to pay the other party the attorneys' fees as may be awarded by a court of competent jurisdiction and costs incurred to enforce the Lease.

### **Force Majeure**

13.9 Neither Lessor nor Lessee shall be required to perform any term, condition, or covenant in this Lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of Lessor or Lessee and which by the exercise of due diligence Lessor or Lessee is unable, wholly or in part, to prevent or overcome.

**Real Estate Commission and Finder's Fees**

13.10 Neither Lessor nor Lessee has entered into any real estate commission or finder's fee agreements with any broker, agent or finder in respect of this transaction, and Lessor and Lessee each agree to indemnify and hold harmless the other from and against any and all claims, losses, damages, costs or expenses of any kind, or arrangement or understanding alleged to have been made by the indemnifying party or on its behalf with any broker, salesman or finder in connection with this Lease or the transactions contemplated hereby.

**Estoppel Information**

13.11 Lessee shall, at the request of Lessor, provide any and all information with respect to this Lease to any person designated by Lessor.

**Time of Essence**

13.12 Time is of the essence of this Lease Agreement.

**No Waiver of Sovereign Immunity**

13.13 Notwithstanding any other provision of this Lease, nothing in this Lease or any action taken by Lessor pursuant to this Lease shall constitute or be construed as a waiver of either the sovereign or governmental immunity of Lessor. The parties intend for this provision to be read as broadly as possible.

THE UNDERSIGNED Lessor and Lessee execute this Lease on the \_\_\_\_\_ day of 2020.

**LESSOR:**

**MCALLEN INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_  
Conrado "Ito" Alvarado, Board President

**LESSEE:**

**DHR HEALTH**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**

**Description of Four Portable Buildings**