

**CITY OF MERCED**  
**MCNAMARA PARK COMMUNITY CENTER BUILDING**  
**LEASE AGREEMENT**

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THIS LEASE AGREEMENT (“Lease”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as “Lessor”) and Symple Equazion, a California Non-Profit Corporation, whose address of record is 1217 Fairway Drive, Atwater, California 95301, (hereinafter referred to as “Lessee”).

**RECITALS**

WHEREAS, Lessor is the owner of the McNamara Park Community Center building located at 1040 Canal Street in the City of Merced, the County of Merced and the State of California; and,

WHEREAS, Lessor is desirous of utilizing the McNamara Park Community Center building in a manner which will benefit the citizens of the surrounding community; and,

WHEREAS, Lessor recognizes the important role that nonprofit and charitable organizations play in assisting the public by providing important services and programs to the public; and,

WHEREAS, Lessor desires to lease the McNamara Park Community Center to one or more nonprofit or charitable organizations with strong community ties for the purpose of providing a variety of important programs and services to public, and in particular to the youth of Merced; and,

WHEREAS, Lessee is a Nonprofit Organization that is recognized as tax-exempt under Section 501, subdivision (c)(3) of the Internal Revenue Code; and,

WHEREAS, Lessee submitted a Request For Interest Application to Lessor to Lease the McNamara Park Community Center Building for the purpose of conducting a variety of community programs and activities, as described in part and in further detail in Exhibit “C,” attached hereto, which is incorporated herein by reference; and,

WHEREAS, Lessee desires to enter into a nonexclusive Lease with Lessor for the nonexclusive use of the McNamara Park Community Center for the purpose of providing youth and community programming to the public; and,

WHEREAS, in entering into the Lease, Lessee agrees to cooperate with and work together with any other entities entering into a nonexclusive Lease with Lessor (hereinafter "Leasing Entities") for the use of the McNamara Park Community Center for the purpose of providing their respective services, activities, programs and/or classes at separate times and/or days and/or dates; and,

WHEREAS, Lessor deems it to be in furtherance of its goals and in the public's interest to enter into a nonexclusive lease with Lessee for the nonexclusive use of the McNamara Park Community Center Building to be utilized solely for the purposes described to Lessor herein.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the Lessor and Lessee do hereby agree as follows:

1. DEFINITION OF FACILITY. The leased premises consist of the certain building known as the McNamara Park Community Center which is located at 1040 Canal Street, Merced, California, and which is more fully described in Exhibits "A" and "B" attached hereto, both incorporated herein by reference. Said leased premises are hereinafter referred to as the "Facility."

2. FACILITY. The Lessor hereby leases to Lessee and Lessee leases from Lessor for the term, at the rental, and upon all the conditions set forth herein, the Facility which is situated in the City of Merced, County of Merced, State of California, together with all improvements thereon and appurtenances thereto, and subject to the conditions set forth herein, the nonexclusive right of Lessee and its officers, employees, business invitees, customers and patrons, of access to and from Facility.

3. TERM. The term of this Lease shall be for a period of seven (7) months, (said term hereinafter called the "Lease Term"). The Lease Term and the rent shall commence upon mutual execution of this Lease, and shall continue for seven (7) months thereafter.

4. RENT. In exchange for Lessee's programs and activities at the Facility, the Facility is leased to Lessee without any monetary payment to Lessor, subject to the terms and conditions set forth in the Lease.

5. **NONEXCLUSIVE USE.** During the term of this Lease, and any renewal hereof, Lessee shall have the nonexclusive shared use of the Facility for the purpose of providing a variety of programs to the community as set forth in Exhibit "C" attached hereto, or for any other programs or activities that provide a beneficial social, recreational or educational value to the community. Lessee will have the nonexclusive shared use of the Facility along with any other Leasing Entities for use of the Facility.

Lessee shall not commit or permit any act or acts in or on the Facility or use the Facility or suffer it to be used in any manner which will cause a cancellation of any fire, liability, or other insurance policy covering the Facility or any part thereof.

Lessor specifically reserves the right to use the Facility for City-sponsored events for the benefit of the public. An example of such an event includes, but is not limited to, the annual Fire/ Kops for Kids Toy Program. In the event that Lessor desires to use the Facility, it will provide Lessor and all other Leasing Entities with at least ten (10) days' notice of such intended use.

6. **NO OVERSIGHT OF THE OPERATIONS OF THE FACILITY BY LESSOR.** Lessor will not be coordinating, controlling or overseeing the operations of the Facility or of any of the programs, activities, services or classes offered by Lessee or any of the Leasing Entities. As this Lease is for the nonexclusive shared use of the Facility, Lessee agrees to be flexible and cooperative to allow any other Leasing Entities to operate their respective programs. The scheduling of programs, activities and classes will be coordinated solely by Lessee and the Leasing Entities.

7. **NO RESPONSIBILITY.** Lessor is entering into a Lease for the nonexclusive shared use of the Facility with Lessee as well as Leasing Entities for the purpose of allowing these organizations to provide a variety of community programs, activities, services and classes for the benefit of the public. Lessor is **NOT RESPONSIBLE** for any items, property or belongings left in or around the Facility by Lessee, individuals, members of the public or any of the Leasing Entities when they are using or not using the Facility. Lessor will not be providing any security or other oversight for any items, property or belongings brought into or left in or around the Facility.

8. REPAIRS, MAINTENANCE AND UTILITIES.

a. Lessor shall provide and pay for building maintenance and repair of the Facility, including, but not limited to, the structure, exterior roof, and exterior side walls.

b. Lessor shall pay up to Seven Thousand Five Hundred Dollars (\$7,500.00) annually for cost of water, sewer, electricity and other utility services for the exterior and interior area of the Facility. In the event that the cost of utilities for the Facility exceeds Seven Thousand Five Hundred Dollars (\$7,500) annually, Lessee and all other Leasing Entities will be responsible to equally pay the costs of the monthly utility charges for the Facility. Lessor will inform Lessee and all other Leasing Entities of the monthly utility costs for the Facility.

c. Lessee can individually provide (pay for) janitorial services or share the cost of such services with any other Leasing Entities. In the alternative, Lessee and all other Leasing Entities can agree to perform janitorial services for the facility in a manner and according to a schedule developed and agreed upon by Lessee and all other Leasing Entities. Lessee agrees to clean up the facility after each time it uses of the Facility or any portion thereof. Lessee agrees to assist all other Leasing Entities with maintaining the inside of the Facility in a safe and clean manner that is appropriate for both youth and community programs.

9. ALTERATIONS AND IMPROVEMENTS. Lessee shall have the right to make alterations and improvements to the Facility subject to the following terms and conditions:

a. No alterations or improvements made by Lessee shall in any way impair the structural stability of the Facility or diminish the value of the property;

b. Any and all alterations or improvements shall be first approved in writing by the Lessor, but said approval shall not be unreasonably withheld by Lessor;

c. Lessee shall keep the Facility and every part of the Facility free and clear of any mechanics' liens or materialmen's liens arising out of the construction of any such alterations or improvements.

d. All alterations and improvements made to the Facility shall become the property of the Lessor and shall remain on and be surrendered with the Facility

at the expiration or sooner termination of this Lease or any renewal or extension of this Lease.

e. Lessee's personal property and its trade fixtures, including machinery, equipment, and furnishings, shall remain the property of Lessee and may be removed by Lessee. Any personal property, trade fixtures, or equipment not removed by Lessee within thirty (30) days after the termination of this Lease or any extension thereof, shall automatically become the property of the Lessor. Lessee shall repair any damage to the Facility caused by Lessee's removal of its personal property, trade fixtures, or equipment, but Lessee shall have no obligation to remove such items from the Facility at any time.

10. MECHANICS LIENS. The Lessor and Lessee agree to keep the Facility free from any and all claims of persons or firms or corporations who, at the request of Lessor or Lessee or their employees or contractor, furnish labor or materials to or for the benefit of the Facility and Lessor and Lessee further agree to hold each other harmless from any and all claims.

11. DAMAGE/DESTRUCTION. If the Facility is damaged or destroyed in whole or in part by fire or other casualty, Lessor shall repair and restore the Facility to a good tenantable condition. All rent shall wholly abate in case the entire Facility is untenable, or shall abate pro rata for the portion rendered untenable in case a part only is untenable, until the Facility is restored to a tenantable condition. Lessor shall commence and complete all work required to be done under this paragraph with reasonable promptness and diligence, but Lessor shall not be in default in any required performance if delay in performance results from fire, flood, storm, labor disputes, shortage of materials, funds or transportation facilities, governmental regulations, war, act of God or other causes beyond Lessor's reasonable control. If Lessor shall not commence such repair or restoration within thirty (30) days after such damage or destruction shall occur or if repair or restoration will require more than one hundred twenty (120) days to complete, Lessor or Lessee may thereafter, at its option, terminate this Lease by giving written notice of its election to do so at any time prior to the commencement of such repair or restoration. In that event, this Lease shall terminate as of the date such notice is received by Lessor.

Notwithstanding any other provisions of this section, Lessee shall be responsible for repair and restoration of Lessee's trade fixtures and personal property located in or on the Facility in the event of damage or destruction of said property.

12. FIRE INSURANCE. Lessee shall maintain fire insurance in full force and effect during the Lease Term and any renewal hereof, which shall include coverage against loss or damage to the Facility in the amount of not less than ninety (90) percent of its full insurable value, against perils included within the classifications of fire, extended coverage, vandalism, malicious mischief and special extended perils.

13. INSURANCE. Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with Lessee's operation and use of the leased premises and Facility. The cost of such insurance shall be borne by the Lessee. The insurance coverage shall be at least as broad as:

- (1) Insurance Services Office ("ISO") Commercial General Liability coverage (occurrence form CG 00 01);
- (2) Worker's Compensation Insurance as required by the State of California and Employer's Liability Insurance;
- (3) Property insurance against all risks of loss to any tenant improvements or betterments.

The Lessee shall maintain limits no less than:

General Liability:

- (1) \$1 million per occurrence for bodily injury, personal injury, death (including accidental death) and property damage. In addition, general liability insurance of not less than \$2 million for bodily injury, personal injury or death (including accidental death) of two or more persons as a result of any one accident or incident; and,
- (2) \$500,000.00 for damage to or destruction of any property of others;
- (3) Property insurance for full replacement cost with no coinsurance penalty provision.

The insurance shall:

- (1) Insure against all liability of Lessee and its authorized representatives arising out of or in connection with Lessee's use or occupancy of the Facility.
- (2) Insure performance by Lessee of the indemnity provisions of paragraph 25.
- (3) Provide that Lessor be named as an additional insured and contain cross-liability endorsements. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The City will be named as an additional insured using ISO form CG 20 10 11 85 the same form with an edition date no later than 1990.
- (4) Be considered by the parties hereto as the primary insurance.
- (5) Contain an endorsement requiring a minimum of thirty (30) days written notice to the City Clerk of Lessor from the insurance company before cancellation or change in the coverage, scope, or amount of any policy. The mailing address for the City Clerk's Office is:

City of Merced  
Attn: City Clerk  
678 West 18th Street  
Merced, California 95340

The Lessee shall furnish a Certificate of Insurance with the City Clerk evidencing the aforesaid coverage prior to the commencement of the Lease Term. Lessee shall also annually furnish copies of Certificates of Insurance to the City Clerk upon renewal of the insurance required by this section throughout the duration of the Lease Term or any extension thereof.

Lessee agrees that, except where prohibited by law, any workers' compensation insurance policy of Lessee covering operations on the Facility shall include a waiver of any right or subrogation which any insurer of the Lessee might otherwise acquire against the Lessor by virtue of payment of any loss under such insurance.

Notwithstanding the above, it is further agreed to between the parties hereto that the limits of insurance coverage specified above are the minimum amounts required and shall be subject to revision by the Lessor from time to time if a need is indicated. The Lessor hereby agrees to act reasonably at all times with respect to the provisions of this paragraph.

14. **WAIVER OF SUBROGATION.** Lessor and Lessee and all parties claiming under or through them hereby mutually release and discharge each other, any other tenants or occupants of the Facility, and the officers, employees, agents, representatives, customers and business visitors of Lessor or Lessee or such other tenants or occupants, from all claims, losses and liabilities arising from or caused by any hazard covered by insurance on or in connection with the Facility, even if caused by the fault or negligence of a release party. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

15. **EXTERIOR SIGNS.** Any and all signs or advertisements of any nature extending into, on, or located over the Facility, shall conform to all City of Merced, California, zoning and building codes and shall be approved by Lessor in writing prior to construction, use, or erection thereof. Approval by Lessor shall not be unreasonably withheld, as to location, graphics type, content, architectural or engineering standards.

16. **TAXES.** The terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this Lease, the private party may be subjected to payment of personal property taxes levied on such interest. Lessee shall be responsible for the payment of, and shall pay before they become delinquent, all taxes, assessments and fees assessed or levied upon Lessee or the Facility, or any interest therein, including, but not limited to, buildings, structures, fixtures, equipment or other property installed, or constructed thereon. Lessee further agrees not to allow such taxes, assessments or fees to become delinquent and as such to become a lien against Facility or any improvement thereto. Nothing herein contained shall be deemed to prevent or prohibit Lessee from contesting the validity or amount of any such tax, assessment or fee in the manner authorized by law.

The obligation to make any payments pursuant to this Section shall survive the expiration of the term of this Lease, provided Lessee's obligation arose out of or is equitably allocable to the period covered by this Lease.

Unless otherwise provided by this Section, the Lessee shall pay the Lessor any other taxes, assessments, or fees, which the Lessor may become obligated to pay in connection with the ownership or maintenance of the Facility.

17. ASSIGNMENT AND SUBLETTING. Lessee shall not encumber, assign, sublet, or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Facility, for a longer period than six (6) months without the prior written consent of Lessor. A consent of Lessor to one assignment, subletting, or occupation and use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, or occupation and use by another person. Any encumbrance, assignment, transfer, or subletting in violation of the requirements hereof, whether it be voluntary or involuntary, by operation of law, or otherwise, is void and shall, at the option of Lessor, terminate this Lease.

The consent of Lessor to any assignment of Lessee's interest in this Lease or the subletting by Lessee of the Facility, shall not be unreasonably withheld or delayed.

18. TERMINATION OF LEASE.

a. In the event the Lessee determines in good faith that it no longer practicably, economically, or operationally can do business from the Facility, upon making a reasonable showing of same to Lessor, Lessee shall have the right to terminate this Lease on thirty (30) days' prior written notice.

b. It is understood and agreed by the parties hereto that Lessor and its successors in interest shall and hereby do reserve the right to cancel or terminate this Lease prior to expiration of the term or renewed or extended term hereof as follows:

- (1) If the Lessee is in default or breach of this Lease, as specified in Section 18 of this Lease or as otherwise provided by law; or
- (2) Upon sixty (60) days' notice without cause.

19. COMPLIANCE WITH LAWS. During the term of this Lease and any renewals hereof, Lessee shall promptly execute and comply with all Federal, State, County, and City statutes, ordinances, regulations, laws, or other

requirements applicable to the occupancy of the Facility, and the operation of the Facility as a youth center.

## 20. DEFAULT/REMEDIES – LESSEE.

The occurrence of any one or more of the following events constitutes a material default and breach of this Lease by Lessee:

a. The failure by Lessee to make any payment required to be made by Lessee hereunder, as and when due, where the failure is continuous for a period of twenty (20) days after written notice thereof from Lessor to Lessee.

b. The failure by Lessee to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Lessee, other than those described in Subsection (a), of this section (18), where the failure continues for a period of thirty (30) days after notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed in default if Lessee commences such cure within the thirty (30) day period and thereafter diligently completes the cure.

c. The making by Lessee of any general assignment, or general arrangement for the benefit of creditors.

d. The filing by Lessee of a petition to have Lessee adjudged as bankrupt.

e. The judicial declaration of Lessee as bankrupt.

f. The appointment of a trustee or receiver to take possession of substantially all Lessee's assets located at the Facility or of Lessee's interest in this Lease, if possession is not restored within thirty (30) days.

g. The attachment, execution or other judicial seizure of substantially all Lessee's assets located at the Facility or of Lessee's interest in this Lease, if the seizure is not discharged within thirty (30) days.

In the event of any such default or breach with the exception of bankruptcy or receivership, by Lessee, Lessor may, after giving written notice as provided above, pursue those remedies available to Lessor under the laws or judicial

decisions of the State of California. In the event of bankruptcy or receivership, this Lease shall immediately terminate.

If Lessee breaches this Lease or is in default, as provided above, the Lessor may terminate this Lease upon written notice as provided herein. On such termination, the Lessor may recover from Lessee:

- (i) The worth at the time of award of the unpaid rent which has been earned at the time of termination;
- (ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been unreasonably avoided;
- (iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for such period that Lessee proves could be reasonably avoided; and
- (iv) Any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform his obligations under this Lease, or which in the ordinary course of things would likely to result therefrom.

The "worth at the time of award" of the amounts referred to in Subsections (i) and (ii) hereinabove is computed by allowing interest at the legal rate. The worth at the time of award of the amount referred to in paragraph (iii) of this subsection is computed by discounting such amount at the legal rate of interest.

Even though Lessee breaches this Lease or is in default, as provided above, this Lease continues in effect for so long as the Lessor does not terminate Lessee's right of possession; and the Lessor may enforce all its rights and remedies under this Lease, including the right to recover the rent as it becomes due under this Lease, unless the breach by Lessee constitutes a breach and abandonment of the Lease, in which case the Lessor may enforce all its rights and remedies except its right to recover rent as it becomes due.

For the purposes of this Lease, acts of maintenance or preservation or efforts to relet the Facility do not constitute a termination of Lessee's right to possession.

The rights of the Lessor under this Lease shall be cumulative to all other rights or remedies now or hereafter given to Lessor by law. Nothing in this Lease affects the right of the Lessor to equitable relief where such relief is appropriate.

Nothing in this Lease affects the rights of the parties under statutory provisions relating to actions for unlawful detainer, forcible entry, and forcible detainer. If Lessor brings an action in unlawful detainer, and possession of the property is no longer an issue because possession of the property is delivered to Lessor before trial or, if there is no trial, before judgment is entered, unless Lessor amends the complaint to state a claim for damages not recoverable in the unlawful detainer proceeding, the bringing of an unlawful detainer, forcible entry, or forcible detainer action as described hereinabove does not affect Lessor's right to bring a separate action for relief on termination, or in equity; but no relief shall be requested and no damages shall be recovered in the subsequent action for any detriment for which claim for damages was made and determined on the merits in the previous action.

Efforts by the Lessor to mitigate the damages caused by Lessee's breach of this Lease do not waive the Lessor's right to recover damages under this section.

Nothing in this section affects the right of the Lessor to indemnification for liability arising prior to the termination of this Lease for personal injuries or property damage as provided in Section 25 of this Lease.

## 21. DEFAULT/REMEDIES – LESSOR.

Lessor shall not be in default unless Lessor fails to perform obligations required of it within a reasonable time, but in no event later than thirty (30) days after written notice by Lessee to Lessor; provided that if the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required for performance, then Lessor shall not be in default if Lessor commences performance within the thirty (30) day period and thereafter diligently completes performance.

If Lessor defaults in the performance of any of the obligations or conditions required to be performed by Lessor under this Lease, Lessee may, after giving notice as provided above, elect to terminate this Lease upon giving thirty (30) days' written notice to Lessor of its intention to do so. In that event, this Lease shall terminate upon the date specified in the notice, unless Lessor has meanwhile cured the default. The foregoing shall be Lessee's sole remedy in the event of a breach by Lessor.

22. CONDEMNATION. If all of the Facility or any portion thereof is taken under the power of eminent domain, sold under the threat of the exercise of said power, or disposed of to satisfy federal requirements (all of which are herein called "condemnation"), this Lease shall automatically terminate as of the date the condemning authority takes title or possession, whichever occurs first.

Any award or payment made upon condemnation of all or any part of the Facility shall be the property of Lessor, whether such award or payment is made as compensation for the taking of the fee or as severance damages; provided Lessee shall be entitled to the portion of any such award or payment for loss of or damage to Lessee's trade fixtures or removable personal property.

23. SEVERABILITY. No waiver of any breach of any covenant, condition or stipulation hereunder shall be taken to be a waiver of any succeeding breach of the same covenant, condition or stipulation.

24. BINDING EFFECT. This Lease shall be binding upon the parties hereto, their heirs, personal representatives, administrators, successors and assigns.

25. ASSUMPTION BY NEW OWNER. If the City of Merced transfers any interest in the Facility to any other party or entity, this Lease shall remain in full force and effect, with the new owner assuming the role of Lessor with all the rights and duties specified in this Lease.

26. SURRENDER. Lessee agrees to take good care of the Facility and to commit no waste, and suffer no injury to be done to the same, and to return the possession of the same to Lessor at the expiration of the term, in as good condition as at the commencement of this Lease, normal wear and tear, unavoidable accidents and damage by casualty excepted.

If Lessee fails to surrender the Facility upon the expiration or termination of this Lease, Lessee shall indemnify and hold the Lessor harmless from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant founded on or resulting from Lessee's failure to surrender.

27. INDEMNITY. Lessee shall indemnify, defend (with legal counsel selected by Lessor) and hold harmless, Lessor and its officers, employees and agents from any and all claims or demands, actions, damages, costs and expenses for injuries to persons or property arising out of the negligence or improper acts or

omissions of Lessee, its agents, officers or employees which are connected with or incident to Lessee's operations, use or occupancy at or of the Facility or Lessee's sublease of the Facility, or occurring on the Facility during the term of this Lease or any time of occupancy of the Facility by Lessee and/or Lessee's sublessee, including claims, liabilities, and actions based upon nuisance or inverse condemnation. Upon demand from Lessor, Lessee shall, at its own cost and expense, indemnify, protect, defend (with legal counsel selected by Lessor), and hold harmless Lessor and its officers, employees, and agents against any and all such liabilities, claims, demands, actions, losses, damages, and costs. It is understood and agreed that the duty of Lessee to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Lessor of insurance certificates and endorsements required under this Lease does not relieve Lessee from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Lease and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Lease, Lessee acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

28. COVENANTS AGAINST DISCRIMINATION. The Lessee agrees for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, that any deed or deeds shall contain the following covenants.

“There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, national origin, religion, sex, disability, marital status or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Facility herein leased, nor shall the Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, occupancy of tenants, lessees, sublessees, subtenants or vendees in the Facility herein leased.”

29. NOTICES. All notices and other communications contemplated shall be in writing and shall be deemed given when personally delivered or received by

mail, and shall be personally delivered or mailed by certified mail, return receipt requested, with postage and fees paid, as follows:

Lessor: City of Merced  
c/o City Manager  
678 West 18th Street  
Merced, CA 95340

Copy to: City Attorney  
City of Merced  
678 West 18th Street  
Merced, CA 95340

Lessee: Symple Equazion  
1217 Fairway Drive  
Atwater, California 95301

30. ENTIRE AGREEMENT. All preliminary and contemporaneous agreements and understandings are merged and incorporated into this Lease which contains the entire agreement between the parties. This Lease may not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

31. VALUE. There is in-kind value to the lease of the McNamara Park Community Center building, which is a 2,240 square foot building with an office, activity rooms and a kitchen. In 2014, the lowest lease rate of a City owned facility was .83 cents per square foot. The Economic Development Department of the City of Merced indicates that in the year 2014, there were some private properties in downtown Merced available for lease without utilities for .75 cents per square foot. Based on these estimates, an approximate in-kind value of the lease of the McNamara Park Community Center building during the year 2014 would be in the range of approximately \$20,160 to \$22,310 per year.

32. RECORDS. It is understood and agreed that all files, studies, financial records, computer records, data and other papers, etc., in possession of the Lessee relating to the matters covered by this Lease shall be the property of the Lessor and Lessee agrees to deliver same to the Lessor upon request or upon any termination of this Lease. Lessee shall also prepare any reports regarding expenditures and performance required by the Lessor.

33. COMMUNICATION. Lessee shall document their programming efforts and report to the City Council on a quarterly basis. While the details and format of the report can be mutually agreed upon after the Lease is signed, the reports shall generally include the following information:

- The date and time of all activities offered at the facility (after-school activities, classes, trainings, etc.)
- The number of participants for or at each activity.
- The number of volunteers/staff for or at each activity.
- A daily sign-in/sign out sheet for each activity.
- A database containing services provided; number of youth participating monthly; male and female breakdown; grade, school, home addresses (can be just by block and/or street name), attendance.
- Photos of events/training.

In addition, on at least a six month basis, each organization shall complete a short self- evaluation, answering the following questions:

- What was the best thing that happened at the Facility this quarter?
- Did you accomplish your goal as stated in the original application?
- If not, why not?
- What would help make your program better?
- Do you have any new partnerships?

34. CONTRACT REVIEW. Throughout the term of this Lease, each year of the Lease Term, Lessor's staff and the staff of Lessee will meet to discuss the Lease with the Lessee to determine if there are any changes or modifications that the parties believe should be made. If there are proposed changes, they can be brought before the City Council prior to the start of the new fiscal year.

35. USE OF CITY NAME AND LOGO. All notices, pamphlets, press releases, research reports, and similar documents or oral reports prepared and released by Lessee for activities being held at the Facility shall include the following statements: "We are a partner with the City of Merced" or "This activity is funded in part by the City of Merced under a Contract with the City of Merced." Lessee's website shall include the City of Merced logo when possible.

36. MISCELLANEOUS.

(a) Attachments, Headings, Terms. All attachments referred to herein are hereby incorporated by reference into this Lease. The headings and underscorings contained herein are for convenience purposes only and shall not be used to interpret nor be deemed to extend or limit the specific sections. The work or words enclosed in quotation marks shall be construed as defined terms for purposes of this Agreement. The terms "Lessor" and "Lessee" shall be construed to mean, when required by the context, the directors, officers, employees, invitees, contractors, materialmen, servants and agents of Lessor and Lessee.

(b) Attorney's Fees. If either party named herein brings an action to enforce the terms of this Lease or to declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorney's fees to be paid by losing party as fixed by the court.

(c) Execution and Delivery. This Lease shall not be binding nor confer any rights upon either party unless and until executed and mutually delivered by and between both parties.

(d) Relationship of Parties. This Lease does not create the relationship of principal and agent or a partnership or joint venture, or of any association other than that of Lessor and Lessee.

(e) Time of Essence. Time and specific performance are each of the essence of this Lease.

(f) Choice of Law. Lessor and Lessee understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Lease and also govern the interpretation of the Lease without regard to any applicable conflicts of law, including matters of construction, validity, and performance.

(g) The parties agree that jurisdiction and venue for any legal challenge to the provisions of this Lease or the enforcement of the rights or obligations hereunder shall be brought in the state Superior Court in the County of Merced.

(h) This Lease contains the complete, final, entire, and fully integrated understanding and agreement between the parties hereto. All prior negotiations, understandings, writings, and oral agreements pertaining to the subject matter

hereof are superseded by this Lease. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any party hereto, except as specifically set forth in this Lease. All prior discussions, negotiations, and understandings have been and are merged and integrated into, and are superseded by, this Lease.

(i) This Lease may be amended only in writing, signed by the Lessor and Lessee.

(j) This Lease has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel in the negotiation and drafting of this Lease. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Lease against the party that drafted this Lease is of no application and is hereby expressly waived.

(k) Failure of any party to insist upon strict observance of, or compliance with, all of the terms of this Lease in one or more instances shall not be deemed a waiver of that party's right to insist upon such observance or compliance with the other terms of the Lease. The mere passage of time, or failure to act upon a breach, shall not be deemed as a waiver of any provision or term of this Lease.

(l) This Lease may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

(m) The person or persons executing this Lease on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Lease on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

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IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be fully executed on the date first herein written.

LESSOR:  
CITY OF MERCED  
A California Charter Municipal Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEVE CARRIGAN, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: K. Flores                      10.10.17  
City Attorney                      Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer

*{Signatures continued on next page}*

LESSEE:  
SYMPLE EQUAZION,  
A California Non-Profit Corporation

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print name)

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

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print name)

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

Taxpayer I.D. No. \_\_\_\_\_

ADDRESS: 1217 Fairway Drive  
Atwater, CA 95301

TELEPHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

EMAIL: \_\_\_\_\_

## **EXHIBIT A**

All that real property situated in a portion of Section 25, Township 7 South, Range 13 East, M.D.B. & M. and in a portion of Section 30, Township 7 South, Range 14 East, M.D.B. & M., City of Merced, County of Merced, State of California, being more particularly described as follows:

Lots 2 and 3, in Block 531, in the City of Merced, as said lots and block are laid down and designated on the "MAP OF THE CITY OF MERCED AND SUBDIVISION OF ADJOININGG ACREAGE PROPERTY, MERCED CO., CAL." Filed for the recorded on May 15, 1901, in Volume 2 of Official Plats, at Page 59, Merced County Records.

The above-described real property is subject to any liens, encumbrances, covenants, restriction, and rights-of-way or easements of record or legally acquired.

## **EXHIBIT A**

DEED

THIS INSTRUMENT, made and executed this 21st. day of March, 1939, by and between MERCED IRRIGATION DISTRICT, party of the first part, and CITY OF MERCED, a municipal corporation, party of the second part,

WITNESSETH: That for and in consideration of the sum of ONE DOLLAR (\$1.00) to it in hand paid by the party of the second part, receipt whereof is hereby acknowledged, the party of the first part does by these presents grant, bargain and sell unto the party of the second part, its successors and assigns forever, all of its right, title and interest in and to, and to have certain pieces or parcels of land situate, lying and being in the City of Merced, County of Merced, State of California, and particularly described as follows, to wit:

Lots 2 and 3, in Block 531, in the City of Merced, as said lots and block are laid down and designated on the "MAP OF THE CITY OF MERCED AND SUBDIVISIONS OF ADJOINING ACREAGE PROPERTY, MERCED CO., CAL." filed for record on May 16, 1901, in Volume 12 of Official Plates at page 59, Merced County Records.

TOGETHER with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD the said premises, together with the appurtenances unto the said party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF this instrument has been duly executed on behalf of said party of the first part by its President and Secretary duly authorized thereto the day and year first above written.

(corp. seal)

MERCED IRRIGATION DISTRICT

By D. K. Barnelly, President.

And H. P. Sargent, Secretary.

EXHIBIT B

STATE OF CALIFORNIA, }  
COUNTY OF MERCED, } ss.

On this 21st day of March, 1939, before me, the undersigned, a Notary Public in and for the said County of Merced, State of California, residing therein, duly commissioned and sworn, personally appeared JOHN BARNELL and H. P. SARGENT, known to me to be the President and Secretary respectively, of Merced Irrigation District, the irrigation district described in and that executed the within instrument, and also known to me to be the persons who executed it on behalf of the irrigation district therein named, and they acknowledged to me that such irrigation district executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the County of Merced, State of California, this day and year in this certificate first above written.

Marina, Notary Public in and for the  
County of Merced State of California.

(Seal)

2617

Recorded at request of Merced Irrigation District at 7:45 a.m. last 9 A.M.  
Vol. 607 Official Records, pg. 224 Mar. 24 1939 Merced County Recorder

J. C. Myers, Recorder  
Janet Silver, Deputy Recorder

Fee D. H.

FOLIO 5 COPIED 5 INDEXED 2 COMPARED 2

B. 3. 2  
dwd 3526  
aff 3-21-1939  
2061-4-19-4

D E E D

THIS INSTRUMENT made and executed this 21<sup>st</sup> day of March, 1939, by and between MERCED IRRIGATION DISTRICT, party of the first part, and CITY OF MERCED, a municipal corporation, party of the second part,

WITNESSETH:

That for and in consideration of the sum of ONE DOLLAR (\$1.00), to it in hand paid by the party of the second part, receipt whereof is hereby acknowledged, the party of the first part does by these presents grant, bargain and sell unto the party of the second part, its successors and assigns forever, all of its rights, title and interest in and to those certain pieces or parcels of land situate, lying and being in the City of Merced, County of Merced, State of California, and particularly described as follows, to-wit:

Lots 2 and 3, in Block 531, in the City of Merced, as said lots and block are laid down and designated on the MAP OF THE CITY OF MERCED AND SUBDIVISIONS OF ADJOINING BEACH PROPERTY, MERCED CO., CALIF., filed for record on May 15, 1901, in Volume 11 of Official Plats at Page 54, Merced County Records.

TOGETHER with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainders and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD the said premises, together with the appurtenances, unto the said party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF this instrument has been duly executed on behalf of said party of the first part by its President and Secretary duly authorized thereto the day and year first above written.

MERCED IRRIGATION DISTRICT

By D. K. SARGENT  
D. K. SARGENT, President

And E. P. SARGENT  
E. P. SARGENT, Secretary

STATE OF CALIFORNIA, }  
County of Merced, } ss.

On this 21<sup>st</sup> day of March, 1959, before me, the undersigned, a Notary Public in and for the said County of Merced, State of California, residing therein, duly commissioned and sworn, personally appeared D. K. BARNWELL and H. P. SARGENT, known to me to be the President and Secretary, respectively, of Merced Irrigation District, the irrigation district described in and that executed the within instrument and also known to me to be the persons who executed it on behalf of the irrigation district therein, and they acknowledged to me that such irrigation district executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the County of Merced, State of California, the day and year in this certificate first above written.

P. Bertina  
NOTARY PUBLIC  
in and for the County of Merced,  
State of California

B. 3. 2  
Decl 25 26  
aff 3-21-1938  
2001-4-19-4

D E E D

THIS INSTRUMENT made and executed this 21<sup>st</sup> day of March, 1938, by and between MERCED IRRIGATION DISTRICT, party of the first part, and CITY OF MERCED, a municipal corporation, party of the second part,

WITNESSETH:

That for and in consideration of the sum of ONE DOLLAR (\$1.00), to it in hand paid by the party of the second part, receipt whereof is hereby acknowledged, the party of the first part does by these presents grant, bargain and sell unto the party of the second part, its successors and assigns forever, all of its right, title and interest in and to those certain pieces or parcels of land situate, lying and being in the City of Merced, County of Merced, State of California, and particularly described as follows, to-wit:

Lots 2 and 3, in Block 531, in the City of Merced, as said lots and block are laid down and designated on the "MAP OF THE CITY OF MERCED AND SUBDIVISIONS OF ADJOINING ACREAGE PROPERTY, MERCED CO., CAL." filed for record on May 15, 1901, in Volume II of Official Plats at page 59, Merced County Records.

TOGETHER with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD the said premises, together with the appurtenances, unto the said party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF this instrument has been duly executed on behalf of said party of the first part by its President and Secretary duly authorized thereto the day and year first above written.

MERCED IRRIGATION DISTRICT  
By L. K. Bagnell  
L. K. BAGNELL, President  
And H. F. Sargent  
H. F. SARGENT, Secretary

STATE OF CALIFORNIA, }  
County of Merced, } ss.

On this 21<sup>st</sup> day of March, 1930, before me, the undersigned, a Notary Public in and for the said County of Merced, State of California, residing therein, duly commissioned and sworn, personally appeared E. K. BARNELL and H. P. SARGENT, known to me to be the President and Secretary, respectively, of Merced Irrigation District, the irrigation district described in and that executed the within instrument and also known to me to be the persons who executed it on behalf of the irrigation district therein named, and they acknowledged to me that such irrigation district executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the County of Merced, State of California, the day and year in this certificate first above written.

P. Bertain  
NOTARY PUBLIC  
in and for the County of Merced,  
State of California

Our services will include:

Drop-in services for youth ages 8-17

Symple Equazion will provided services Every other Monday, Tuesday and Friday 3-6 We will assist with homework, leadership development, arts and crafts and science.

**EXHIBIT C**

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Our services will include:

Drop-in services for youth ages 8-17

Symple Equazion will provided services Every other Monday, every other Tuesday and every Friday 3-6 We will assist with homework, leadership development, arts and crafts and science.

*Amended*  
**EXHIBIT C**