

DAY CARE SITE LICENSE AGREEMENT
SALVATION ARMY

This SITE LICENSE AGREEMENT ("Agreement") is effective as of September 1, 2011 (the "Effective Date") between the Board of Education of the City of Chicago (the "Board") and the Salvation Army ("Day Care Provider").

RECITALS

- A. The Board desires that day care be made available to children of students at Simpson Academy for Young Women, located at 1321 South Paulina Street, Chicago, IL (the "School") and children of individuals living in the immediate community surrounding the School ("Community Children") through an on-site day care facility that will offer day care for infants and children of students at the School and Community Children between the ages of six (6) weeks and five (5) years. Accordingly, Day Care Provider desires to license space on the School premises, including four (4) modular classroom units located on such School premises, for the purpose of offering child care and related services (the "Day Care Facility"). Child care services for children of students at the School shall be provided at no cost to the students or the Board and children of such students will have priority over Community Children for the purposes of enrollment and day care services. Child care services for Community Children shall be provided to parents of such Community Children for a co-pay amount (determined by Head Start and the Illinois Department of Family and Support Services) based on income and determined by the State of Illinois. In no event shall the Board be required or requested to pay for any day care or related services provided by Day Care Provider to any Community Children.
- B. Day Care Provider has represented that it has the expertise, knowledge, skill, experience and other resources necessary to provide such child care and to operate the Day Care Facility at the School providing services which shall include, but not be limited to, age appropriate educational, health, social and child development services (the "Services"). Day Care Provider shall only use the Premises (defined below) in connection with rendering the Services (the "Use").
- C. The Board desires that Day Care Provider provide such Services and operate such a Day Care Facility on-site at the School, and Day Care Provider is desirous of making such Services available and operating such a Day Care Facility as more particularly described herein.

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual promises, covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Incorporation of Recitals. The matters recited above are hereby incorporated into and made a part of this Agreement as though set forth in full.
2. Grant of License. The Board hereby grants a license to Day Care Provider, at no charge, for the use and occupancy of the four (4) modular classroom units located on School premises (hereinafter referred to as the "Premises").
3. Term of Agreement. Day Care Provider shall have such use and occupancy of the Premises commencing as of the Effective Date and ending June 30, 2014 (the "Term"), unless sooner terminated in accordance with the terms of this Agreement.
4. Board's Right to Terminate. Upon six (6) months prior written notice to Day Care Provider, the Board may terminate this Agreement for convenience or to accommodate enrollment in the School and/or high school programs.
5. Limitations.
 - A. Day Care Provider shall have the right to utilize the Premises for the Use only on Mondays through Fridays between 8:00 a.m. to 6:00 p.m.;
 - B. Day Care Provider acknowledges that the primary function of the Premises is in connection with the operation of the School and that Day Care Provider's license hereunder is and shall at all times remain throughout the Term subordinate to and ancillary to school operations and, in accordance therewith, Day Care Provider hereby agrees that it shall conduct operations in the Premises in a manner that will not interfere with, interrupt, or disturb or disrupt in any manner the operation of the School.
6. Responsibilities of Day Care Provider. Day Care Provider shall:
 - A. Ensure the Day Care Center is certified and maintains certification as required by state and local laws and regulations and that all personnel rendering Services at the Day Care Facility are duly licensed and certified to render such Services, and provide proof of such certifications and licenses to the Board;
 - B. Establish and be solely responsible for the overall operation of the Day Care Facility, and bear all operational costs associated therewith;
 - C. Be solely responsible and liable for all Services rendered at the Day Care Center;
 - D. Provide custodial and maintenance services for the Day Care Facility in accordance with Board standards;

- E. Be solely responsible for utility costs and any and all custodial and engineering costs necessary for the Day Care Facility;
- F. Cooperate with the School's Principal, the School's nurse, social workers and other School staff to ensure that the Day Care Facility is an integral part of the School, and that the Services rendered meet the child care needs of the students at the School;
- G. Provide all decorations, equipment and furnishings for the Day Care Center including, but not limited to, telephones, computers and related infrastructure and services;
- H. Secure the appropriate written consent form(s), if required by law, prior to providing any Services to a child in the Day Care Facility;
- I. Maintain adequate insurance (as set forth in Paragraph 17 hereof) for the operation of the Day Care Facility and the rendering of the Services; and
- J. Ensure that the Day Care Facility is accessible to both school personnel and Board employees as appropriate.
- K. Subject to all applicable laws which may restrict such access, ensure that the Day Care Facility is accessible to School personnel and Board employees for purposes of cleaning, maintenance, repair, inspection, and other reasonable building concerns; and
- L. Under the provisions of the Illinois School Code, 105 ILCS 5/10-21.9, Day Care Provider shall conduct a fingerprint-based criminal background investigation and a Statewide Sex Offender Database check of all employees on who may have direct, daily contact with the students in the School. Day Care Provider shall not assign anyone to the School convicted of the offenses listed in the Illinois School Code or those for whom a fingerprint-based criminal background investigation or Statewide Sex Offender Database check has not been initiated. Upon receipt of the record of conviction, Day Care Provider shall immediately remove any person so assigned. In addition, Day Care Provider shall require all persons assigned to the School to show evidence that they are free from communicable disease, including tuberculosis. Acceptable evidence is described in the Illinois School Code, 105 ILCS 5/24-5. From time to time, the Board may require Day Care Provider to demonstrate its compliance with the provisions of this Section. Also, Day Care Provider shall comply with the requirements of the Illinois Drug-Free Workplace Act, 30 ILCS 580/3.

7. Responsibilities of the Board: The Board shall:

- A. Provide the Premises (including the modular units) to be used by the Day Care Provider for a Day Care Facility, with no license fee being due from the Day Care Provider to the Board;
 - B. Provide any and all construction necessary for the Day Care Facility to operate;
 - C. Be responsible for making all necessary capital repairs, capital replacements, and capital improvements to the Premises and the School, all as defined under generally accepted accounting principles consistently applied;
 - D. Use good faith efforts for the School's Principal and staff to be knowledgeable and supportive of the Services and cooperate with the Day Care Provider in efforts to secure funding, conduct special events and otherwise support the Day Care Facility's operations; and
 - E. Permit Day Care Provider to place an exterior sign announcing the presence of the Day Care Facility in a location and with such form and content as agreed upon by Day Care Provider and the Board.
8. Costs and Expenses. Except for those matters that are the responsibility of the Board as set forth in Section 7 above, any and all other costs, expenses or fees arising out of or relating to the granting of this license or the Day Care Provider's Use of the Day Care Facility shall be borne by the Day Care Provider, including, without limitation, permit or approval fees, and insurance premiums. To the extent the Board is obligated to pay any of the preceding costs, expenses or fees, the Day Care Provider shall reimburse the Board within five (5) days after receipt of written notice from the Board regarding the same.
9. Compliance with Laws. Day Care Provider shall, at all times during the Term, comply (and shall cause its employees and agents, to comply) with all laws, codes, statutes, ordinances and regulations applicable to this Agreement, the rendering of the Services; and Day Care Providers Use of the Day Care Facility.
10. Damage to Day Care Facility. Except for ordinary wear and tear, Day Care Provider shall repair any damage to the Day Care Facility caused by Day Care Provider, or by its respective employees or agents. Further, Day Care Provider shall maintain and replace, as needed, all equipment and other personal property used in connection with the Day Care Facility. Except for ordinary wear and tear and matters covered by Day Care Provider's insurance, the Board shall repair any damage caused to the Day Care Facility and/or the property of Day Care Provider caused by the Board or its employees or agents.

11. Alterations and Modifications. Day Care Provider may make minor decorative or aesthetic alterations to the Day Care Facility. Notwithstanding the foregoing, Day Care Provider shall not alter, modify, improve or otherwise change the Day Care Facility, except as otherwise permitted or required under this Agreement without the prior written approval of the Board. Any such alterations shall be at the Day Care Providers sole cost and expense, without right of reimbursement from the Board, unless the Board agrees, in writing, to such reimbursement.
12. Waiver of Claims. To the fullest extent permitted by law, Day Care Provider hereby releases the Board, the School and the Local School Council that is affiliated with the School, and their respective board members, officers, directors, employees, agents, affiliates, and representatives, and all other parties claiming by, through or under any of the preceding from, and waives all claims for damages to person or property sustained by Day Care Provider, regardless of the cause thereof.
13. Construction and/or Renovations to the Premises. The parties acknowledge that all construction and/or renovations to the Premises necessary to begin operating the Day Care Facility have been, or will be, made by the Board, in accordance with plans and specifications approved by the Board.
14. Return of Property. Upon the termination of this Agreement, Day Care Provider will immediately vacate and surrender the Day Care Facility in the condition required by this Agreement, ordinary wear and tear excepted. All fixtures or improvements remaining in place following vacation of the Premises by Day Care Provider shall be and become the property of the Board.
15. Site Inspections: At least once annually, or at the reasonable request of either party, representatives from the Board's Department of Operations and Department of Specialized Services, the School Principal, school engineer and a representative from the Day Care Provider shall perform a physical inspection of the Day Care Facility to assure that the Board is providing adequate and necessary custodial, maintenance and utility services; and shall, if the parties determine that the same is necessary, negotiate in good faith the required services and standards therefor. The Department of Specialized Services representatives will assess the Day Care Provider's utilization of the Premises as well as school cooperation in Day Care Facility activities.
16. Dispute Resolution: If there is a dispute between the Day Care Provider and the School Principal, such matter shall be referred to the Board's Chief Specialized Education and Support Officer for the area (or equivalent) in which the Day Care Facility is located, who shall resolve the issue. If such resolution is not satisfactory to the Day Care Provider or the School Principal, the matter shall be referred to the Board's Chief Area Officer (or equivalent) for the area in which the Day Care Facility is located for final resolution, which resolution shall be determined within ten (10) school days of such referral and which decision shall be binding on the Day Care Provider and School Principal.

17. **Insurance:** Day Care Provider shall provide and maintain at all times, at Day Care Provider's own expense, the insurance coverages and requirements specified below. All such insurance shall be in form and substance satisfactory to the Board, and shall be issued by insurers authorized to do business in the State of Illinois and rated "A-VII" or better by A.M. Best & Company. Upon execution of this Agreement, certificates of insurance evidencing such coverages shall be provided to the Board, and such certificates shall state that the insurance coverage thereby provided may not be amended, canceled or not renewed without at least thirty (30) days prior written notice to the Board. The Commercial Liability Insurance policy required hereunder shall name as additional insureds, by specific endorsement, the Board, the School and the Local School Council which is affiliated with the School, and any other parties which may be designated in writing by the Board. Each such policy shall also contain, whether by endorsement or otherwise, a waiver of subrogation clause in favor of the Board and any other additional insureds, the effect of which shall be to waive the insurers' rights of recovery against the Board or such other additional insureds.

- A. **Workers' Compensation and Employers' Liability Insurance.** Workers Compensation and Employers Liability Insurance affording workers' compensation benefits for all employees as required by law, and Employers Liability Insurance with limits of not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) per occurrence for accident and disease. The workers' compensation policy shall contain a waiver of subrogation clause.
- B. **Commercial General Liability Insurance.** Commercial General Liability Insurance or equivalent with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate for bodily injury, personal injury and property damage liability. Coverage shall include, but not be limited to: all premises and operations, contractual liability, independent contractors, products/completed operations (for a minimum of two (2) years following completion), defense and contractual liability for this insured Agreement (with NO limitation endorsements).
- C. **Automobile Liability Insurance.** Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with this Agreement, with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
- D. **Additional Insured.** Day Care Provider shall have its General and Automobile Liability Insurance policies endorsed to provide that the Board of Education of the City of Chicago, a body politic and corporate, and its members, employees, officers, officials, agents, and any other entity as may be designated by the Board are named as additional insureds on a primary basis without recourse or right of contribution from the Board.

E. **Insurance Certificate.** The insurance company, or its representative, shall submit an insurance certificate to the Board evidencing all coverage as required hereunder and indicating the Additional Insured status as required above. The Certificate must provide sixty (60) days prior written notice of material change, cancellation, or non-renewal be given to:

Risk Manager
Board of Education of the City of Chicago
125 S. Clark Street, 7th Floor
Chicago, Illinois 60603

F. **General.** Any failure of the Board to demand or receive proof of insurance coverage shall not constitute a waiver of Day Care Provider's obligation to obtain the required insurance. The receipt of any certificate does not constitute an agreement by the Board that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements.

Any deductibles or self-insured retentions on referenced insurance coverage must be borne by Day Care Provider. Any insurance or self-insurance programs maintained by the Board do not contribute with insurance provided by the Day Care Provider.

The coverages and limits furnished by Day Care Provider in no way limit the Day Care Provider's liabilities and responsibilities specified in this Agreement or by law. The required insurance is not limited by any limitations expressed in the indemnification language in this Agreement, if any or any limitation placed on any indemnity in this Agreement that might be given as a matter of law.

Day Care Provider agrees that insurers waive their rights of subrogation against the Board.

Upon Board request, Day Care Provider shall promptly provide a certified copy of any applicable policy of insurance. The Board reserves the right to modify, delete, alter or change insurance requirements at any time.

18. **Indemnification.**

A. To the fullest extent permitted by law, Day Care Provider shall indemnify, defend and hold harmless the Board, the School and the Local School Council that is affiliated with the School, and their respective board members, officers, directors, employees, agents, affiliates, and representatives, and all other parties claiming by, through or under any of the preceding ("Indemnitees), from and against any and all claims, demands, suits, liabilities, injuries (personal or bodily), property damage, causes of action, losses, expenses, damages or penalties, including, without limitation, court costs and attorneys'

fees, arising or resulting from, or occasioned by or in connection with: (i) the possession, occupancy or Use of the Day Care Facility by Day Care Provider, or employees, agents, affiliates or other representatives; (ii) any act or omission to act (whether negligent, willful, wrongful or otherwise) by Day Care Provider, or its employees, agents, affiliates or other representatives; (iii) a violation of any laws, statutes, codes, ordinances or regulations by Day Care Provider, or its employees, agents, affiliates or other representatives; and/or (iv) any breach, default, violation or non-performance by Day Care Provider of any term, covenant, condition, duty or obligation provided in this Agreement; provided, however, Day Care Provider shall not indemnify the Indemnitees with respect to any injury to, or death of, any person, and from any damage to, or loss or destruction of any property while on the Premises or any portion thereof occasioned by any act or omission of any of the Indemnitees.

B. Day Care Provider expressly understands and agrees that the indemnity obligations set forth herein are separate from and not limited by Day Care Provider's obligation to obtain insurance pursuant to this Agreement.

C. Day Care Provider agrees that no Board member, employee, agent, officer or official of the Board shall be personally charged by Day Care Provider with any liability or expense or be held personally liable to Day Care Provider under this Agreement.

D. The indemnities set forth herein shall survive the expiration or termination of this Agreement.

19. Disclaimer by the Board. The parties hereto acknowledge and agree that it is their intent that the Board incur no liability as a result of operation of the Day Care Facility or any of the Services provided therein. It is further acknowledged and agreed that nothing in this Agreement shall be construed as imposing any responsibility or obligations on the Board other than as specifically provided in Section 7 herein, or imposing any liability whatsoever on the Board for the operation of the Day Care Facility or any of the Services provided therein pursuant to this Agreement.

20. Default. If Day Care Provider fails to observe or perform any covenant, agreement, obligation, duty or provision of this Agreement, the Board may, after thirty (30) days' prior written notice to the Day Care Provider (except in the case of emergencies in which event the default shall be cured immediately) and without prejudice to any other right or remedy the Board party may have at law and/or in equity, terminate this Agreement.

21. Assignment and Successors and Assigns. The interest of Day Care Provider under this Agreement is personal to Day Care Provider and may not be assigned or transferred to any other individual or entity without the Board's prior written consent. The Board will have the right at any time to transfer or assign its interest under this

Agreement. This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Board. While this Agreement will likewise be binding upon the successors and permitted assigns of Day Care Provider, it will not inure to the benefit of Day Care Provider's unpermitted assigns.

22. Subcontracting. Day Care Provider may not subcontract the Services to any third party without the prior written consent of the Board. In the event the Board consents to a subcontract, all Services, obligations and responsibilities shall be maintained by Day Care Provider to ensure compliance with the terms and conditions of this Agreement and the Board shall look only to Day Care Provider for compliance with this Agreement.

23. Notices. All notices required hereunder will be in writing and will be deemed properly served if delivered in person or if sent by registered mail or certified mail, with postage prepaid and return receipt requested, to the addresses set forth below, or to such other addresses as either party may subsequently designate.

The Board: Board of Education of the City of Chicago
125 S. Clark Street
Chicago, IL 60603
Attention: Jennifer Vidis, Chief Area Officer, Area 30
Phone: (773) 553-8500

with a copy to: Board of Education of the City of Chicago
125 S. Clark Street, Suite 700
Chicago, IL 60603
Attention: General Counsel

Day Care Provider: Salvation Army
845 West 69th Street
Chicago, IL 60621
Attention: Leon Denton
Phone (773) 382-4700
Email: leon_denton@salvation army.org

All notices required hereunder will be deemed received on the date of delivery, or attempted delivery, if delivered in person, or if mailed, the date which is two (2) days after the date such notice is deposited in the U.S. mail.

24. 105 ILCS 5/34 Provisions.

A. This Agreement is not legally binding on the Board if entered into in violation of the provisions of 105 ILCS 5/34-21.3 which restricts the employment of, or the letting of contracts to, former Board Members during the one-year period following expiration or other termination of their terms of office.

B. Each party to this Agreement hereby acknowledges that, in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Board has the authority to conduct certain investigations and that the Inspector General shall have access to all information and personnel necessary to conduct those investigations.

25. Board of Education Indebtedness Policy. Day Care Provider shall comply with the Board's Indebtedness Policy (96-0626-PO3), adopted July 26, 1996, as may be amended from time to time. Such policy is hereby incorporated into and made part of this Agreement as if fully set forth herein.

26. Ethics. Day Care Provider shall comply with the Board's Ethics Policy (11-0525-PO2), adopted May 25, 2011, as may be amended from time to time. Such policy is hereby incorporated into and made part of this Agreement as if fully set forth herein.

27. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois.

28. Entire Agreement. This Agreement represents the entire agreement between the Board and Day Care Provider and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may be amended or modified only by a written instrument executed by both the Board and Day Care Provider.

29. Severability. In case any provision in this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected.

30. Contingent Liability. Any expenditure by the Board beyond its current fiscal year is deemed to be a contingent liability, subject to appropriation in the subsequent fiscal year budget(s).

31. No Third Party Beneficiary. This Agreement is not intended and shall not be construed so as to grant, provide or confer any benefits, rights, privileges, claims, causes of action or remedies to any person or entity as a third party beneficiary under any statutes, laws, codes, ordinances or otherwise.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**BOARD OF EDUCATION OF THE
CITY OF CHICAGO**

By: David J. Vitale
David J. Vitale, President

Attest: Estela G. Beltran 3/29/12
Estela G. Beltran, Secretary

Board Report No. 11-0824-OP1, 12-0328-AE1-20

Approved as to legal form:

Patrick J. Rocks
Patrick J. Rocks, General Counsel

SALVATION ARMY

By: [Signature]

Its: E. Randall Polsley
Asst. Treasurer

Attest: James Hoskin

Its: James Hoskin
Trustee