

**LEASE AGREEMENT BETWEEN
CAMBRIAN SCHOOL DISTRICT
AND
CASA DI MIR MONTESSORI**

(1975 CAMBRIANNA DRIVE, SAN JOSE, CALIFORNIA)

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LEASE AGREEMENT

**Between
CAMBRIAN SCHOOL DISTRICT
And
CASA DI MIR MONTESSORI**

THIS LEASE AGREEMENT ("Lease") is made on May 26, 2023 ("Effective Date") by and between the **Cambrian School District**, a California public school district ("District"), and Casa di Mir Montessori, a California 501(c)3 nonprofit company ("Tenant"), referred to individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, District is the owner of that certain real property containing approximately 4.6 acres located at 1975 Cambrianna Drive, in San Jose, California, Santa Clara County, which is the site of the District's former Metzler Elementary School ("Property"), which Property is generally depicted in **Exhibit A** attached hereto and made a part hereof. The Property includes approximately 26,010 square feet of building area, along with parking and recreational areas (hereinafter, the "Premises"); and

WHEREAS, on June 30, 1989, the Metzler Elementary School was closed as a public school; and

WHEREAS, Tenant is the owner and operator of a pre-school through 8th grade independent Montessori School that desires to lease the entire Premises to operate its education program ("Program") serving Pre-K through 8th grade students; and

NOW THEREFORE, in consideration of the covenants and agreements set forth in this Lease, District and Tenant agree as follows:

AGREEMENT

Section 1. Lease of Property.

District hereby agrees to lease to Tenant and Tenant hereby agrees to lease from District the Premises depicted on the aerial and site maps attached hereto as **Exhibit A** and incorporated herein by reference, subject to the terms and conditions outlined herein.

Section 2. Term.

The term of this Lease shall be ten (10) years, commencing on July 1, 2024 ("Lease Commencement Date") and ending on June 30, 2034 ("Term"). Tenant agrees to vacate and surrender the Premises to District in accordance with the terms of this Lease on the date of expiration of the Term of the Lease (as the same may be extended) or earlier termination of this Lease, whatsoever the reason for such termination. Notwithstanding the foregoing, if District fails to deliver possession of the Premises in the Delivery Condition (as defined below) on the Lease Commencement Date set forth above, then the actual Lease Commencement Date for purposes of this Lease shall be deemed to be the date on which District delivers possession of the Premises in the Delivery Condition. Accordingly, if the actual Lease Commencement Date has not occurred on or before August 1, 2024 (the "Outside Lease

Commencement Date”), Tenant shall be entitled to a rent abatement following the Lease Commencement Date of \$1,734.00 for every day in the period beginning on the Outside Lease Commencement Date and ending on the actual Lease Commencement Date. In addition, if the actual Lease Commencement Date has not occurred on or before September 1, 2024 (the “Required Lease Commencement Date”), then Tenant may terminate this Lease by giving District written notice of termination within ten (10) days after the Required Lease Commencement Date. In such event, this Lease shall be deemed null and void and of no further force and effect and District shall promptly refund any prepaid rent and Security Deposit previously advanced by Tenant under this Lease and the parties hereto shall have no further responsibilities or obligations to each other with respect to this Lease.

Section 3. Use of Premises.

- A. *Tenant’s Program.* Tenant shall use the Premises solely for the Program and for other related legal uses.
- B. *Non-Approved Uses.* Tenant shall not use the Premises for any use other than that specified in this Lease without the prior written consent of the District, which District shall not unreasonably withhold, condition or delay. Tenant agrees to maintain the Premises and to conduct the Program in a manner that meets all federal, state and local regulations relating to the Premises and to the operation of the Program, and to comply with all federal, state and local laws, regulations and ordinances, now or hereafter enacted concerning the Premises, the use of the Premises, and/or the Program. This Lease shall be subject to the Tenant obtaining any and all permits or approvals (collectively, the “Permits”) which may be required in order for Tenant to operate the Program on the Premises, it being agreed that if Tenant fails to obtain all such Permits on or before December 31, 2023, then this Lease shall be deemed null and void and of no further force and effect and District shall promptly refund any prepaid rent and Security Deposit previously advanced by Tenant under this Lease and the parties hereto shall have no further responsibilities or obligations to each other with respect to this Lease. Tenant shall not use or permit the Premises to be used in whole or in part during the Term of this Lease for any purpose or use in violation of the laws, ordinances, and/or regulations applicable thereto.
- C. *Tenant’s Qualifications.* Tenant represents that it is qualified to operate the Program and, upon receipt of all Permits, shall be licensed to operate the Program. Tenant shall be solely responsible for the administration and operation of the Program, including the hiring of all employees. Tenant shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, employees, agents, consultants and/or subcontractors who may provide services in conjunction with Tenant’s use of or activities on the Premises.

Section 4. Consideration.

- A. *Security Deposit.* Tenant shall deliver to District a security deposit in the amount of One Hundred Twenty-Eight Thousand, Seven Hundred Fifty Dollars and 00/100 Cents (\$128,750.00) (“Security Deposit”) to be paid to District one-half (1/2) upon execution of the Lease and the remaining one-half (1/2) at Lease Commencement.

The Security Deposit shall secure the timely, full and faithful performance by Tenant of each term, covenant and condition of this Lease. If during the Term, Tenant shall fail to make any payment or fail to keep or perform any term, covenant or condition on its part to be made or performed or kept under this Lease and such failure

continues beyond any applicable notice and cure periods, without waiving or releasing Tenant from any obligation under this Lease, District may, but shall not be obligated to use, apply or retain the whole or any part of the Security Deposit: (a) to the extent of any sum due to District; (b) to make any required payment on Tenant's behalf; and/or (c) to compensate District for any loss, damage, attorneys' fees or expense sustained by District due to an Event of Default, it being expressly understood that the Security Deposit shall not be considered an advance payment of Rent or a measure of District's damages in case of an Event of Default. In such event, Tenant shall, within fifteen (15) days of written demand by District, remit to District sufficient funds to restore the Security Deposit to its original sum. No interest shall accrue on the Security Deposit. District shall not be deemed a trustee of the Security Deposit and may commingle the Security Deposit with its other funds. Any remaining balance of the Security Deposit shall be returned by District to Tenant within thirty (30) days after the expiration or earlier termination of this Lease.

B. *Monthly Base Rent, and Prepaid Rent.*

1. For and in consideration of the use of the Premises for the Term of this Lease, Tenant agrees to pay District monthly rent ("Monthly Base Rent") at the rates set forth below. The first payment in the amount of Fifty-Two Thousand, Twenty Dollars and 00/100 (\$52,020.00) shall be paid to District in two installments. One-half upon execution of the Lease and the remaining one-half (1/2) on the Commencement Date. The Monthly Base Rent shall be due and paid on or before the first (1st) day of each month thereafter during the Term.

2. Monthly Base Rent, shall be as follows:

- Month 01: \$0.00
- Months 02-24: \$2.00 per square foot per month (\$52,020.00/month)
- Months 25-60: \$3.30 per square foot per month (\$85,833.00/ month)
- Months 61-72: \$3.40 per square foot per month (\$88,434.00/month)
- Months 73-84: \$3.50 per square foot per month (\$91,035.00/month)
- Months 85-96: \$3.61 per square foot per month (\$93,896.10/month)
- Months 97-108: \$3.71 per square foot per month (\$96,497.10/month)
- Months 109-120: \$3.83 per square foot per month (\$99,618.30/ month)

C. *Place of Payment.* All Base Rent, and Additional Rent that becomes due and payable under this Lease shall be paid to District, located at 4115 Jacksol Drive, San Jose, California 95124, with Attention to: Chief Business Official, or any other place or places that District may designate by written notice to Tenant.

D. *Net Charges.* Except to the extent expressly provided elsewhere in this Lease, Tenant, at its sole cost and expense, shall pay, as and when due, all Taxes and Assessments (as defined below), insurance, utilities, landscaping, maintenance, excluding repair and maintenance of the roof of the Premises, the exterior walls of the Premises and any Capital Repairs, as defined below, within the Property, and other costs, expenses, and charges which may arise or become due in connection with Tenant's lease of the Premises, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties (collectively, the "Net Charges"). Except as otherwise set forth in this Lease, Tenant shall be responsible for any cost incurred by Tenant related to any of the Net Charges.

- E. *Late Payment.* Tenant acknowledges that late payment by Tenant to District of the Base Rent and other sums due hereunder will cause District to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of Base Rent or any other sum due from Tenant by 4:00 p.m. within ten (10) days after such amount is due, Tenant shall pay to District, a late charge equal to five percent (5%) of such overdue amount. The Parties hereby agree that such late charges represent a fair and reasonable estimate of the costs District will incur by reason of late payment by Tenant. Acceptance of such late charge by District shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.

- F. *Interest on Past Due Obligations.* Any amount due to District not paid when due shall bear interest at the rate of Bank of America's or its successor's reference rate plus three percent (3%) per annum, commencing on the due date, but not to exceed the maximum rate permitted by law. Payment of interest shall be in addition to any late charges owing pursuant to this Lease and shall not excuse or cure any default by Tenant under this Lease.

- G. *Taxes.* Tenant shall pay, before delinquency, any and all taxes, assessments, levies, possessory interest taxes, and other charges and governmental fees, general and special, ordinary and extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever to the extent applicable to a school occupying space within the Premises, including, but not limited to assessments for any public improvements or benefits, which during the Term of this Lease are laid, assessed, levied, or imposed upon or become due and payable and a lien upon the Premises ("Taxes and Assessments"). Taxes and Assessments, late charges, costs and expenses which Tenant is required to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Tenant's failure to pay such amounts, and all reasonable damages, costs, and attorneys' fees and expenses which District may incur by reason of any default of Tenant or failure on Tenant's part to comply with the terms of this Lease, shall be deemed to be Additional Rent and, in the event of nonpayment by Tenant, District shall have all of the rights and remedies with respect to all Additional Rent as District has for the nonpayment of the Base Rent. Nothing in this Section shall limit District's right to recover, as Additional Rent, utility and other costs, Taxes and Assessments payable after termination of this Lease pursuant to the terms of this Lease. "Taxes and Assessments" shall not include any real property taxes, general or special assessments or governmental impositions (of whatever kind) imposed on or by reason of the ownership of the Property (including any assessed ad valorem taxes payable following the sale of the Property by District to a non-tax-exempt party or any other taxes secured against the real property).

Section 5. Premises and Improvements.

- A. *Condition of Premises.* The Premises is leased to Tenant on an "as is" basis, and Tenant acknowledges and accepts that the Premises are leased in its "as is" condition including ADA and pre-existing soils conditions, subject to the terms of this Lease. Except as otherwise provided in this Lease, District shall not be required to make or construct any alterations including structural changes, additions, or improvements to the Premises. Tenant acknowledges that neither the District nor District's agents have made any representation or warranty as to the suitability of the Premises to

the conduct of Tenant's Program. Notwithstanding the foregoing, District shall deliver possession of the Premises on the Lease Commencement Date vacant and broom clean and free of debris and of all furniture, fixtures and equipment belonging to any prior tenants or occupants of the Premises (the "Delivery Condition"). As part of the Delivery Condition, District agrees that the Premises shall have water, gas and electricity service (provided that Tenant shall be responsible for contracting directly with the utility providers for such utilities and for paying for such utilities during the Term). In addition, notwithstanding anything to the contrary contained herein, District agrees that as of the Lease Commencement Date, the Premises will be free of all pests and insects (including, without limitation, termites) and that the roof, doors, foundation, structural elements of the building and base building mechanical, electrical, plumbing, fire/life safety and heating, air conditioning systems servicing the Premises will be in good working order. Except as otherwise provided herein, by entry into and taking possession of the Premises pursuant to this Lease, Tenant agrees to accept the Premises in its as-is condition existing as of the Effective Date of this Lease.

- B. *Signs.* Tenant may, at Tenant's sole cost, have the right and entitlement to place Tenant's sign on the exterior of the Premises (including, without limitation, signage on the exterior walls of the Building and monument signage on or about the Property), and otherwise to advertise its services, provided Tenant obtains the prior written approval and consent of District, such approval not to be unreasonably withheld, conditioned or delayed. Any signs shall be at Tenant's cost and in compliance with all local ordinances pertaining thereto. In connection with the placement of Tenant's signs, District agrees to cooperate with Tenant in obtaining any governmental permits which may be necessary. Throughout the Term of this Lease, Tenant shall, at its sole cost and expense, maintain the signage and all appurtenances and improvements in good condition and repair. At the termination of this Lease, Tenant shall remove any signs and shall repair any damage caused by the installation or removal of Tenant's signs.
- C. *Liens.* At all times during the Term of this Lease, Tenant shall keep the Property and Premises and all improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises by or on behalf of Tenant. Tenant agrees to settle and discharge all liens for materials for the Premises and Tenant's Program, and to defend and hold the District harmless from and against any such claims or liens. If Tenant fails to discharge or cause the Premises to be released from any such lien or claim of lien within thirty (30) days of District's request to do so, District may pay, adjust, compromise, and discharge any such lien or claim of lien on any terms and in any manner that the District may deem appropriate, and Tenant agrees to reimburse District for the full amount paid by District in connection therewith, including interest, attorneys' fees, and costs which may be incurred within thirty (30) days after District's delivery of a reasonably detailed invoice therefor.
- D. *Nuisance.* Tenant shall not use or permit the Premises to be improved, developed, used or occupied in any manner that is in violation of any law, ordinance, or regulation of any federal, state, county, or local governmental agency, body or entity. Tenant shall not maintain, commit or permit the maintenance or commission of any nuisance as now or hereafter defined with respect to the Premises, or any part thereof.

E. *Maintenance and Repairs.* Tenant, at its cost, shall maintain the Premises in a good condition consistent with the condition of the Premises existing at the time of delivery. Tenant acknowledges and accepts that the Premises are leased in "As Is" condition and Tenant shall keep and maintain the Premises, excluding the roof of the Premises, the exterior walls of the Premises and any Capital Repairs, in a condition existing at the time Tenant takes possession of the Premises excepting normal wear and tear, condemnation.

1. District, at its sole cost and expense (and without pass-through as part of net charges hereunder), shall be required to maintain, repair and/or replace the roof and exterior walls of the building and shall be responsible for all Capital Repairs (as defined below). District shall perform such repair and maintenance obligations in a reasonable manner that is otherwise consistent with the manner in which prudent owners of properties in the same geographic region as the Property maintain their properties. District's obligation to operate the Property in the foregoing manner shall include, without limitation, District's repair and maintenance obligations as described in this Lease in such manner. If District fails to perform any of its maintenance obligations hereunder and such failure continues for thirty (30) days after District's receipt of notice thereof from Tenant or, in the case of any such failure which cannot with due diligence and in good faith be cured within such thirty (30) day period, within such additional period as may be reasonably required to cure such failure with due diligence and in good faith (it being intended that, in connection with any such failure which is not susceptible of being cured with due diligence and in good faith within thirty (30) days, the time within which District is required to perform such maintenance and repair item shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith), then Tenant, without being obligated to do so, shall have the right, but not the obligation, to perform such District obligation which District failed to perform (provided, however, that in the case of a failure that creates a risk of imminent injury to person or substantial property damage, Tenant may perform such repair and maintenance obligation without affording any such notice and cure period). The full amount of the documented, third party out-of-pocket reasonable costs and expenses so incurred by Tenant (the "Reimbursable Costs") shall be paid by District to Tenant, within thirty (30) days after written demand therefor. If District fails to reimburse Tenant for the Reimbursable Costs within such thirty (30) day period, then Tenant shall be entitled to deduct the Reimbursable Costs due and payable to Tenant hereunder from the next installment(s) of Monthly Base Rent due under this Lease until the Reimbursable Costs are fully reimbursed by District.
2. Tenant shall maintain, repair and/or replace the interior spaces including the interior surface of exterior walls, the foundation of the parking lot servicing the Premises, and the exterior portions of the Premises (including the landscaping for the Premises) that are not District's responsibility hereunder. If Tenant fails to perform any of its maintenance obligations hereunder and such failure continues for thirty (30) days after Tenant's receipt of notice thereof from District or, in the case of any such failure which cannot with due diligence and in good faith be cured within such thirty (30) day period, within such additional period as may be reasonably required to cure such failure with due diligence and in good faith (it being intended that, in connection with any such failure which is not susceptible of being cured with due

diligence and in good faith within thirty (30) days, the time within which Tenant is required to perform such repair or maintenance item shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith) and, in turn, District is required to perform such maintenance obligations that are not District's obligation hereunder (provided, however, that in the case of a failure that creates a risk of imminent injury to person or substantial property damage, District may perform such repair and maintenance obligation without affording any such notice and cure period), Tenant shall reimburse District, as additional rent, within thirty (30) days after receipt of billing, for the cost of such maintenance and repairs which are the obligation of Tenant hereunder.

3. As used in this Lease, the term "Capital Repairs" are defined as any repairs or replacements within the Property that constitute a capital expenditure pursuant to generally accepted accounting principles or that, when repaired or replaced, would have a useful life longer than five (5) years according to Federal income tax regulations or guidelines for depreciation thereof.
- F. *Waiver of Statutes.* Except as provided in Section 6.E.1. above, District shall have no maintenance or repair obligations with respect to the Premises. Tenant hereby expressly waives the provisions of subsection 1 of Section 1932 and Sections 1941 and 1942 of the Civil Code of California and all rights to make repairs at the expense of District as provided in Section 1942 of said Civil Code.
- G. *Utilities and Security.* Tenant shall be responsible for and pay for all utility installation and service to and for the Premises, which may include water, gas, electricity, telephone and other data and communication lines and service as well as the removal of garbage and rubbish from the Premises. Tenant agrees to contract directly with providers for all utilities. Tenant shall be responsible for security of the Premises at all times and, at Tenant's election, will contract directly with a security service provider.
- H. *Restoration of Premises.* Upon expiration or earlier termination of this Lease, Tenant shall restore the Premises to the Delivery Condition and peaceably deliver up to District possession of the Premises in the same condition that existed on the date of Tenant's first occupancy, reasonable wear and tear, condemnation and damage by casualty excepted; provided that Tenant shall not be obligated to remove alterations which have been approved by District pursuant to Section 7 or that otherwise do not require removal hereunder.

Section 6. Construction of Alterations and Improvements.

- A. *Tenant Alterations.* As permitted under this Lease or with prior written approval of the District (which approval shall not be unreasonably withheld, conditioned or delayed), Tenant may, at its sole cost and expense (unless otherwise agreed upon by the Parties), construct or cause to be constructed on the Premises those improvements which Tenant deems necessary to the operation of its Program or which Tenant otherwise desires, provided such improvements are subject to local site, zoning, and design review and any and all other required approvals and provided District has approved all such construction of improvements (which approval shall not be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, Tenant shall have the right to perform, with prior written notice to but without District's consent, alterations or improvements that (i) cost less than \$50,000.00; and (ii) do not require a building permit or approval from the Division

of State Architect ("DSA") (hereinafter, "Minor Alterations").

- B. *Requirements.* All alterations, additions, and/or improvements to the Premises must be made in compliance with applicable provisions of the California Education Code, applicable regulations, the Americans with Disabilities Act (ADA), the Fair Employment and Housing Act (FEHA), applicable building code standards, other applicable state and federal statutes (including review by the California Department of General Services - Division of the State Architect if deemed necessary by District), and the District's reasonable and nondiscriminatory policies, practices, standards and procedures (to the extent Tenant is notified of such policies, practices, standards and procedures prior to Tenant's commencement of such alterations, additions and/or improvements). Except in connection with the performance of Minor Alterations, Tenant shall, prior to construction, repair, renovation or demolition of any improvements on the Premises, obtain the prior written consent of District thereto and to the final plans, specifications, and schedule for completion thereof, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall also, prior to construction of any improvements (other than Minor Alterations), obtain written approval from District of the improvements, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant agrees to deliver any local planning approval to District within ten (10) business days after Tenant's receipt. Except in connection with Minor Alterations, Tenant agrees not to proceed with any construction until Tenant has obtained District's and planning department's approvals. District and Tenant recognize that approvals may be completed in phases, such that Tenant initially requests conceptual approval and, if approved by District, then proceeds to draw the plans and specifications. District's approval shall be at District's reasonable discretion. As a condition of its approval, District may require that Tenant agree to remove certain improvements and restore the Premises to its original condition upon expiration or earlier termination of this Lease (reasonable wear and tear, condemnation and damage by casualty excepted) or Tenant may, at Tenant's election, instead elect to provide District with adequate security in the amount reasonably estimated to remove the subject improvements in lieu of performing such repairs and restoration (if required by District).
- C. *Tenant Assurances.* Except in connection with Minor Alterations, not less than fifteen (15) days prior to the construction, repair, renovation or demolition of any improvements on the Premises, Tenant shall provide District with information regarding the contractor's financial condition and evidence to District's satisfaction that adequate funds to complete the improvements are committed and available or that completion has been otherwise adequately assured (provided, however, that District shall only be entitled to require Tenant to provide to District such assurance in the event that following District's evaluation of Tenant's then-current financial condition and performance history, District determines in its good faith, prudent business judgment that the same is reasonably and prudently required). Such assurances may include, in District's discretion, a bond or completion guarantee. Except in connection with Minor Alterations, no construction shall commence until District has given Tenant written acceptance of such assurances.
- D. *Notice of Non-Responsibility.* Tenant shall give District fifteen (15) days prior written notice before commencing any work on the Premises so that District may post notices of non-responsibility with respect thereto as District may deem appropriate.
- E. *Permits and Insurance.* Not less than fifteen (15) days prior to the construction, repair, renovation or demolition of any improvements, Tenant shall provide District

with sufficient evidence that it has obtained all required approvals and permits for the work and that Tenant or Tenant's contractor(s) has in effect, with premiums paid, adequate casualty and liability insurance (including builder's risk) coverage and workers' compensation that is satisfactory to District in its reasonable discretion.

- F. *Performance of Alterations.* Upon commencement of construction of any improvements, Tenant shall cause the work to be diligently pursued to completion in accordance with the schedule for completion approved by District, subject to unavoidable delays caused by weather, supply shortages, strikes or acts of God (and provided District's approval of a schedule for completion shall not be required in connection with any Minor Alterations). All work on improvements shall be performed in a sound and workmanlike manner, in compliance with all applicable laws and building codes, in conformance with the plans and specifications approved by District, or any modifications thereto which have been approved in writing by District (provided that District's approval shall not be required in connection with any Minor Alterations).
- G. *Inspection of Work.* District or District's agent shall have a continuing right at all times during the period that improvements are being constructed on the Premises to enter the Premises and to inspect the work. Tenant shall require its contractors who construct improvements on the Premises to reasonably cooperate with District and/or its employees and/or agent in such inspections.
- H. *As Built Plans.* Within ninety (90) days after completion of construction of any work of improvement on the Premises, Tenant shall deliver to District two (2) full and complete sets of as-built plans for the work so completed; provided, however, for work that does not require permits or formal plans, Tenant shall provide to District marked-up plans clearly showing all changes made to the Premises.

Section 7. Removal of Alterations.

Upon the expiration or sooner termination of the Lease, Tenant shall, at Tenant's sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant and expressly designated by District at the time of their approval by District to be removed, and Tenant shall, forthwith and with all due diligence, at its sole cost and expense, repair any damage to the Premises caused by such removal; provided, that in no event shall Tenant be required to remove any Minor Alterations, any telecommunications cabling and wiring installed by or on behalf of Tenant and any standard and typical improvements (including, without limitation, any partitions, ceiling grids and tiles, fluorescent lighting panels, Building standard doors and non-glued down carpeting).

Section 8. Hazardous Materials.

- A. *Definition.* As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste that is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, Section 66261.30 et seq. (ii) defined as a "hazardous waste" pursuant to Section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to Section 10 of the Comprehensive Environmental

Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Laws" shall mean any and all statutes, laws, ordinances, or regulations of any governmental body or agency (including the U.S. and California Environmental Protection Agencies, the California state and applicable Regional Water Quality Control Boards, the California Department of Toxic Substances Control, and the California Department of Health Services) which regulate the use, storage, release or disposal of any Hazardous Material.

- B. *Hazardous Materials.* District hereby represents and warrants that, to District's knowledge, there are no Hazardous Materials in, on or about the Property in violation of Hazardous Materials Laws (as defined below) and District has no knowledge that the Premises is in violation of any applicable laws. Tenant shall not cause or permit any Hazardous Materials to be generated, brought onto, used, stored, or disposed of in or about the Premises or Property and any improvements by Tenant and/or its agents, employees, officers, contractors, subtenants, representatives, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with all applicable Hazardous Materials Laws). Tenant shall comply with all Hazardous Materials Laws.
- C. *Responsibility of Tenant.* From and after the Lease Commencement Date, Tenant shall be solely responsible for all environmental matters affecting the Premises and any improvements, except as otherwise provided in Section 8.D below.
1. Any handling, transportation, storage, treatment, disposal or use of Hazardous Materials in or about the Premises and any improvements made by or on behalf of Tenant (except to the extent performed by District) shall be the responsibility of Tenant and shall strictly comply with all applicable Hazardous Materials Laws and the provisions of this Lease.
 2. It shall be the duty of Tenant to insure that the Premises and any improvements are at all times in strict compliance with all Hazardous Materials Laws and that all activities conducted in or about the Premises, subject to Section 8.D below, and improvements performed by or on behalf of Tenant (except to the extent performed by District) comply in every respect with all applicable Hazardous Materials Laws including, but not limited to, all notification, record keeping, and maintenance requirements of such Hazardous Materials Laws.
 3. Subject to Section 8.D below, Tenant shall have and discharge all of the duties and obligations of the owner of the Premises and improvements under applicable Hazardous Materials Laws, including, but not limited to, response and remediation.
 4. Subject to Section 8.D below, Tenant shall be responsible for all liability to any party or parties who may be harmed or claim harm resulting from an environmental condition on or about the Premises and any improvements.
- D. *Preexisting and Migrating Hazardous Materials.* Tenant shall not be liable for any cost or expense related to removal, cleaning, abatement or remediation of Hazardous Materials existing in the soils located on the Premises prior to the date District tenders possession of the Premises to Tenant or Hazardous Materials in the ground water or soil or that migrate onto the Premises from outside the Premises

after District has granted Tenant access to the Premises, including, without limitation, Hazardous Materials in the ground water or soil. For clarity, Tenant shall be liable for any cost or expense related to removal, cleaning, abatement or remediation of Hazardous Materials existing within the Premises, excepting pre-existing soils conditions, if Tenant's use of the Premises or improvements to the Premises disturb, release, expose or otherwise distribute any Hazardous Materials existing within the Premises.

Section 9. [Intentionally Omitted]

Section 10. Tenant Option to Renew

A. *Two Five-Year Options.* District hereby grants to Tenant two (2) five (5)-year options to extend the Term (the "Renewal Option #1" and "Renewal Option #2", together the "Renewal Options") upon all of the terms and conditions contained in this Lease, except as modified by the terms and conditions as set forth below.

B. *Option Term.* The Renewal Options are each for an additional five (5)-year term, the first of which would commence on July 1, 2034, and end on June 30, 2039, ("Option Term #1") and the second of which would commence on July 1, 2039, and end on June 30, 2044, ("Option Term #2").

C. *Exercise.* Tenant shall be eligible to exercise the Renewal Options only if it is not in material default under any of the terms and conditions of the Lease beyond any applicable notice and cure periods at the time of exercise and, solely with respect to Renewal Option #2, only if District has not timely and validly provided Tenant with a Re-opening Notice (as defined below) pursuant to Section 10.G below. If Tenant elects to exercise one or both Renewal Options, Tenant, for Renewal Option #1, shall provide District with written notice no later than July 1, 2033 (i.e., 12 months prior to the expiration of the Term), and Tenant, for Renewal Option #2, shall provide District with written notice no later than July 1, 2038 (i.e., 12 months prior to the expiration of Option Term #1). Before the commencement date of Option Term #1 and Option Term #2, District and Tenant shall execute an amendment to this Lease extending the Term as provided for in this Section 10. If Tenant elects not to exercise Renewal Option #1, then Renewal Option #2 shall expire and not be exercisable by Tenant.

D. *Grant.* Renewal Option #1 shall be exercised at the sole discretion of the Tenant. If the Tenant exercises Renewal Option #1, the District's decision not to grant Renewal Option #2 shall be based solely upon the District's timely and valid delivery of a Re-opening Notice, subject to and in accordance with Section 10.G below.

E. *Consideration.* Base Rent for Option Term #1 shall be as follows:

1. *Option Term #1*

Base Rent for Year 1 of Option Term #1 shall be based on ninety-five percent (95%) Fair Market Value (FMV) determined as follows:

FMV is the arms' length rent that a willing lessee would pay and a willing lessor would accept for space comparable to the Premises pursuant to a lease of the same terms and conditions as the current Lease subject to Tenant receiving credit for the unamortized costs of any improvements made by Tenant to the

Premises if such improvements will not be removed at the termination of the Lease. The determination of the FMV shall take into account any other terms and conditions, including but not limited to rent abatement and tenant improvement allowance, available in the market at the time of renewal which are not being provided by District for Option Term #1 and/or Option Term #2, as applicable, and for any other cost not being incurred by District for Option Term #1 and/or Option Term #2, as applicable. Within thirty (30) days of exercise by Tenant, District shall provide its estimate of FMV to Tenant. Within thirty (30) days of receipt of District estimate, Tenant shall either accept District's estimate, rescind its exercise, or elect that FMV be determined by an independent valuation professional with at least ten (10) years' experience in the local market valuing school or educational use property (the "Valuation Expert"). Such Valuation Expert shall be selected jointly by District and Tenant; provided however, if District and Tenant cannot agree on the Valuation Expert, then each shall appoint their own Valuation Expert and those two Valuation Experts shall jointly agree on a third Valuation Expert who shall solely decide FMV.

Base Rent for Years 2, 3, 4 and 5 year of Option Term #1 shall increase by three percent (3%) annually.

2. *Option Term #2*

Base Rent for Year 1 of Option Term #2 shall be based on ninety-five percent (95%) FMV as determined in Section 10.E.1 above.

Base Rent for Years 2, 3, 4 and 5 of Option Term #2 shall increase by three percent (3%) annually.

- F. *Other.* There shall be no additional Renewal Options beyond Option Term #2. All of the other terms and conditions contained in this Lease, except as modified by the terms and conditions as set forth above in this Section 10 shall remain in effect during Option Term #1 and Option Term #2.
- G. *Termination.* Notwithstanding anything to the contrary contained in this Section 10, if District requires the Premises for educational purposes, District shall have the right to provide notice to Tenant in writing (a "Re-opening Notice") by no earlier than July 1, 2036 (i.e., 36 months prior to the expiration of Option Term #1) but no later than January 1, 2037 (i.e., 30 months prior to the expiration of Option Term #1). Upon District's timely and valid delivery of a Re-opening Notice, the rights of Tenant hereunder to exercise Renewal Option #2 shall terminate and be of no further force or effect.

Section 11. Default and Remedies.

- A. *Events of Default.* A breach of this Lease shall exist if any of the following events (hereinafter referred to as "Event of Default") shall occur:
1. Default in the payment when due of any installment of rent or other payment required to be made by Tenant hereunder, and such default shall not have been cured within ten (10) days after written notice from District;

2. Tenant's failure to perform any other term, covenant or condition contained in this Lease and such failure shall have continued for thirty (30) days after written notice of such failure is given to Tenant (provided, however, that such failure shall not be an Event of Default if such failure could not reasonably be cured during such thirty (30) day period, Tenant has commenced the cure within such thirty (30) day period and thereafter is diligently pursuing such cure to completion);
 3. The sequestration of, attachment of, or execution on, any substantial part of the property of Tenant or on any property essential to the conduct of Tenant's business, shall have occurred and Tenant shall have failed to obtain a return or release of such property within forty-five (45) days thereafter, or prior to sale pursuant to such sequestration, attachment or levy, whichever is earlier;
 4. The Tenant or any guarantor of Tenant's obligations hereunder shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts;
 5. Any case, proceeding or other action against the Tenant or any guarantor of the Tenant's obligations hereunder shall be commenced seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, and such case, proceeding or other action (i) results in the entry of an order for relief against it which is not fully stayed within fifteen (15) days after the entry thereof or (ii) remains undismissed for a period of forty-five calendar (45) days.
 6. The Tenant or any such guarantor shall take any corporate action to authorize any of the actions set forth in Subsections 4 or 5 above.
- B. *Remedies.* Upon any Event of Default, District shall have the following remedies, in addition to all other rights and remedies provided by law, to which District may resort cumulatively, or in the alternative:
1. Recovery of Rent. District shall be entitled to keep this Lease in full force and effect (whether or not Tenant shall have abandoned the Premises) and to enforce all of its rights and remedies under this Lease, including the right to recover rent and other sums as they become due, plus interest at the rate of Bank of America's or its successor's reference rate plus three percent (3%) per annum from the due date of each installment of rent or other sum until paid.
 2. Termination. District may terminate this Lease by giving Tenant written notice of termination. On the giving of the notice all of Tenant's rights in the Premises shall terminate. Upon the giving of the notice of termination, Tenant shall surrender and vacate the Premises, and District may re-enter and take possession of the Premises and all the remaining improvements or property and eject Tenant or any person or persons claiming any right of occupancy under or through Tenant or eject some and not others or eject none. This

Lease may also be terminated by a judgment specifically providing for termination. Any termination under this section shall not release Tenant from the payment of any sum then due District or from any claim for damages or rent previously accrued or then accruing against Tenant. In no event shall any one or more of the following actions by District constitute a termination of this Lease:

- (a) maintenance and preservation of the Premises;
- (b) efforts to relet the Premises;
- (c) appointment of a receiver in order to protect District's interest hereunder;
- (d) consent to any subletting of the Premises or assignment of this Lease by Tenant, whether pursuant to provisions hereof concerning subletting and assignment or otherwise; or
- (e) any other action by District or District's agents intended to mitigate the adverse effects from any breach of this Lease by Tenant.

3. Damages. In the event this Lease is terminated pursuant to Section 11.B(2) above, or otherwise, District shall be entitled to damages in the following sums:

- (a) the worth at the time of award of the unpaid rent which has been earned at the time of termination; plus,
- (b) 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 Tenant proves could have been reasonably avoided; plus,
- (c) 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 that Tenant proves could be reasonably avoided; and,
- (d) any other amount necessary to compensate District for all detriment proximately caused by Tenant's failure to perform Tenant's obligation under this Lease, or which in the ordinary course of things would be likely to result there from including, without limitation, the following: (i) expenses for cleaning, repairing or restoring the Premises; (ii) real estate broker's fees, reasonable advertising costs and other expenses of reletting the Premises; (iii) costs of carrying the Premises and insurance premiums thereon, utilities and security precautions; (iv) expenses in retaking possession of the Premises; (v) reasonable attorneys' fees and court costs; and, (vi) any unamortized real estate brokerage commission paid in connection with this Lease; and
- (e) the "worth at the time of award" of the amounts referred to in subsections (a) and (b) of this section is computed by allowing interest at the rate of Bank of America's or its successor reference rate

plus three percent (3%) per annum. The "worth at the time of award" of the amounts referred to in subsection (c) of this section is computed by discounting such amount at the discount rate of the Federal Reserve Board of San Francisco at the time of award plus one percent (1%). The term "rent" as used in this section shall include all sums required to be paid by Tenant to District pursuant to the term of this Lease.

- (f) District shall use commercially reasonable efforts to mitigate District's damages in the Event of Default on the part of Tenant.

Section 12. Title to and Removal of Tenant's Equipment.

- A. *Tenant's Equipment.* Title to equipment and/or improvements provided by Tenant ("Tenant's Equipment") on the Premises shall be held solely by Tenant. All of Tenant's Equipment shall remain the personal property of Tenant and shall not be treated as real property or become a part of the Premises. On or before the expiration of this Lease, or within thirty (30) days after any earlier termination hereof, Tenant shall remove Tenant's Equipment, at its sole expense. Tenant shall repair any damage to the Premises, caused by said removal and restore the Premises to the same condition existing as of the date on which District delivers possession of the Premises to Tenant, ordinary wear and tear, condemnation and damage by casualty excepted. Any and all fixtures attached to the Premises by Tenant shall become part of the Property. On the expiration or earlier termination of the Lease, such attached fixtures shall remain on the Property, and Tenant shall not remove them from the Property unless District elects to direct Tenant to remove them.
- B. *Failure to Remove.* In the event that Tenant fails to timely remove Tenant's Equipment, or any attached fixtures of which District does not elect to take ownership, District, upon fifteen (15) days written notice, may, without liability on the part of District to Tenant or any person or entity claiming under Tenant, either (1) accept ownership of Tenant's Equipment or attached fixtures at no cost to the District, or (2) remove and/or dispose of Tenant's Equipment or attached fixtures at Tenant's sole cost. In the event that the District chooses to accept ownership of Tenant's Equipment or fixtures, ownership of the same shall pass to District as if by bill of sale. In the event that the District removes and/or disposes of Tenant's Equipment or fixtures, Tenant shall pay all costs for the removal and/or disposal of Tenant's Equipment or fixtures within thirty (30) days of receipt of a reasonably detailed invoice.

Section 13. Destruction.

- A. *Uninsured Peril.* In the event that any portion of the Premises are destroyed or damaged by an uninsured peril, District or Tenant may, upon written notice to the other, given within thirty (30) days after the occurrence of such damage or destruction, elect to terminate this Lease; provided, however, that either party may, within thirty (30) days after receipt of such notice, elect to make the required repairs and/or restoration at such party's sole cost and expense, in which event this Lease shall remain in full force and effect, and the party having made such election to restore or repair shall thereafter diligently proceed with such repairs and/or restoration.

- B. *Insured Peril.* In the event the Premises are damaged or destroyed from any insured peril to the extent of seventy percent (70%) or more of the then replacement cost of the Premises, District or Tenant may, upon written notice, given to the other within thirty (30) days after the occurrence of such damage or destruction, elect to terminate this Lease. If neither party gives such notice in writing within such period, District shall be deemed to have elected to rebuild or restore the Premises, in which event District shall, at its expense, promptly rebuild or restore the Premises to their condition prior to the damage or destruction. In the event the Premises are damaged or destroyed from any insured peril to the extent of less than seventy percent (70%) of the then replacement cost of the Premises, District shall at District's expense, promptly rebuild or restore the Premises to their condition prior to the damage or destruction. Notwithstanding the foregoing, Tenant may upon written notice, given to District within thirty (30) days after the occurrence of such damage or destruction, elect to terminate this Lease if the Premises are damaged or destroyed to the extent of fifty percent (50%) or more of the then replacement cost of the Premises.
- C. *Lease Termination.* In the event that, pursuant to the foregoing provisions, District is to rebuild or restore the Premises, District shall, within thirty (30) days after the occurrence of such damage or destruction, provide Tenant with written notice of the time required for such repair or restoration. If such period is longer than one hundred twenty (120) days from the issuance of a building permit and/or two hundred seventy (270) days from the date of the damage, Tenant may, within thirty (30) days of receipt of District's notice, elect to terminate the Lease by giving written notice to District of such election, whereupon the Lease shall immediately terminate. The period of time for District to complete the repair or restoration shall be extended for up to one hundred eighty (180) days in the event of any delays caused by the fault or neglect of Tenant or because of acts of God, labor disputes, strikes, fires, freight embargoes, rainy or stormy weather, inability to obtain materials, suppliers or fuels, acts of contractors or subcontractors, or delays of contractors or subcontractors due to such causes or other contingencies beyond the control of District (hereinafter, "Reconstruction Delays"). District's obligation to repair or restore the Premises shall not include restoration of Tenant's trade fixtures, equipment, merchandise, or any improvements, alterations, or additions made by Tenant to the Premises. In addition to District's and Tenant's right to terminate this Lease as a result of a peril as provided herein, Tenant shall have the right to terminate this Lease if: (a) a material portion of the Premises is rendered untenable by a peril and District's notice provides that such damage cannot reasonably be repaired within one hundred eighty (180) days after the date of such casualty (without any extension to account for Reconstruction Delays); and (b) there is less than one (1) year of the Term remaining on the date of such peril.
- D. *Abatement of Base Rent.* Unless this Lease is terminated pursuant to the foregoing provisions, this Lease shall remain in full force and effect; provided, however, that during any period of repairs or restoration, Base Rent and all other amounts to be paid by Tenant shall be abated in proportion to the area of the Premises rendered not reasonably suitable for the conduct of Tenant's business thereon.

Section 14. Program Operations and Requirements.

- A. *Due Authorization.* Tenant represents that it is duly authorized to administer and operate the Program, and upon expiration of any license, permit, accreditation and/or certification and/or at District request, Tenant shall provide copies of relevant

licenses, permits, accreditations, and/or certifications to District. Tenant shall be solely responsible for obtaining all necessary permits, licenses, and approvals from any and all applicable State, local or other regulatory agencies related to the operation of its Program or otherwise connected to Tenant's use of the Premises, including without limitation, use permits and compliance with the California Environmental Quality Act (CEQA) as applicable.

- B. *Program Certifications.* Tenant shall be responsible for compiling all guidelines and requirements with respect to appropriate certifications and approvals for Tenant to operate its Program and to be located at the Premises, including, but not limited to the staff fingerprinting clearance and tuberculosis examination clearance requirements applicable to Tenant's Program.

Section 15. Good Neighbor; Quiet Enjoyment.

- A. *Good Neighbor.* Tenant agrees to not use or permit the use of the Premises, the Property, or any part thereof for any purpose which is inimical or contrary to public morals and/or welfare or morally objectionable as unsuitable for its Program. Tenant agrees to respond immediately to concerns expressed by neighbors or District relating to the operation of the Program, Premises or use of the Premises and/or Property.
- B. *Quiet Enjoyment.* District covenants that Tenant, on paying the rent and performing all of its other obligations hereunder, shall, during the Term (as the same may be extended), peaceably and quietly have, hold and enjoy the Premises subject to the terms and conditions of this Lease without interference by any persons lawfully claiming by or through District. Notwithstanding the foregoing, Tenant acknowledges that the adjacent parcels on either side of the Property may be developed through the construction of a housing development and a project for seniors in the future (collectively, the "Adjacent Projects"), and that the existence of the Adjacent Projects shall not be considered an unreasonable interference with Tenant's use of the Premises.

Section 16. Hold Harmless/Indemnification.

To the fullest extent permitted by California law, Tenant shall defend, indemnify, and hold harmless District, its Board and members of the Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all losses, liabilities, claims, suits, damages, expenses, costs, recourses, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs (collectively, "Claims"), directly or indirectly arising out of, connected with, or resulting from the performance of this Lease, or use/access to the Premises or Property, or from any activity, work, or thing done, permitted, or suffered by Tenant, its agents, contractors, employees, representatives, officers, servants, tenants, concessionaires, or volunteers in conjunction with the performance of this Lease, excepting Claims arising from the sole negligence or willful misconduct of the Indemnified Parties; and in case any action or proceeding be brought against any of the Indemnified Parties, Tenant, upon notice from District, shall defend the same at Tenant's expense by counsel reasonably approved in writing by District (unless Tenant's insurance carrier requires other counsel in connection with the same). Notwithstanding the foregoing, District shall protect, indemnify and hold Tenant harmless from and against any and all Claims incurred by reason of any damage to any property (including but not limited to property of Tenant) or any injury (including but not limited to death) to any person occurring in, on or about the Property to the extent that

such injury or damage shall be caused by or arise from the gross negligence or willful misconduct of District or any of the Indemnified Parties.

Section 17. Insurance.

- A. *General Liability Insurance and Auto Insurance.* Tenant shall, at Tenant's expense, obtain and keep in force during the Term of this Lease a policy of commercial general liability insurance and a comprehensive auto liability policy insuring District and Tenant against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. Tenant's comprehensive auto liability policy shall insure all vehicle(s), whether owned (but only to the extent Tenant owns any company vehicles), non-owned or hired. Tenant's commercial general insurance shall be at least as broad as the Insurance Service Office (ISO) CG 00-01 form and in an amount of not less than One Million Dollars (\$1,000,000.00) for bodily injury or death and property damage as a result of any one occurrence and a Three Million Dollar (\$3,000,000.00) general aggregate policy limit. In addition, Tenant shall obtain an excess/umbrella liability coverage in the amount of Two Million Dollars (\$2,000,000.00) each occurrence and Two Million Dollars (\$2,000,000.00) in the annual aggregate. The insurance carrier, deductibles and/or self-insured retentions shall be approved by District. The deductible/occurrence for said insurance shall not exceed Twenty-Five Thousand Dollars (\$25,000.00) for any and all losses resulting from negligence, errors and omissions of the Tenant, its Board, officers, agents, employees, representatives, consultants, invitees and/or students.
- B. *Fire Insurance.* During the Term of this Lease, Tenant shall maintain at its cost a policy of standard fire and casualty insurance limited to the value of the buildings and improvements located on the Premises as of the Effective Date. In the event of loss or damage to the buildings, the Premises or any contents, each of the Parties hereto, and all persons claiming under each of the Parties, shall look first to any insurance in its favor before making any claim against the other Party, and to the extent possible without adding additional costs, each Party shall obtain for each policy of insurance provisions permitting waiver of any claim against the other party for loss or damage within the scope of the insurance and each Party, to the extent permitted, for itself and its insurers, waives all such insurance claims against the other Party.
- C. *Workers' Compensation Insurance.* During the Term of this Lease, Tenant shall comply with all provisions of law applicable to Tenant with respect to obtaining and maintaining workers' compensation insurance.
- D. *Tenant's Property Insurance.* Tenant acknowledges that any insurance to be maintained by District on the Premises will not insure any of Tenant's property, personal property, or improvements made by or for Tenant. Accordingly, Tenant shall, at its own expense, maintain in full force and effect an insurance policy on all of its fixtures, equipment, improvements made by Tenant and personal property in, about, or on the Premises. Said policy is to be for "All Risk" coverage insurance to the extent of at least ninety percent (90%) of the insurable value of Tenant's property.
- E. *Certificates of Insurance and Endorsements.* Not later than thirty (30) days prior to the Lease Commencement Date, Tenant shall deliver to District a certificate of insurance evidencing the existence of the policies required hereunder and copies of

endorsements stating that such policies shall:

1. not be canceled or altered without thirty (30) days prior written notice (fifteen (15) days in the event of cancellation for non-payment of any premium), provided that if Tenant's insurer will not provide such notice, then Tenant may provide such notice within the timeframes set forth above;
2. ensure performance of the indemnity set forth in Section 17 (Hold Harmless/Indemnification), above;
3. state the coverage is primary and any coverage by District is in excess thereto; and
4. include a separate endorsement naming District as an additional insured.

At least ten (10) business days prior to the expiration of each certificate, and every subsequent certificate, Tenant shall deliver to District a new certificate of insurance consistent with all of the terms and conditions required in connection with the original certificate of insurance as described above.

- F. *Insurance Limits, Rating of Insurers and Certificates.* It is the intent of the Parties that policy limits set herein shall be raised from time to time during the Term of this Lease if and to the extent reasonably necessary to account for (i) increases in the estimated full replacement cost of the Premises, and (ii) increases in the general marketplace insurance limits for tenancies as defined herein or subtenancies consistent with the provisions of this Lease. Insurance is to be placed with insurers with a current A.M. Best Insurance rating of no less than A-minus: VII and subject to the approval of District. Tenant shall furnish District with the original certificates and amendatory endorsements effecting coverage required.
- G. *District's Insurance.* District shall keep in force throughout the Term Commercial General Liability Insurance and All Risk or Special Form coverage insuring the District and the Building, in such amounts and with such deductibles as District determines from time to time in accordance with sound and reasonable risk management principles.

Section 18. Notice.

Any notice required or permitted to be given under this Lease shall be deemed to have been given, served and received if given in writing and personally delivered or deposited in the United States mail, postage prepaid, return receipt required, or sent by overnight delivery service, addressed as follows, and accompanied with a courtesy copy sent via e-mail:

If to District:

CAMBRIAN SCHOOL DISTRICT
Attn: Superintendent
4115 Jacksol Drive
San Jose, CA 95124
E-mail: schwiebertk@cambriansd.com

If to Tenant:

CASA DI MIR MONTESSORI
Attn: Head of School
90 E. Latimer Avenue
Campbell, CA 95008
Email: tbourcier@casadimir.org

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the

overnight delivery service. Any notice given by certified or registered mail shall be effective five (5) days after deposit in the United States mail.

Section 19. Sublease and Assignment.

Tenant shall not assign its rights, duties or privileges under this Lease, nor shall Tenant sublease or attempt to confer any of its rights, duties or privileges under this Lease on any third party, without the prior written consent of the District, which consent shall not be unreasonably withheld, conditioned or delayed. Any such attempt without District written consent shall be void. District shall have twenty-five (25) days after receipt of written notice of Tenant's desire to sublease or assign its rights, duties, or privileges under this Lease, and receipt of and all information and financial documentation required to underwrite a new agreement. Any profits generated through Tenant's subleasing or assignment of the Premises shall be allotted one hundred percent (100%) to Tenant. Notwithstanding anything to the contrary contained herein, Tenant shall have the right, upon twenty-five (25) days' written notice to the District (but without the consent of District), to sublease all or any portion of the Premises to any tenants, subtenants or occupants of the Property existing as of the date of this Lease. In addition, notwithstanding anything to the contrary contained herein, Tenant shall have the right, upon twenty-five (25) days' written notice to the District (but without the consent of District), to sublease all or any portion of the Premises and/or to assign the Lease to any entity created by merger, reorganization or recapitalization of or with Tenant, or to any purchaser of substantially all of Tenant's assets, or to any entity providing the same educational services as Tenant, and provided that the assignee has annual earnings before interest, taxes, depreciation, and amortization ("EBITDA") of at least Five Million Dollars (\$5,000,000.00), a net worth not less than Ten Million Dollars (\$10,000,000.00), and has agreed unequivocally and in writing to assume all of Tenant's obligations under this Lease, Tenant shall be released from all further obligations and liability under the Lease Agreement. For purposes of this provision, the calculation of "EBITDA" shall be based on the twelve (12) month period ending on the date of determination, the sum of such entity's net income (loss) for such period plus, in each case to the extent previously deducted in calculating net income (loss): (i) income taxes, (ii) interest payments on all of its debt obligations (including any borrowings under short term credit facilities), (iii) all non-cash charges including depreciation and amortization, and (iv) Non-Recurring Items. "Non-Recurring Items" shall mean with respect to such entity, items of the sum (whether positive or negative) of revenue minus expenses that, in the reasonable judgment of District, are unusual in nature, occur infrequently and are not representative of the ongoing or future earnings or expenses of such entity. Notwithstanding anything to the contrary contained in Section 4.G above, if additional taxes, assessments, levies or possessory interest taxes, are payable with respect to the Premises solely as a result of the use and occupancy of the Premises by an assignee or subtenant of Tenant following an assignment of this Lease or a sublease of all or any portion of the Premises by Tenant, as applicable, then Tenant shall be responsible for the same.

Section 20. No Right to Encumber Leasehold.

At no time shall Tenant allow or suffer the encumbrance of its interest under this Lease by any creditor or institutional lender, whether by deed of trust, mortgage, or other security interest for any purpose or purposes, without the prior written consent of the District.

Section 21. Independent Status.

This Lease is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

Section 22. Entire Agreement of Parties.

This Lease constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Lease may be amended or modified only by a written instrument executed by both Parties.

Section 23. California Law.

This Lease shall be governed by, and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Lease shall be maintained in Santa Clara County, California.

Section 24. Attorneys' Fees.

In the event of any dispute under this Lease, or the default by any Party of that Party's obligations hereunder, then the prevailing Party shall be entitled to recover, in addition to all other sums which may be due under the terms of this Lease, all costs of suit, including reasonable attorneys' fees.

Section 25. Waiver.

The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

Section 26. Successors and Assigns.

This Lease shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

Section 27. Captions.

The captions contained in this Lease are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties.

Section 28. Severability.

Should any provision of this Lease be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed, and the remaining provisions shall continue as valid, legal and enforceable.

Section 29. Incorporation of Recitals and Exhibits.

The Recitals and each Exhibit attached to this Lease are incorporated into this Lease by reference.

Section 30. Non-Discrimination.

Tenant shall not discriminate against any person because of race, color, religion, ancestry, age, sex, sexual orientation, gender identification, national origin or physical handicap. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, sexual orientation, gender identification, age, national origin or physical handicap. Tenant covenants to meet all requirements of District pertaining to non-discrimination in employment. If Tenant is found in violation of the non-discrimination provisions of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the conduct of its activities under this Lease by the State of California Fair Employment Practices Commission or the equivalent federal agency or officer, it shall thereby be found in default of this Lease.

Section 31. Inspection of Premises.

District's employees and agents shall have the right at all reasonable times after school hours upon reasonable prior written notice to Tenant to inspect the Premises and all structures and improvements on the Premises to determine if Tenant is complying with the provisions of this Lease and to determine whether any repairs are necessary. Tenant shall have the right to have a representative accompany the person or persons conducting any such inspection. District shall exercise reasonable efforts to perform any entry into the Premises in a manner that is reasonably designed to minimize interference with the operation of Tenant's business in the Premises.

Section 32. Reservation of Rights.

Except as otherwise provided herein, the Premises are accepted "as is" and "where is" by Tenant subject to any and all existing easements and encumbrances; provided that, as a condition precedent to the future subordination of this Lease to a future encumbrance, District shall be required to provide Tenant with a non-disturbance, subordination, and attornment agreement in favor of Tenant from the party having the benefit of such encumbrance who comes into existence after the Lease Commencement Date. District represents that as of the date of this Lease, there exists no mortgage or deed of trust encumbering District's interest in the Property. District reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the applications and appurtenances necessary or convenient for connection therewith, in, over, upon, through, across and along the Premises or any part thereof, and to enter the Premises for any and all such purposes after reasonable notice to and coordination with Tenant. District also reserves the right to grant franchises, easements, rights of way, and permits, in, over, upon, through, across, and along any and all portions of the Property, including the Premises, provided that no rights reserved by District in this clause shall be so exercised as to interfere unreasonably with or impair student safety or the use and operation of the Premises by Tenant as permitted under this Lease.

Section 33. Construction Related Accessibility Standards.

Pursuant to Civil Code section 1938, District states that the Property and the Premises rented hereunder have not undergone inspection by a Certified Access Specialist (CASp). A CASp can inspect the subject Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, District may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant, if requested by Tenant. The Parties shall mutually agree on the arrangements for the time and manner of the CASp inspection. The payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises identified by such CASp inspection shall be borne by Tenant.

Section 34. Commission and Representation.

Cornish & Carey Commercial dba Newmark Knight Frank and Advantage Real Estate represent the Tenant in this transaction and Colliers Parrish International represents the District. The real estate commission shall be paid by Tenant per a separate agreement. Each Party will indemnify, defend and hold harmless each other Party from and against any claims for brokerage commissions, real estate commissions and/or finders' fees based on the indemnifying Party's alleged agreements, and this obligation shall survive the expiration of the Term.

Section 35. Counterparts.

This Lease and all amendments and supplements to it may be executed in counterparts and transmitted by facsimile or scanned and emailed pdf file, and all counterparts together, whether original, facsimile, or scanned and emailed pdf file, shall be construed as one document.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Lease on the dates written below.

ACCEPTED AND AGREED BY:

DISTRICT:
CAMBRIAN SCHOOL DISTRICT

By: _____

Print Name: Kristi Schwiebert

Print Title: Superintendent

Date: _____

TENANT:
CASA DI MIR MONTESSORI

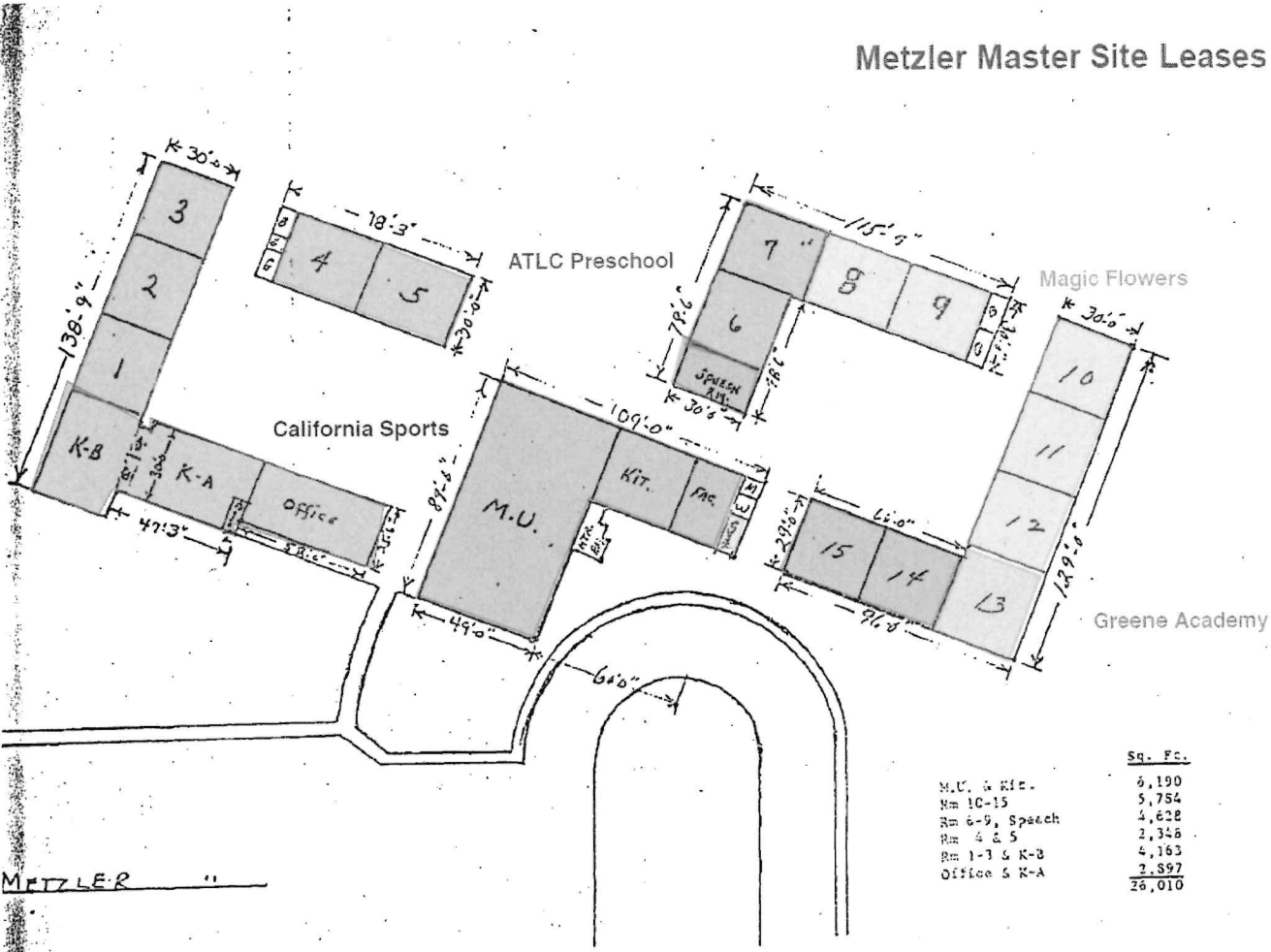
By:  _____

Print Name: Tyler Bourcier

Print Title: Head of School

Date: 6/8/23

Metzler Master Site Leases



METZLER

July 22 2019

EXHIBIT A
Metzler Property



