

THE SAN RAFAEL CITY ELEMENTARY SCHOOL DISTRICT
FACILITY USE AGREEMENT
SAN PEDRO ELEMENTARY SCHOOL

This LEASE made and entered into this 14th day of August 2017 by and between COMMUNITY ACTION MARIN, hereinafter designated "Lessee" and SAN RAFAEL ELEMENTARY SCHOOL DISTRICT of Marin County, California, hereinafter designated "Lessor", is as follows:

WITNESSETH:

Lessee, for the consideration hereinafter set forth, does hereby lease from Lessor certain premises subject to the terms and conditions as follows:

1. **PREMISES.** Lessee hereby leases from Lessor a portion of the facility known as San Pedro Elementary School., 498 Pt. San Pedro Road, San Rafael, CA 94901 specifically the southeast side of the playing field for (use, hereinafter "Premises"). During the term of the Lease, and for any extension, Lessor also grants to Lessee and Lessee accepts a license solely for access to the Premises by Lessee, its employees, day care instructors, agents and clients of the day care program. Lessee acknowledges that title to the Premises is held by District.
2. **TERM.** The term of this lease shall be three (3) years and shall commence on July 1, 2017 and shall terminate on June 30, 2020.
3. **USE OF PREMISES.** The Premises shall be used by Lessee solely for the operation of a child day care program.
4. **RENT.** For consideration for entering into this Lease, Lessee agrees to pay \$1.00 per year on July 1st of each year of the lease term.
5. **CONDITION OF PREMISES.** Premises are provided "as-is", subject only to the conditions set forth in this Lease.
6. **CARE, MAINTENANCE AND REPAIR.** Lessee at its sole cost shall provide usual and customary care to the Premises including custodial and maintenance. Lessee shall be responsible for and shall pay for any repairs or replacements which are occasioned or made necessary by reason of the use of said Premises by Lessee or its agents or employees.
7. **INSPECTION BY LESSOR.** Lessee shall permit Lessor or Lessor's agents, representatives or employees to enter said Premises at all reasonable times and with reasonable notice for the purpose of inspecting said Premises to determine whether Lessee is complying with the terms of this Lease and for the purpose of

doing other Lawful acts that may be necessary to protect Lessor's interest in said Premises under this lease or to perform Lessor's duties under this Lease.

8. **UTILITIES.** Lessee shall pay for all utilities and services, including without limitation, garbage, gas, electricity and water for the Premises. Lessee shall be responsible for its own telephone costs.

9. **HOLD HARMLESS.** Lessee shall hold harmless, defend and indemnify Lessor, its officers, agents and employees, from and against any liability, claim, action, cost, damage or loss, including reasonable costs and attorney's fees, for injury, including death, to any person or damage to any property arising out of Lessee's activities under this Lease. This obligation shall continue beyond the term of this Lease as to any act or omission which occurred during or under this Lease. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Lessee or its employees or agents under workers' compensation acts, disability benefit acts, or other employee benefit acts.

10. **INSURANCE.** Lessee is self-insured and participates with other cities and entities in a joint powers agreement for excess coverage. With respect to this Lease, Lessee shall maintain insurance, which may be self-insurance, as described below:

- (1) Worker's compensation insurance with limits of \$1,000,000.00 or more with an insurance carrier satisfactory to the Lessor in accordance with the Act of the Legislature of the State of California, known as "Worker's Compensation Insurance and Safety Act" originally approved May 26, 1913, and all Act amendments and supplements thereto. Said policy shall be endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to Lessor. In the event Lessee is self-insured, it shall furnish a certificate of permission to self-insure, signed by the Department of Industrial Relations Administration of Self-insurance, Sacramento, CA."
- (2) Commercial or Comprehensive General Liability insurance covering bodily injury and property damage utilizing an occurrence policy form, in an amount no less than \$2,000,000.00 combined single limit for each occurrence. Said insurance shall include, but not be limited to: Premises and operations liability, independent contractors liability, and personal injury liability.
- (3) Lessee shall maintain, in force, for the term of the Lease and any extensions thereto, fire and extended coverage insurance on the building and its contents.

- (4) Each said comprehensive or commercial general liability insurance policy shall be endorsed with the following specific language:
- (a) Lessor, its officers and employees, is named as additional insured for all liability arising out of the operations by or on behalf of the name of the insured in the performance of this Lease.
 - (b) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.
 - (c) The insurance provided herein is primary coverage to Lessor with respect to any insurance or self-insurance programs maintained by Lessor and no insurance held or owned by Lessor shall be called upon to contribute to a loss, except for the sole negligence of Lessor.
 - (d) This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to Lessor except for non-payment of premium which shall require ten (10) days prior written notice.

- (5) Documentation. The following documentation shall be submitted to Lessor:

- (a) Properly executed Certificates of Insurance or Certificates of Coverage clearly evidencing all coverages, limits and endorsements required above. Said certificates shall be permitted prior to the execution of this Lease.
- (b) Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted within thirty (30) days of execution of this Lease.
- (c) Upon Lessor's written request, certified copies of insurance policies. Said policy copies shall be submitted within thirty (30) days of Lessor's request.

- (6) Policy Obligations. Lessee's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

- (7) Material Breach. If Lessee, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of Lease.

11. **ASSIGNMENT.** This Lease, or any interest of the Lessee therein, shall not be assignable by Lessee or by operation of law without the written consent of Lessor.

12. **COMPLIANCE WITH RULES AND REGULATIONS.** The rules and regulations adopted by Lessor, either now or in the future for the safety, care, and

cleanliness of the Premises and the Preservation of good order on the Premises, are expressly made a part of this Lease, and Lessee agrees to obey all such rules and regulations.

13. **COMPLIANCE WITH LAW.** Lessee shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Lessee shall, at its sole cost and expenses, promptly comply with all Laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to or affected by Lessee's improvements or acts.

14. **SEVERABILITY.** The invalidity or illegality of any provision shall not affect the remainder of the lease.

15. **AMERICANS WITH DISABILITIES ACT (ADA).** Lessee is responsible for compliance with the Americans with Disabilities Act ("ADA"), its supporting regulations, and all similar Federal, state or local laws, regulations and ordinances relating to removal of barriers within the workplace, i.e., arrangement of interior furnishings and access within the Premises, and any improvements installed by Lessee. If Lessor's consent would be required for alterations to bring the Premises into compliance, Lessor agrees not to unreasonably withhold its consent.

16. **HAZARDOUS MATERIALS ACKNOWLEDGEMENT, ENVIRONMENTAL REPRESENTATION AND LIABILITY RELEASE.** Lessee acknowledges that various materials may contain materials that have been or may in the future be determined to be toxic, hazardous or undesirable and may need to be specifically treated, specially handled and/or removed from the Premises. Such substances may be above and below ground on the Premises or may be present in soils, water, building components or other portions of the Premises in areas that may or may not be accessible or noticeable. Lessee shall use and operate the Premises, at all times during the term hereof, under and in compliance with the laws of the State of California and in compliance with all applicable environmental legal requirements. For any contamination to Premises due to Lessee's use, Lessee assumes full responsibility for the clean-up of such toxic hazardous or undesirable materials as required by current and further federal, state and local laws and regulations. Lessee acknowledges that toxic wastes, hazardous materials and undesirable substances problems can be extremely costly to correct and Lessee relieves Lessor from all liability related thereto due to Lessee's use. Lessee therefore agrees that Lessee shall indemnify and defend and hold Lessor harmless from any claim, liability, damage, cost or expense, including but not limited to court costs and attorney's fees, arising out of or in any way related to and/or caused by Lessee's use.

17. **CONDITION AT TERMINATION.** During the term of this Lease, Lessee shall at all times maintain the Premises in a good, clean and safe condition. Upon the expiration of the term of this Lease and any renewals thereof or upon the sooner termination thereof, Lessee shall surrender to Lessor possession of the Premises. Lessee shall leave the Premises in as good order and condition as said Premises were in the beginning of the term of this Lease, ordinary wear and tear thereof and damage by the elements, fire, earthquake, flood, act of God, or public calamity excepted.

18. **EARLY TERMINATION.** Either party may terminate this Lease upon giving six (6) months written notice to the other or immediately upon a material violation of this Lease by the Tenant or District or Any act by Tenant exposing the District to liability to others for personal injury or property damage.

19. **AMENDMENTS.** This Lease may be amended only by the written consent of both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed the day and year first above written.

SAN RAFAEL SCHOOL DISTRICT

DATED: _____

BY Rachel Kertz
President, Board of Education

ATTESTED:

BY: Douglas Marquand
Assistant Superintendent, Business Services

COMMUNITY ACTION MARIN

DATED: _____

BY: Kristen Brock
Executive Director

THIS AGREEMENT IS NOT VALID UNTIL SIGNED BY BOTH PARTIES